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FISCAL IMPACT REPORT

SPONSOR Sharer **DATE TYPED** 2/25/05 **HB** _____

SHORT TITLE Legislative Hearings Certain Rules **SB** 711

ANALYST Fernandez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$30.0 - \$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB35
 Duplicates HB574

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Department of Transportation (NMDOT)
- New Mexico Environment Department (NMED)
- Energy, Minerals and Natural Resources Department (EMNRD)
- Public Education Department (PED)
- Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 711 requires Legislative Council Service (LCS) to review proposed rules and designate appropriate interim committees to review rules proposed by the State Engineer, Environmental Improvement Board, Water Quality Control Commission, and Oil Conservation Commission prior to the rule becoming effective.

Significant Issues

Senate Bill 711 requires each proposed rule to be reviewed in a public hearing before the appropriate interim committee or Legislative Council Service within 90 days of the filing of the rule

with the director of LCS.

Rules may be filed, published and become effective after a public hearing on the rule and after any other necessary public hearings are held.

Rules filed prior to July 1, 2005 shall continue in effect provided that they were filed in accordance with applicable law at the time of filing.

According to NMED, current statutes governing environmental laws provide for ample public input, and in fact have much broader public participation rules and requirements than most other states. Many of the rule-making hearings conducted by the department last more than 7 days due to the complexity and level of interest from the public. The department also indicates that interim legislative committees such as the Radioactive and Hazardous Materials Committee routinely hold public hearings on environmental issues including matters subject to rule making.

According to OSE, current statutes provide for optimal safeguards and opportunity for public input. Additional public hearings would duplicate the administrative procedures already required.

PERFORMANCE IMPLICATIONS

According to both OSE and NMED, duplicative public hearings required by Senate Bill 711 could inhibit the agencies from meeting its performance goals and targets.

According to EMNRD, the duplication of effort required by this bill may significantly impede the efforts of the boards and commissions to carry out their statutory duties.

FISCAL IMPLICATIONS

Senate Bill 711 does not include an appropriation to LCS for the additional duties. Depending on the number and duration of additional interim committee meetings, additional costs could be significant to LCS.

According to NMED, solid waste hearings can cost up to \$3,000 for a one-day hearing. Assuming 10 one-day hearings at \$3,000 costs cost be as much as \$30,000 per year. Multiple day hearings or hearings requiring testimony of expert witnesses could significantly increase the cost.

According to EMNRD, additional costs associated with House Bill 711 could be \$100,000 per year.

Public Education Department notes that if state agencies are required to publish proposed rules in the State Register, costs would double.

CONFLICTS/DUPLICATION/RELATES

According to NMED, Senate Bill 711 conflicts with House Bill 35 which seeks to eliminate duplicative hearings before the Water Quality Control Commission.

Senate Bill 711 duplicates House Bill 574

Senate Bill 711 relates House Bill 705. This bill requires that rules proposed by executive agencies must be filed with the Legislative Council Service (LCS) prior to any public hearing conducted by the agency. The proposed rules will be forwarded to the members of the appropriate interim committee or, if no committee has been designated, the Legislative Council. The Legislative Council Director or a committee member may then request a public hearing before the interim committee within 30 days of the filing of the rule; the hearing must be held within 60 days of the request. The proposed rule would not become effective until after the hearing is held. HB 705 exempts agencies subject to the Uniform Licensing Act, provides for emergency rules that may take effect without a legislative hearing and contains a savings clause addressing existing rules filed prior to July 2, 2005.

TECHNICAL ISSUES

EMNRD, NMDOT and OSE raise concerns that Senate Bill 711 may violate the separation of powers doctrine if a legislative committee would be able to disapprove a proposed regulation.

According to PED, executive branch agencies currently publish notice of proposed rulemaking in a newspaper of general circulation at least 30 days prior to the hearing date and must mail the notice of hearing to all persons who have made a written request for advanced notice of hearing at least 30 days prior to the hearing. This bill requires a legislative hearing within 90 days of the filing of the rule with the director.

CTF/sb