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FISCAL IMPACT REPORT

SPONSOR HCPAC ORIGINAL DATE 03/05/07
LAST UPDATED _____ HB 1219/HCPACS
SHORT TITLE DISPLAY U.S. FLAG IN ALL PUBLIC BUILDINGS SB _____
ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$. see narrative			recurring	various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee substitute for House Bill 1219 requires all state agency buildings with a flagpole to continually display a flag of the United States in salute and remembrance of the our armed forces during international conflicts. The bill provides for all weather flags to be used in inclement weather; and, further provides that flags flown at night be properly illuminated.

FISCAL IMPLICATIONS

American flag etiquette requires that the American flag be lit at all times, but the troubles of dealing with outdoor wiring and changing dead bulbs makes it difficult to accomplish. The bill does not provide an appropriation directed toward these efforts.

All flagpole locations owned or occupied by the state, county, municipality or other local government entities will have to fly flags continually instead of during normal business hours. These entities will need to purchase inclement weather flags if not already owned; and, will need to install outdoor lighting, or provide other lights as necessary to illuminate the flags when flown during night hours. It is difficult to estimate the exact costs, including the cost of utilities to provide lighting at night, and could be significant.

SIGNIFICANT ISSUES

Section 22-2-9, NMSA 1978 United States and New Mexico flags; display regulations, "provide that the flag of the United States and the flag of the State of New Mexico shall be displayed in

each classroom and on or within all public school buildings of this state...”

Section 6a within the Flag Code states: "when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness."

The substitute bill may be seen as implicating the Free Speech clause (i.e., First Amendment) of the United States Constitution. Even though the bill does not prohibit speech, as a basic tenet, the U.S. Supreme Court has invalidated laws that seek to compel speech. See, *West Virginia v. Barnette*, 319 U.S. 624 at 637 (1943) (a student could not be compelled to salute the flag); *Boy Scouts of America v. Dale*, 530 U.S. 640 at 661 (2000) (“While [a] law may promote all sorts of conduct in place of harmful behavior, it may not interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may seem.”)

The requirement to fly the flag during international conflicts may be seen as supporting a specific viewpoint, especially during conflicts that are controversial. In those situations, this bill may be interpreted as mandating symbolic speech, which requires consideration of constitutional principles articulated by the U.S. Supreme Court.

PERFORMANCE IMPLICATIONS

The section of law dealing with American Flag etiquette is generally referred to as the Flag Code. Some general guidelines from the Flag Code include:

- The flag should be lighted at all times, either by sunlight or by an appropriate light source.
- The flag should be flown in fair weather, unless the flag is designed for inclement weather use.
- When the flag is lowered, no part of it should touch the ground or any other object; it should be received by waiting hands and arms. To store the flag it should be folded neatly and ceremoniously.
- The flag should be cleaned and mended when necessary.

ADMINISTRATIVE IMPLICATIONS

One of the vulnerable provisions of the bill is requiring places “occupied” by the state and its political subdivisions to fly the flag. If any such “occupied” place is leased from and owned by private persons or entities, this bill will force symbolic speech upon private property.

SUBSTANTIVE ISSUES

The flag flies 24 hours a day on the moon and at the South Pole. However, there is an elite group where, by executive order, it is to fly 24 hours a day:

- Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland
- Flag House Square, Albemarle and Pratt Streets, Baltimore Maryland

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- United States Marine Corps Memorial (Iwo Jima), Arlington, Virginia
- On the Green of the Town of Lexington, Massachusetts
- The White House, Washington, DC.
- Fifty flags of the United States are displayed at the Washington Monument continuously.
- United States Customs Ports of Entry which are continually open.
- Grounds of the National Memorial Arch in Valley Forge State Park, Valley Forge, Pennsylvania

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Public buildings, including schools, offices and prisons, will continue to fly the flag during business hours to serve as a symbol of the United States.

AHO/nt