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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/08

SPONSOR Sanchez, B LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Create Interim Process & Law Committee SB 528

ANALYST Escudero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$90.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of District Attorney (AODA)  
 Attorney General Office (AGO)  
 Commission of Public Records (CPR)  
 Public Education Department (PED)  
 Department of Environment Information Technology (DoIT)

### SUMMARY

#### Synopsis of Bill

Senate Bill 528 creates a ten member joint interim legislative "Regulatory Process and Administrative Law Committee" of the State Legislature. The Committee will function from the date of its appointment until December 15 prior to the first session of the fiftieth legislature. The members will be appointed from the Senate and House of Representatives.

The Committee shall:

- conduct a continuing study of the benefits and challenges of existing agency regulatory process and structure;
- review the model Administrative Procedures Act and other regulatory process legislation;
- recommend any necessary legislative action to improve regulatory processes, including a time line for implementation of any recommended changes; and
- make a full report of its findings and recommendations.

Staff will be provided by the Legislative Council Service and the Director of the Administrative Law Division of the State Records Center and Archives.

## **FISCAL IMPLICATIONS**

The appropriation of \$90.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY09 shall revert to the general fund.

According to CPR, Senate Bill 528 could have a fiscal impact on the commission of public records if the director of the administrative law division were to provide staff support for the committee. The size of the fiscal impact is difficult to quantify because it is not known what type of service will be required by the committee. The appropriation is made to the LCS; no provision is made for any costs incurred by the commission.

According to DoIT, it is not possible at this time to quantify the fiscal implications SB 528 would have on the Environment Department. In the short term, there will be no fiscal impact on the Environment Department. Depending on the actions of the Committee, the fiscal implications could be significant in the long term.

## **SIGNIFICANT ISSUES**

According to AGO, the State Records Center and Archives and its divisions is part of the Executive Branch of state government. See NMSA Section 14-3-8 (1978). This bill would require the Director of its Administrative Law Division to provide staff support for a legislative committee. Requiring an executive agency to provide staff for a legislative committee may violate Article III Section 1 of the New Mexico Constitution, commonly referred to as the "Separation of Powers" clause.

According to CPR, Senate Bill 528 would create a legislative interim committee to study regulatory processes in the state. The committee would also recommend legislative changes.

The bill stipulates that staff shall be provided by the LCS and the director of the administrative law division of the "state records center and archives" (statutory name of the agency is commission of public records). The commission has two concerns.

- First, the administrative law division is small, with only five employees. Depending on the extent of the staff support expected, it could become a burden that could interfere with the division's ability to conduct its work. The agency appreciates the opportunity to participate in the process, but would prefer language providing for an advisory role, rather than staff support.
- Second, the bill names the director of the administrative law division. When it references the LCS, it simply refers to the agency; it does not specify the director. The commission would prefer that the reference be to the agency - the state commission of public records - not to the director of a division.

As stated by AODA, the process of application of the Administrative Procedures Act and various agencies' regulatory schemes are often the first stages of administrative penalties and possible serious ramifications to licensing, therefore care should be made to properly comprise any study committee with a fair cross section of those possibly affected.

Interim Committees may be helpful if the topic to be studied needs studying. If not, the legislative effort is seen as bureaucracy.

As stated by PED, Senate Bill 528 proposes to analyze and recommend improvements to current state regulatory processes of the various state agencies. Senate Bill 528 is less sweeping than other legislative attempts to revamp state regulatory processes such as HB 685 (Administrative Accountability Act) introduced in 2007's 60-day session, which proposed detailed procedures for agencies to follow and numerous requirements on agencies related to rulemaking, adjudications, fees and licenses. It is also less far-reaching than House Joint Resolution 12, Senate Joint Resolution 5 and Senate Joint Resolution 7, which propose a constitutional amendment allowing an interim or standing committee to annul an agency rule if the committee finds that the agency or officer of the executive branch was not "authorized" to adopt the rule. Senate Bill 528 also does not immediately set requirements for agencies as does HB 310 (requiring that agencies prepare a regulatory impact statement if a proposed rule has an economic impact of more than \$25.0) or HB 614 (requiring agencies to conduct and review an economic impact study of a proposed rule or amendment).

Senate Bill 528 would at most result in a report on current state regulatory processes and recommendations for improvement which may be taken by future legislation. Any review or study of current processes would necessarily be extensive because state agency regulatory processes vary from one agency to another. Most agency enabling statutes provide the cabinet secretaries with their own rulemaking authority and rulemaking processes are promulgated by each agency.

A review of the model Administrative Procedures Act may provide recommendations for changes in state regulatory procedures including uniformity of regulatory processes throughout the various state agencies. New Mexico's current Administrative Procedures Act only applies to agencies made subject to its coverage by law, or by agency rule or regulation.

According to DoIT, potential issues could arise if the actions of the Committee resulted in the Legislature taking on executive branch duties. Executive commissions and boards in New Mexico are provided the duty of promulgating regulations, including regulations that dictate administrative procedures for those actions appearing before the commissions and boards. If the legislative committee strayed too far from its primary duties of passing legislation and began infiltrating into the executive regulatory arena, constitutional issues could arise.

## **PERFORMANCE IMPLICATIONS**

As stated by CPR, the performance of the administrative law division in the commission of public records could be affected if the director were to spend any significant providing staff support for the committee. Please see Significant Issues, above.

As stated by DoIT, short-term, there are no performance implications for the Environment Department. Long-term, there could be significant performance implications if administrative procedural changes were made based upon Committee findings. Such changes would entail regulation promulgation, training, public outreach and possibly staffing issues, which would all affect the performance of Department employees. Alternatively, it is possible that revisions to administrative procedures could make employee performance smoother and more efficient.

## **ADMINISTRATIVE IMPLICATIONS**

According to CPR, the performance of the administrative law division in the commission of public records could be affected if the director were to spend any significant providing staff support for the committee. Please see Significant Issues, above.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 528 relates to SB 57, SB 535, SJR 5, SJR 7, HB 310, HB 614, and HJR 12.

As stated by PED, this bill relates to HJR 12, SJR 5 and SJR 7, which propose an amendment to the New Mexico Constitution which, if approved, would allow the Legislature to, by law, prohibit regulatory rules proposed by an agency or officer of the executive branch from taking effect until the proposed rules were reviewed and approved by the appropriate interim or standing committees of the Legislature.

It also relates to/conflicts with HB 310, which would amend the State Rules Act by adding a requirement that agencies prepare a regulatory impact statement if a proposed rule has an economic impact of more than \$25.0.

It also relates to/conflicts with House Bill 614, which requires all agencies to, prior to the adoption or amendment of any rule, conduct and review an economic impact study of costs, benefits and impacts of the proposed rule or amendment.

## **ALTERNATIVES**

According to DoIT, an alternative to the Committee would be to have a broad-based group of participants who have experience with administrative procedure and processes report their viewpoints to the Legislature. That would allow for an accurate evaluation of the current system(s), and would give the Legislature a greater understanding of what would be within its power to change.

PME/bb