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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/08

SPONSOR Sanchez, B LAST UPDATED _____ HB _____

SHORT TITLE Create Interim Process & Law Committee SM 53

ANALYST Escudero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Energy, Minerals & Natural Resources Dept. (EMNRD)

SUMMARY

Synopsis of Bill

Senate Memorial 53 requests the creation of the Interim Regulatory Process and Administrative Law Committee to study concerns about the regulatory process, review the proposed model administrative procedures act, identify specific areas of reform, make findings and endorse any necessary legislation to improve administrative procedure on rulemaking and adjudication and ensure that agencies carry out the mandates of the legislature, the lawmaking branch of government.

The memorial establishes membership of the committee as ten voting members appointed by the Legislative Council, five each from the House of Representatives and the Senate, with at least two from the minority party in each chamber's membership. The Legislative Council would designate the co-chairs of the committee, with a co-chair from each chamber's membership on the committee.

The committee would be staffed by the Legislative Council Service and the Director of the Administrative Law Division of the New Mexico Commission of Public Records. The memorial would be transmitted to the Governor, the Attorney General, and the Director of the Administrative Law Division of the New Mexico Commission of Public Records.

FISCAL IMPLICATIONS

None to the PED.

None for EMNRD. There will necessarily be some expenditure of funds incident to the activity of an interim legislative committee, which presumably will be met from funds appropriated for the legislature.

SIGNIFICANT ISSUES

As stated by PED, although similar to Senate Bill 528 in calling for the creation of the interim legislative regulatory process and administrative law committee, Senate Memorial 53 differs in these respects:

SM 53 does not specifically provide a term for the committee. SB 528 provides as follows:

- Committee shall function until December 15 prior to the first session of the fiftieth legislature (December 15, 2010). In contrast, section 2-3-3 NMSA 1978 provides that interim committees created by Legislative Council shall terminate on or before December 1 of the year in which they are created.
- SM 53 does not provide for an appropriation. SB 528 provides a \$90.0 appropriation from the general fund to support the committee.
- SM 53 specifically provides for co-chairs of the committee to be one member of the House of Representatives and one member of the Senate, as appointed by the Legislative Council. SB 528 only provides for the Legislative Council to appoint a chair and vice chair and does not specify whether they must come from the House of Representatives or the Senate.

Like Senate Bill 528, SM 53 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 Memorial 53 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 Memorial 53 would at most result in a committee to study current state regulatory processes and make 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. As SM 53 suggests in its recitals, 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 EMNRD, the subject of "regulatory reform" has been extensively discussed at this session, and numerous bills have been introduced to study or make changes in the process by which state agencies make rules. See "Conflicts, Duplication, etc." below. SM 53 is neutral in that it neither calls for particular changes, nor identifies any particular concerns to be addressed, other than inconsistencies in processes among agencies. The only specific mandate to the committee is that it considers the Model Administrative Procedures Act being drafted by the National Conference of Commissioners on Uniform State Laws.

ADMINISTRATIVE IMPLICATIONS

PED may be asked to testify before the committee or to provide information and input regarding its regulatory process and structure for the proposed report.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As stated by PED, this memorial relates to/conflicts with Senate Bill 528 for the reasons stated under Significant Issues.

This memorial 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.

Section 9-1-5(E), NMSA 1978 of the Executive Reorganization Act. (discussed above)

As stated by EMNRD, SM 53 addresses the same subject (the administrative rulemaking process) as several bills that have been introduced at the present session. SM 53 is most similar to SB 57, also sponsored by Sen. Sanchez, the difference being that SB 57 would have created a task force including members of the legislature, appointees of the Governor and others to study the administrative process, whereas SM 53 provides for a committee composed of members of the legislature only. The other related bills, HB 310, HB 394 and HB 614 are fundamentally different in that these bills would make specific changes in the administrative process.