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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/09

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE Interstate Compact Transparency Act SB 666

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY09 | FY10 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Finance and Administration (DFA)
 Office of the State Engineer (OSE)
 New Mexico Environment Department (NMED)
 Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 666 would prohibit the State of New Mexico (State) from entering into, or participating in, any interstate compact that is administered by a "governing body," as defined in the bill, unless that interstate compact complies with New Mexico's open access laws. In addition to the general requirement of compliance with open access laws, the bill requires three things specifically: (1) that the interstate compact's governing body give "written notice" of its meetings to residents of New Mexico, (2) that it provide public access to records of its meetings, and (3) that the interstate compact comply specifically with the New Mexico Open Meetings Act, which would require that all meetings of the governing body be open to the public.

FISCAL IMPLICATIONS

Senate Bill 666 makes no appropriations.

SIGNIFICANT ISSUES

The AGO¹ notes that Section 3 limits the state to participating in interstate compacts only if the governing body complies with New Mexico's open access laws, such as the Open Meetings Act. This may create issues for the other states or tribal governments participating in a compact, especially if their laws require compliance with those states' or tribal governments' open access laws.

The OSE contributed the following notes and concerns.

The State currently is a participant in several interstate compacts that have governing bodies. One instance is the Interstate Oil and Gas Compact Commission (IOGCC), in which the State participates through the Energy, Minerals and Natural Resources Department (EMNRD). IOGCC is an interstate organization that was formed more than 70 years ago, pursuant to congressional authorization, to provide legal and technical support to administrative agencies that regulate the oil and natural gas industry. It does not make rules or issue orders, and its governing bodies have no power to impose any requirements that are binding on the State of New Mexico or its residents. The information and legal and technical analyses that IOGCC develops are very useful to EMNRD in formulating its policies. An example of IOGCC's activities is its carbon sequestration task force, which has provided vital technical and legal research on this developing area.

The State does not have any power to impose its laws upon an existing interstate body such as IOGCC. Since Section 3.C of the bill provides that the State shall not "participate in" interstate compact that do not observe the bill's requirements, presumably the effect of passing this bill would be to preclude New Mexico from participating in IOGCC and other, similar existing interstate organizations.

SB 666 contains a lot of vague language that will make it difficult to implement. For instance, the definition of "interstate compact" is very broad and could cover all sorts of intergovernmental agreements, including Joint Powers Agreements. It seems to be intended to apply only to interstate compacts that have a "governing body," but that is not explicit.

Section 3.A of SB 666 requires governing bodies of interstate compacts to comply with "open access laws of the state [of New Mexico]," but does not specifically identify those laws. The definition of "open access laws" does not help much.

TECHNICAL ISSUES

AGO notes that the bill applies to "the state." Presumably, the reference means the State of New Mexico, but this is not clear.

Section 3 is redundant. Subsections A and B each condition the state's participation in an interstate compact on the compact's governing body's compliance with the subsection's provisions. Subsection C repeats that the state shall not participate in an interstate compact unless the governing body complies with subsections A and B.

The OSE makes the following suggestions.

1. Change the definition of “interstate compact” as follows: On Page 1, between lines 24 and 25, insert “which provides for a governing body,”
2. Change the definition of “open access law” as follows: On Page 2, delete line 5 after the word “means”, deleted line 6 through 8, and insert, after the word “means” in line 5: “the Open Meetings Act (Chapter 10, Article 15, NMSA) and [cite other specific statutes intended for inclusion in the definition.]”

OTHER SUBSTANTIVE ISSUES

The OSE comments that the inability to participate in interstate organizations such as IOGCC that provide technical support for the work of New Mexico state agencies could limit the ability of New Mexico agencies to remain in the forefront of regulatory development.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AGO states that there will be no New Mexico law generally requiring the governing body of an interstate compact to conduct open meetings and make records of the meetings available to the public.

CH/mt

1 The analysis for the Attorney General’s Office includes the following disclaimer. This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.