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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 03/14/05 HB _____

SHORT TITLE Prohibit Retroactive Rules of Law SB 158

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Corrections Department (CD)
 Public Defender (PD)

SUMMARY

Synopsis of Bill

Senate Bill 158 proposes to prohibit the courts in New Mexico from creating retroactive rules of law and from creating rules that would apply to conduct prior to the time of the filing of the cause of action associated with a particular cause of action.

Significant Issues

AOC cites that, under Art. 1, § 10 of the U.S. Constitution, states are forbidden to pass "ex post facto" laws, which is a law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed. Because of this, AOC asserts, this legislation is unnecessary because all courts are governed by the U.S. Constitution. AOC states that insofar as the legislation seeks to limit courts from developing the common law by way of its decisions in the context of specific cases brought before the courts, the change would render the judicial branch unable to perform the basic duty for which it exists - to decide cases and clarify the law. According to AOC, the very nature of the common law is that it is constantly changing and evolving.

PERFORMANCE IMPLICATIONS

AOC predicts that the effectiveness of the judicial branch would be hampered if the ability of courts to develop the common law were limited.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Attorney General's Office cites that the proposed bill seems to duplicate in part the provisions of the State Constitution as interpreted by the courts (Art. II, Sec. 19 and Art. IV, Sec. 34).

TECHNICAL ISSUES

The phrase "rules of law" raises technical concerns according to AGO, because, in New Mexico, the rules created by courts are limited. The Supreme Court creates rules of procedure for itself and lower courts and other rules such as disciplinary rules. Other courts create local rules governing conduct in that court. Court decisions interpreting and applying legal principles are not referred to as rules of law. AGO has interpreted "rules of law" as a court decision interpreting substantive rather than procedural law; however, the agency predicts, there is no assurance that a different interpretation could be applied due to the confusing nature of the term.

OTHER SUBSTANTIVE ISSUES

AGO asserts that, since courts do not "create" substantive rules of law in civil actions it is difficult to understand how the bill would be applied; Art. IV, Sec 34 of the NM Constitution prohibits changing substantive law or rules of procedure or evidence so as to effect a pending case and the provision applies to court rules as well (Marquez v. Wylie, 78 N.M. 544 (1967)).

ALTERNATIVES

The Attorney General's office suggests that, if the concern is causes of action derived from statute, that the legislation rather addresses directly the "effective dates and that to do this, the bill could address substantive law directly through legislation that would be modeled after Art. IV, Sec. 34 but made applicable to the courts rather than the legislature.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If this legislation is not enacted, the judicial system will continue to develop common law in the context of cases brought before the courts.

EM/lg