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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/07  
 SPONSOR Feldman LAST UPDATED 2/13/07 HB \_\_\_\_\_  
 SHORT TITLE Conference Committees as Open Meetings SB 288/aSRC/SPAC  
 ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1				General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 297  
 Relates to SB 322

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment strikes the Senate Rules Committee amendments. The bill is restored to its original version.

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment adds a definition for "conference committee" which shall be "a committee consisting of three members from each house appointed by the president pro tempore of the senate and the speaker of the house".

#### Synopsis of Original Bill

Senate Bill 288 will amend NMSA Section 10-15-2 of the open Meetings Act to:

- require "reasonable notice" of meetings to be given to the public via publication on the daily calendars or by the presiding officer in each house at the time the meeting is scheduled;

- remove the exemption from discussion by a legislative committee or policymaking body in an open meeting for matters relating to any bill, resolution or other legislative matter not yet presented to either house of the legislature or general appropriation bills and
- include a gathering of members of a conference committee within the definition of meeting.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

Proponents of the bill may cite the mission statement of the Open Meetings Act that say a representative government is dependent upon an informed electorate and all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Section 10-15-1 (A).

Proponents may also cite to Article IV, Section 12 of the state constitution requiring all sessions of each house shall be public to mean that the legislature should not be holding closed conference committee meetings, or closed legislative committee meetings on matters relating to bills not yet presented to either house or general appropriation bills.

Opponents of the bill may cite to a precept of constitutional law that one legislature cannot bind another (with a few exceptions relating to compacts and contracts), and the legislative branch is free to conduct its own internal proceedings without interference from the courts. Given these precepts, it is unclear whether state laws governing the conduct of legislative proceedings are binding on future legislatures, or even the legislative body enacting the law. In addition, opponents may point out that the legislature has already adopted rules governing the conduct of its meetings which appear to conflict with this bill and other provisions in the Open Meetings Act.

The AGO noted the following change to existing law:

- Section 10-15-1(D) states the affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body.
- Section 10-15-2(A) imposes open meeting act requirements on the legislature under certain circumstances. For example, if the Chairman of the Legislative Finance Committee calls a meeting to discuss a study of county and municipal finances ordered by a joint resolution, an open meeting must be held. On the other hand, if an evening reception is held at which a quorum of the members of House Judiciary is present, an open meeting is not held because this is not a gathering called by the presiding officer for the purpose of discussing public business.

- Section 10-15-2(B) deletes the express exemptions covering matters relating to bills, resolutions, or “other legislative matters” not yet presented to either house of the legislature or relating to general appropriations bills from being open to the public. For example, any standing committee may currently meet in closed session at any time to consider a general appropriations bill. In addition, if a freshman representative will like to submit a bill concerning school finance and seeks the advice of his more experienced colleagues before the bill is officially introduced, the House Education Committee can currently meet in closed session to discuss the proposal. This bill will remove these two types of exemptions and allow the public to attend meetings at which such matters are discussed.
- The elimination of the exemptions in Section 10-15-2(B) may make a violation and enforcement situation more likely. The enforcement process is not entirely clear. Section 10-15-3 states if a body violates Section 10-15-1, then the action shall be invalid. But this bill only addresses actions in Section 10-15-2. If the exemptions are enforceable, the AGO or local district attorney (or a citizen) may enforce the provisions in district court, although such enforcement actions could raise separation of powers issues if the courts hold that they should not address these disputes where the executive branch brings an action against a legislative body.
- Allow the public to attend meetings of legislative conference committees. Those committees are governed by Joint Rule 3-1 and are convened when one house refuses to concur in the amendments made to a bill in the other house, and the amending house refuses to recede from its amendments. Some argue good public policy requires that conference committees should be fully open to the public, and that will help guard against new matters being inserted in conference reports. Others argue that opening conference committees will merely drive sensitive discussions elsewhere in secret and inhibit the frank exchange of ideas needed to resolve disputes in conference committees.

## **ADMINISTRATIVE IMPLICATIONS**

If there are additional enforcement actions, the AGO or a local district attorney office may need to commit additional resources and staffing to this issue.

## **DUPLICATION/RELATIONSHIP**

SB 288 duplicates HB 297 except for Short Title, “open” is changed to “public”.  
HB 297 also relates to SB 322.

DW/csd