

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 98

49th Legislature, 2nd Session, 2010

Tracking Number: .180347.1

Short Title: Delay Rules Affecting Educational Funding

Sponsor(s): Senator William E. Sharer

Analyst: James Ball

Date: February 3, 2010

Bill Summary:

SB 98 prohibits any agency rule negatively affecting educational funding by more than \$5.0 million, as determined by the Legislative Finance Committee (LFC), from taking effect before the next regular legislative session.

Fiscal Impact:

SB 98 makes no appropriation.

Substantive Issues:

The fiscal impact report of the LFC states that “Senate Bill 98 is related to the constitutional amendment proposed by House Joint Resolution 4 “Nullification of Executive Rules, CA.” This proposes to allow the legislature to nullify rules established by executive branch.”

PED notes that it appears that SB 98 would result in the Executive Branch being able to act only with the permission of the Legislative Branch (i.e., the LFC). Therefore, such a bill would implicate Article 3, Section 1 of the Constitution of New Mexico relative to the separation of powers between the executive, judicial and legislative branches of government.¹

PED further states that SB 98 permits a unilaterally binding decision to be made by the LFC and imposed upon state agencies without any recourse or due process. In addition, SB 98 does not indicate whether the LFC would have authority to invoke its procedures to apply to existing rules, new rules, or both.

Finally, PED analysis also points out that the *State Rules Act* prescribes how agency rules in New Mexico are adopted. The act permits for rulemaking that calls for the inclusion of an effective date of the rule. SB 98 would permit the LFC to change the effective date of agency rulemaking in certain circumstances without any regard to the need for the rule and objection to the LFC’s determination that the proposed rule would negatively affect educational funding. PED believes that SB 98 conflicts with the *State Rules Act*.

Related Bills:

HJR 4 *Nullification of Executive Rules, CA*

¹ As provided in Article 3, Section 1 of the Constitution of New Mexico: “The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others. . . .”