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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/10

SPONSOR Sharer LAST UPDATED _____ HB _____

SHORT TITLE Delay Rules Affecting Educational Funding SB 98

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJM 4

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See narrative				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 98 would give the Legislative Finance Committee the responsibility of determining if any rule promulgated by an agency negatively affects educational funding by more than \$5 million. If a rule would have that level of impact, Senate Bill 98 would prohibit the rule from taking effect before the next succeeding regular session has ended.

FISCAL IMPLICATIONS

Senate Bill 98 makes no appropriation.

SIGNIFICANT ISSUES

The PED provides the following analysis of a potential conflict posed by Senate Bill 98.

The bill does not describe how nor does it require that agency bills are delivered to the LFC for their review. The State Rules Act [14-4-1 to 14-4-11, NMSA 1978] currently prescribes how agency rules in New Mexico are adopted. Moreover, that 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 by more than \$5 million. This bill as drafted would conflict with that Act.

Article III, Section 1 of the New Mexico Constitution prohibits any branch of government from usurping the power of the other branches:

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.

Because it appears that the bill if adopted would result in the Executive Branch acting only with the permission of the Legislative Branch (i.e., the LFC), such a bill would implicate Article III, Section 1 of the New Mexico Constitution relative to the separation of powers between the executive, judicial and legislative branches of government. *Compare, I.N.S. v. Chadha*, 462 U.S. 919, 954 (1983) (providing that executive action under legislatively delegated authority that might resemble "legislative" action in some respects is not subject to the approval of the Houses of Congress and the President).

The LFC observes that it has no statutory rulemaking authority, but being generally assigned as follows: "The mission of the Legislative Finance Committee is to provide the Legislature with objective fiscal and public policy analyses, recommendations and oversight of state agencies to improve performance and ensure accountability through the effective allocation of resources for the benefit of all New Mexicans."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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 the executive branch.

CH/svb