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FISCAL IMPACT REPORT

SPONSOR:	McSorley	DATE TYPED:	2/6/00	HB
SHORT TITLE:	NM Religious Freedom Restoration Act			SB
				ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact	Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00		
NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

LFC files

Attorney General's Office

Energy, Minerals and Natural Resources Dept.

Corrections Department

General Services Dept.

SUMMARY

Synopsis of Bill

SB 239 establishes a new Religious Freedom Restoration Act in NM, which would prohibit the state government entity from restricting a person's free exercise of religion unless :

- the restriction is in the form of a rule of general applicability and does not directly discriminate against religion or among religions; and
- the application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

It defines "free exercise of religion" to mean an act or a refusal to act that is substantially motivated by religious belief whether or not the religious exercise is compulsory or central to a larger system or religious belief.

A person whose free exercise of religion has been so restricted may bring suit against a government agency for injunctive or declaratory relief, actual damages and reasonable attorney fees and costs provided that damages awarded do not exceed \$75,000 to any person and \$200,000 for a single occurrence. The bill provides that immunity from liability of the government agency is waived for an action brought pursuant to the Act. The waiver of immunity does not waive immunity granted pursuant to the Governmental Immunity Act.

The rights provided under the Act would be in addition to any remedies which already exist under state and federal law and constitutions.

Significant Issues

The Attorney General office(AG), in reference to the *Smith* Court, noted that the Court recognized some pitfalls to a broad interpretation of religious freedom guarantees. One of these pitfalls is that someone will have to determine whether the religious practice an individual is trying to protect is indeed legitimate. The AG office further noted that the protections in SB 239 generally exist under the NM Constitution, but that decision has not been made by the NM appellate courts. The AG office declares that the absence of SB 239 will mean the perpetuation of this uncertainty.

According to the analysis of the Energy, Minerals and Natural Resources Department (EMNRD), actions of government sometimes affect lands that have been or are being utilized by people for religious purposes. These lands may not be owned by the individuals using them for religious purposes. EMNRD states that the bill may prevent the owner of the land from using it as he wishes.

EMNRD further notes that the bill does not provide clear guidance for what constitutes a "burden" on a person's free exercise of religion.

The Corrections Department analysis states that the bill will allow inmates to interfere with the management and operation of prisons. The Corrections Department estimates a dramatic increase in the number of lawsuits filed by inmates if this bill becomes law. According to the Corrections Department, the federal Religious Freedom Restoration Act (prior to it being declared unconstitutional) resulted in a significant increase in lawsuits file by inmates in NM.

The Corrections Department expresses concern that definition of the "free exercise of religion" is extremely broad and can result in the department having to deal with inmates who create their own religion and/or use strange interpretations of the Bible or Koran to object to a work activity, request a special diet and/or require obscure articles for worship, which would then interfere with the efficient operation of the prison system.

FISCAL IMPLICATIONS

EMNRD maintains that the bill may affect state and local government revenues if the religious use of certain lands prohibits the land owner from developing the land for commercial use. EMNRD contends that

performing the analysis required to implement the law will increase cost to the agency and refusing to issue a permit would place the state in a litigious situation.

The Corrections Department envisions an increase in costs to defend against law suits filed by inmates.

General Services Department anticipates an increase in litigation costs arising from numerous lawsuits if the bill is enacted.

ADMINISTRATIVE IMPLICATIONS

EMNRD believes that the bill could be used to challenge permitting efforts for mining, timber sales and oil and gas development. As such the workload of several divisions would increase and additional staff may be required.

If this bill is enacted the Corrections Department expects an increase in the administrative burden because of the need to address the inmates claims on allege violations of the Act.

DUPLICATION

The bill duplicates HB 419.

OTHER SUBSTANTIVE ISSUES

EMNRD points out that many Native American tribes and pueblos in NM have used large areas of land for religious purposes and some of this land is outside the reservation. The department indicates that two mining operations are under fire for negatively affecting lands once used by nearby tribes and that the bill, if enacted, may prevent the private landowner from developing the land because of historic uses.

General Services Department mentions that religious freedom is already guaranteed by federal and state constitutions and that it subjects state and local governments to frivolous litigation.

AMENDMENTS

The Corrections Department suggest the following amendment:

On page 2, line 4, after the word "authorities" add the phrase "except those institutions or facilities of governmental agencies housing prisoners or inmates committed by law"

BD/prr