

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 1/27/05 HB _____

SHORT TITLE Per Diem & Mileage for Legislators-Elect SB 155

ANALYST Fernandez

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

Senate Bill 155 would authorize members-elect of the Legislature to receive per-diem and mileage to attend new-member orientation provided by Legislative Counsel Service.

Significant Issues

Attorney General Opinion No. 62-145 found that a person who has been elected to the New Mexico Legislature, but who has not qualified, is not a member of that body for purposes of the constitutional prohibition against being appointed to any other civil office.

The opinion pointed to a court ruling in Arizona whose constitutional prohibition is practically identical to New Mexico. In the case of *State ex rel. Pickrell v. Myers*, 89 Ariz. 167, 359 P.2d 757 (1961), the court ruled that the person does not become a member of the legislature simply by election thereto. The court said: “until affirmative action is taken by the house by judging of the election and determining the qualifications of those seeking to be seated, a person elected may not become a member.” The New Mexico Attorney General ruled that the same is true in this state where, under Article IV, Section 7, New Mexico Constitution, “each house shall be the judge of the election and qualification of its own members.”

The Attorney General Opinion also notes that the “Federal courts have long since ruled that

members of Congress do not include persons who have been elected until such time as they have been accepted and qualified as such by the branch of Congress to which they were elected and have embarked upon their duties.”

FISCAL IMPLICATIONS

Pursuant to 2-1-9 NMSA 1978, members of the legislature serving on official business for interim committees within the state shall receive per diem at the internal revenue service per diem rate as provided in Section 2-1-8 NMSA 1978 for each day served, including travel time, and the cost of public transportation by the shortest, most direct route or mileage for each mile traveled by the shortest, most direct route by automobiles at the internal revenue service standard mileage rate or by privately owned aircraft at the air mileage rate set out by the rules adopted by the department of finance and administration pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

Effective 7/1/05-8/31/05, the government per diem rate will be \$181.00 per day and 9/1/05-6/30/06 the per diem rate will be \$141.00 per day. The internal revenue service mileage rate is 40.5 cents per mile.

CTF/sb