

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

ORIGINAL DATE 02/12/10
 SPONSOR SRC LAST UPDATED 02/12/10 HB _____
 SHORT TITLE Review Model Administrative Procedures Act SJM 7/SRCS/aSJC
 ANALYST Pava/Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$25.0-\$50.0			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment Department (ED)
 Economic Development Department (EDD)
 Public Education Department (PED)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Rules Committee substitute for Senate Joint Memorial 7 changes the membership of the task force from fifteen members to eleven members.

The amendment adds the following members:

- the state land commissioner or the commissioner's designee;
- a member of the public regulation commission appointed by the commission; and
- the state engineer or the engineer's designee.

The amendment removes the following members:

- one representative of either the environmental improvement board or the water quality control commission;
- one member who is a small business owner or operator;
- one member representing the interests of the judicial branch;
- two members representing the interests of different industries affected by regulatory proceedings; and
- two members representing public advocacy groups.

Senate Joint Memorial 7/SRCS/aSJC – Page 2

The amendment removes the administrative office of the courts from the list of those who should receive copies of this memorial.

On page 4, lines 13 and 14 removes language allowing the superintendent of Regulation & Licensing to have a designee. This conflicts with page 2, line 25 which permit the superintendent to send a designee.

Synopsis of Original Bill

The Senate Rules Committee Substitute for Senate Joint Memorial 7 establishes a Task Force to review the proposed Model State Administrative Procedure Act and make recommendations concerning the adoption of part or all of that model act.

The SRCS adds the phase in addition to maintaining a healthy environment, “strong workers’ and public safety standards.” Task force membership is changed to fifteen from nineteen with the following changes in participation:

- A. indicates three members from the legislature rather than those from specific to parties.
- D. replaces the secretary of economic development to the state records administrator.
- G. now specifies the two boards of environmental improvement and water quality control.
- H. replaces an attorney general designee and a member of the state bar with a small business operator.
- K. now specifies two public advocacy members from environmental justice and consumer groups.

The SJM 7 Substitution adds as technical resources the office of attorney general staff and a faculty member of the UNM law school. It has an additional task to consider whether agencies engaged in administrative proceedings have adequate recourses to comply with their mandates and future recommendations with sufficient fees to cover the costs.

SJM 7 establishes an administrative procedures task force comprised of fifteen members from the legislature, Tax and Revenue (TRD), State Records, NMED, Energy, Minerals & Natural Resources (EMNR), boards, a business operator, judicial branch, industry, public advocacy groups, and chaired by the Regulation, Licensing Dept. (RLD) Superintendent.

It is to review the state of rulemaking and adjudicatory proceedings used by NM agencies, those in other states, and review the Model State Administrative Procedure Act as to its applicability in NM. They are to consider if reform across all agencies would enhance the consistency and predictability of regulatory processes to meet goals more efficiently and effectively.

The task force is to identify strategies for improving rulemaking and adjudicatory functions, determine any legislative action necessary, and develop a strategy with a time frame for implementation. The Administrative Procedures Task Force is requested to report its findings and recommendations before October 1, 2010 and post them for public access on the RLD web site.

FISCAL IMPLICATIONS

The task force is established through a joint memorial with no appropriation, so there is no provision for covering the expenses of task force members such as travel per diem and mileage.

SIGNIFICANT ISSUES

SJM7 indicates that New Mexico statutes and regulations that provide for and govern rulemaking and adjudications of regulatory activities lack uniformity, in part because the Administrative Procedures Act, enacted in 1969, does not apply to most New Mexico state agencies.

The National Conference of Commissioners on Uniform State Laws currently has a drafting committee to revise the Model State Administrative Procedure Act. They are revising the 1980 Model State Administrative Procedures Act which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated. It is expected that the committee will present a draft for final approval in July 2010.

The July 2010 date for approval of the final draft of the model act may not allow sufficient time for study and recommendations by the Task Force created by this memorial.

PED is not made subject to the Administrative Procedures Act, but is nevertheless required to comply with numerous other statutory mandates regarding rulemaking. Not all state agencies that adopt and maintain rules are on the task force even though the SJM 7/SRCS resolves “to consider whether all or part of the proposed act should apply to some or all New Mexico agencies”.

TECHNICAL ISSUES

The scope of this task force is daunting and must be completed in less than 8 months, three of which are summer months. In addition to reviewing and comprehending the final draft of the Model Administrative Procedures Act, which according to the website of the National Conference of Commissioners on Uniform State Laws is not expected to even be presented for approval until July 2010, the task force is expected to review state rules and agency procedures to determine if agencies have adequate resources to comply with their mandates and whether fees charged by agencies are sufficient to cover the agencies' costs.

ADMINISTRATIVE IMPLICATIONS

The Substitution indicates the Office of Attorney General and Dean of the UNM Law School will appoint staff to serve as technical resources. It is assumed support staff will be allocated from the other participating agencies.

NMED supports uniform, simplified procedural requirements that enable the affected parties and the public to fully participate in administrative procedures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State of New Mexico will not have an opportunity to comprehensively study the national uniform model act during the interim and develop recommendations to apply it to NM regulations and agencies. State Records and Archives will continue to work on a uniform Administrative Procedures Act and individual agencies will continue to have administrative procedures that are agency specific.