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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/11

SPONSOR Anderson LAST UPDATED _____ HB 185

SHORT TITLE Limit Secretary of State Rulemaking SB _____

ANALYST Aledo

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Miniscule	Miniscule	Miniscule		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

Commission of Public Records (CPR)

SUMMARY

Synopsis of Bill

House Bill 185 prohibits the Secretary of State from implementing a procedure or practice until it is filed and published as a rule. The stated intent of this bill is to ensure consistency in the implementation of Election Code provisions.

The effective date would be July 1, 2011.

FISCAL IMPLICATIONS

According to the Secretary of State's Office the typical cost of filing a rule with the New Mexico Register is forty dollars (\$40). Costs associated with the bill would be minimal or non-existent.

SIGNIFICANT ISSUES

The Secretary of State office states that it has the authority to file rules by emergency clause within the same day, or to go through a full notice and commenting period under the State Rules Act. The Secretary of State's office is currently reviewing all existing rules and procedures with the intent to implement rules as mandated by statute which do not currently exist. The enactment of this bill might require emergency rules to be implemented in cases where there is an urgent need for a rule or procedure.

ADMINISTRATIVE IMPLICATIONS

According to the Commission on Public Records, House Bill 185 would have little fiscal impact on the Commission of Public Records. There may be a minor impact if the Secretary of State increases the number of rules filed with the Commission of Public Records and published in the New Mexico Register. This could increase the work for the rules analysts who review and file the rules. If an increase in rulemaking from the Secretary of State were to occur, the Commission of Public Records would realize added revenue through publishing those rules in the New Mexico Register.

TECHNICAL ISSUES

According to the Commission of Public Records, if the intent of House Bill 185 is to require that internal practices and procedures be filed and published as rules, it would run counter with the definition of "rule" found in the State Rules Act.

State Rules Act, Subsection C of Section 14-4-2 NMSA 1978 reads in part:

"rule" means any rule, regulation, order, standard, statement of policy, including amendments thereto or repeals thereof issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing such rule or to affect persons not members or employees of such issuing agency.

AMENDMENTS

The Commission of Public Records recommends amending to make it clear that only those practices and procedures which affect persons or agencies outside the Office of the Secretary of State should be filed and published as rules.

MCA/mew:svb