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FISCAL IMPACT REPORT

SPONSOR: Hamilton DATE TYPED: 2/15/01 HB 446
 SHORT TITLE: License to Carry Act SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

SOURCE OF INFORMATION

Attorney General Office
 Administrative Office of the District Attorneys
 Administrative Office of the Courts

SUMMARY

Synopsis of Bill

The License to Carry Act provides for statewide, uniform standards for the issuance of concealed handgun licenses for security and defense. The Act provides as follows:

- i) Definitions are contained in Section 3.
- ii) Licenses. The county sheriffs are authorized to begin issuing licenses in July, 2001. Each license is valid for five years. (Section 4) The county sheriff may promulgate rules regarding licensure, confiscation, and provisions to allow property owners and employers to disallow the carrying of a concealed weapon on that person's property. (Section 12)
- iii) Applicants. Applicants for a license must meet minimum criteria including being a U.S. citizen and New Mexico resident (or being stationed in the armed forces here), not a fugitive from justice, not a felon or under indictment for a felony, not convicted of a misdemeanor offense involving a crime of violence in the previous five years, mentally competent, and not addicted to drugs or alcohol and having completed a firearms training course. (Section 5 and 8) The application must include several statements under oath, pay a fee of \$50.00, and provide two full sets of fingerprints and other certified documents proving that the applicant meets the minimum requirements. (Section 6) There is a \$50.00 renewal fee of a license. (Section 7)
- iv) Issuance of a License. The county sheriff is required to investigate whether the person is qualified to receive the license. The fingerprints are forwarded to the federal bureau of investigation for a national criminal records check. The county sheriff is required to check the records to verify the accuracy. (Section 6) The county sheriff has 60 days to issue the license or deny it, giving grounds

for the denial. An applicant who is denied a license may submit more information and can seek judicial review of the denial. (Section 7)

v) Court Review. The district court has jurisdiction to review a denial of a license. If the county sheriff is reversed, the applicant may be reimbursed by the county for the costs of bringing the appeal. (Section 7)

vi) Personal Protection Fund. All fees collected by the Act shall be placed in a license to carry fund administered by the county treasurer so that it may carry out the provisions of the Act. The county treasurer shall invest the fund as all other county funds are invested, and income from the investment of the fund shall be credited to the fund. Any funds remaining at the end of the fiscal year shall remain in the fund. (Section 13)

vii) Amendment. Section 30-7-2 NMSA is amended to allow a person with a license to carry a concealed weapon lawfully.

FISCAL IMPLICATIONS

See Administrative Implications.

ADMINISTRATIVE IMPLICATIONS

The AOC reports that the fiscal implications on the judiciary will directly follow the amount of litigation that is generated or, alternatively, avoided by the Act. The courts hear appeals only from a denial of a license. Because the requirements for licensure are clear, there should not be a great deal of litigation generated by the Act. The impact on the courts likely will be minimal.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

SB 148, HB 277 and HB 446 are very similar with the following exceptions:

SB 148	HB 277	HB 446
Department of Public Safety issues and revokes license	Department of Public Safety issues and revokes license	County sheriffs issues and revokes license
Section 6 (B)(6) and (8) are separate provisions	(6) and (8) are contained in (6)	Same as SB 148
Section 6 (B)(9) regarding the description of the gun's action is added	Does not contain this provision	Does not contain this provision
Section 7 (D) DPS and County sheriff make check of applicant's records	Same as SB 148	Section 7 (D) County sheriff make check of applicant's records
Section 7 (C) includes a sentence on DPS maintaining a database of licensees	Does not contain this provision	Section 7 (C) includes a sentence on County Sheriff maintaining a database of licensees
Section 7(D) regarding the description of the gun's action is added	Does not contain this provision	Does not contain this provision
Section 8 (A) regarding DPS sets standards for training courses	Same as SB 148	Same as SB 148

Section 8 (A) regarding course lasting >10 hrs	Same as SB 148	Does not contain this provision
Section 12 (D) regarding private employer's right to disallow privilege during work shift is added	Does not contain this provision	Same as SB 148
Section 13 regarding creating state treasury fund	Same as SB 148	creates county treasury fund
Section 30-7-2 (C) includes a sentence making second or subsequent convictions a misdemeanor	Does not contain this provision	Does not contain this provision

TECHNICAL ISSUES

1. Section 3 (D) provides a definition of handgun. That definition is different than the definition provided in Section 30-7-2.2.
2. Section 5 (A)(9) does not define “residential treatment facility.” With the variety of alcohol and controlled substance treatment options available, this term may need a specific definition.
3. Section 6 (D) states that the county sheriff shall conduct an appropriate check of available records. It may be helpful to county sheriff to explain what this means with an “including, but not limited to” list.
4. Section 7 (G) does not explicitly state that the refresher firearms course must be approved by the department. (Compare with Section 5(A)(10)).

OTHER SUBSTANTIVE ISSUES

1. Section 6 (B)(3) states that an employee shall not be liable unless he/she has actual knowledge that licensee should not receive a license. This provision may implicate, and arguably provide less protection to the employee as provided in, the Tort Claims Act, Sections 41-4-4 & 41-4-12.
2. Section 7 does not provide for an appeal process for revocation or suspension of the license. (Compare with appeal process for denied applicant).
3. Section 11 states that this bill will apply to tribal land, except if a tribe passes its own law prohibiting concealed weapons. This provision appears to implicate and run contrary to federal and tribal jurisdictional issues.
4. There is a possibility that the discretionary actions in the application and revocation matters may vary county to county—instead of uniformity from one state agency (DPS).

FAR/njw