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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
LAST UPDATED 03/11/13 **HB** 312/aHBIC/aHJC

SPONSOR Smith

SHORT TITLE Bail Bondsmen Qualifications **SB** _____

ANALYST Canney/Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
NFI	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Public Regulation Commission (PRC)
 Administrative Office of the District Attorney (AODA)
 Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee (HJC) amendment to House Bill 312 changes the date in the paragraph on page 3, lines 7-10 from January 1, 2013 to January 1, 2014. However, the Department of Public Safety (DPS) reports, “[T]he subsection amended remains incoherent. The subsection, as amended, appears to exempt bail bondsmen and solicitors who are properly licensed as of January 1, 2014 from the prohibition against licensure for convicted felons.” The language provides a grandfather clause to any felons already licensed and those felons who obtain licenses during the remainder of 2013.

The amendment additionally strikes conflicting language to clarify that an individual desiring to be licensed as a solicitor must file an application for qualifying examination. The bill requires such an examination, but striking this conflicting language eliminates possible confusion regarding the requirement and mandates that the application must be submitted.

Synopsis of HBIC Amendment

The House Business and Industry Committee (HBIC) amendment to House Bill 312 restores a portion of the original Bail Bondsmen Licensing Law regarding Section 8(A), Administrative Fine in Lieu. The amendment restores the ability of the superintendent to impose a discretionary penalty of \$100 in lieu of license suspension, revocation, or refusal, except for second offenses. For willful misconduct or willful violation on the part of the licensee, the amendment removes the discretionary penalty of \$500 and replaces this with *not to exceed \$1,000*.

The amendment restores a portion of the original Bail Bondsmen Licensing Law regarding Section 8(B), Administrative Fine in Lieu, to allow the superintendent the ability to allow the licensee a reasonable period to pay the amount of penalty imposed, not to exceed thirty days, or to face license suspension or revocation without further proceedings.

The amendment also removes original bill language, which subjects persons in violation of the Bail Bondsmen Licensing Law to penalty amounts at the discretion of the superintendent. This section had no dollar limits attached to the discretionary penalties.

Synopsis of Original Bill

House Bill 312 (HB 312) amends the qualifications and educational requirements for licensure of a bail bondsman and a solicitor under the Bail Bondsman Licensing Law. The statutory requirement for continuing education is replaced by rule. The scope for the qualifying examination is removed but not replaced. The bill also provides that the superintendent will set premium rates charged, as well as penalty fees for violations.

The Attorney General's Office (AGO) provided the following synopsis:

HB 312 would make numerous amendments to current statutes regulating the bail bond industry found at Chapter 59A, Article 51 NMSA 1978. The bill would name this article the "Bail Bondsmen Licensing Law." Significant changes under the bill include the requirement that bail bondsmen and solicitors have a high school degree or GED, that bail bondsmen register their solicitors with the insurance superintendent within seven days of employment, and it eliminates the exception for persons with conditionally discharged felony convictions who were not licensed prior to January 1, 2013.

The bill changes educational requirements for licensure for both bail bondsmen and solicitors. First, the bill would do away with separate educational requirements for solicitors found at Section 59A-51-4.1(C), and repeal the provision allowing applicants for a bail bondsman license the alternative of meeting educational requirements through a six month apprenticeship. The bill would repeal the requirement for 30 or more hours of classroom training and replace them with "pre-licensing requirements prescribed by rule", including an unspecified number of classroom hours to be approved by the superintendent. The bill would reduce the number of on-the-job training hours for applicants from 120 to 30. While retaining the requirement for the annual completion of continuing education, the bill would remove the specific requirement of 15 hours of such education, and strike the description in the current statute of what such education should cover.

HB 312 would repeal Section 59A-51-18, which provides for a maximum penalty of \$1000 for violations of the article, and would instead give the superintendent discretion to set penalty amounts.

FISCAL IMPLICATIONS

No fiscal implications.

SIGNIFICANT LEGAL ISSUES

According to the AGO, the bill could face constitutional challenges based on its retroactive application to licensees or applicants convicted of felonies with a conditional discharge.

Specifically, Section 2 of the bill would eliminate the current exception to the bar to licensure for convicted felons whose convictions were conditionally discharged, and make the change applicable to anyone not licensed as of January 1, 2013. Section 7 of the bill, consistent with Section 2, would make conditionally discharged felony convictions grounds for denial, suspension, revocation or refusal to continue a license. Thus, under the bill, a person who otherwise meets the requirements for licensure under the current article, has a conditionally discharged felony conviction, and is licensed after January 1, 2013 but before the bill goes into effect could face revocation of his or her license. A simple fix would be to amend Section 2 of the bill to change the date on lines 9 and 10 of page 3 of the bill to a date after the bill's effective date. Similarly, Section 7 could be amended to limit the elimination of the exception for conditionally discharged felony convictions to those seeking a license after the bills effective date, or, for current licensees, felony convictions that were conditionally discharged after the effective date of the bill.

PERFORMANCE IMPLICATIONS

The Public Regulation Commission (PRC) stated that currently, bail bondsmen are required to file their rates with the Superintendent for his prior approval, despite the fact that all filed rates have been the same. "Allowing the Superintendent to promulgate rates will eliminate what has become a pointless filing process and will also allow the Superintendent to promulgate rules regarding the determination of what types of expenses bail bondsmen may charge in addition to the premium."

OTHER SUBSTANTIVE ISSUES

The PRC reported that HB 312, with minor modifications, represents changes to the Bail Bondsmen Licensing Law that have been recommended by the Superintendent's Bail Bond Task Force.

The AGO stated that the statutory authority to require a person seeking a solicitor's license to take an examination is ambiguous at best. To address this issue, the bill could be amended so that it would: (1) amend Section 59A-51- 4(G) to add an examination requirement; and (2) amend Section 59A-51-5(A) by striking "if for bail bond license."