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FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/19

SPONSOR Cook LAST UPDATED _____ HB 649/ec

SHORT TITLE Internet Business Development & Innovations SB _____

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 649 enacts the Internet Business Development and Innovations Act (Act), which implements a limited licensing structure for persons engaging in business as a cryptovalve creator and distributor or as a cryptovalve exchange.

HB 649 defines these terms:

“Cryptovalve” means “tokens, coins or cryptocurrencies that are math-based, decentralized and convertible virtual currencies, protected by cryptography, and that rely

on cryptographic techniques to achieve validity consensus but that: (1) are neither issued nor guaranteed by any public authority; (2) do not have the legal status of fiat currency; and (3) are accepted or used on a voluntary basis”;

"Cryptovalve creator and distributor" means “a business that may create cryptovalve or distribute, transmit or redeem for fiat currency its own cryptovalve ”; and

"Cryptovalve exchange" is defined as “a business that brokers, between individual buyers and sellers, the exchange of cryptovalve that has been transmitted and verified via a distributed ledger technology, or the fiat payment therefor.”

To be licensed under the Act, a company must be an active corporation organized pursuant to the laws of New Mexico. The board of directors for the company must include at least one attorney licensed in New Mexico, and its registered agent must be licensed to practice law in New Mexico. A company would pay an annual \$100 licensing fee. A licensed cryptovalve creator and distributor shall not issue cryptovalve in exchange for equity stock in its corporation. Section 4 requires any issued cryptovalve must be marked with a statement essentially reading: “This cryptovalve has not been examined, regulated or endorsed by the State of New Mexico. As such, any purchaser hereof understands and accepts the potentially high risk associated with this product.”

The bill specifically exempts licensees from being regulated as a “money service business” under the New Mexico Uniform Money Services Act (UMSA) §58-32-101 NMSA 1978, *et seq.*, and HB 649 provides that licensees may issue cryptovalve without being required to be registered or licensed as a New Mexico securities product. Funds generated by a licensee must be deposited in a financial institution doing business in New Mexico, and state chartered institutions are expressly permitted to accept these deposits.

HB649 contains an emergency clause and becomes effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

Although HB 649 imposes a \$100 annual licensing fee on those subject to the Act’s provisions, RLD has provided no estimate as to the number of potential licensees, so projected revenue is shown as unknown in the revenue table.

RLD notes that the bill places new licensing duties on its Financial Institutions Division (FID) but does not contain any appropriation for any associated costs for the development and implementation of a new licensing process, nor does the bill provide for any portion of the fees generated by the proposed licenses to be designated to cover new/recurring costs incurred by the FID for carrying out the licensing activity. RLD reports that at this time, there is no accurate data or method whereby the FID can estimate startup or recurring costs for carrying out the licensing activity, and those costs are shown as unknown in the budget operating table.

SIGNIFICANT ISSUES

FID comments that under existing law (UMSA), companies that engage in the types of financial activity contemplated under HB 649 would be defined as being involved in the transmission of

“monetary value” and would therefore be required to be licensed under the “money transmitter” provisions of the UMSA. FID advises that HB 649 would exempt at least some of these companies from licensing and regulation under the UMSA, which would be placed under a licensing scheme that is far more limited in terms of consumer protection and regulatory oversight.

By way of comparison, FID notes that the UMSA contains well-defined provisions for: an original license application form and license application review process; provisions for routine regulatory examination and oversight of licensees; a license renewal application and review process; defined procedures for the issuance of administrative orders and sanctions; and, an appeal process whereby licensees may challenge administrative orders and sanctions. The proposed regulatory structure under HB 649, FID points out, contains essentially none of those provisions. Additionally, HB 649 contains no provision authorizing the Director of the FID to develop or adopt administrative rules under the Act. Absent such authority, the Director of the FID would have no ability to address licensing or regulatory issues or questions that may arise under the Act. Further, unlike UMSA, there are no provisions in this bill authorizing suspension or revocation of a license, nor any penalties or other sanctions for violating the Act (such as failing to mark any issued cryptovalued with the Section 4 disclaimer). The Act, as drafted, is unenforceable.

In addition, the Securities Division of RLD identifies these points and concerns:

On page 3, lines 17 through 21, HB649 proposes, “A licensee operating as a cryptovalued creator and distributor shall not issue cryptovalued in exchange for equity stock in its corporation. With that exception, such a licensee may issue creative and innovative cryptovalued, without registration or licensing as a New Mexico securities product.”

A cryptovalued, as defined by the broad global industry, as well as in HB649, is nothing more than a form of currency. It is something that has an agreed-upon value and can be exchanged in a particular manner. A cryptocurrency or cryptovalued product is not, in itself, a security. But, if a “cryptovalued creator or distributor,” *issues* this cryptovalued in a way that securitizes it, or speculates on its value, then such an issuance would certainly fall under the jurisdiction of the NM Uniform Securities Act. The word “issue” is not defined by HB 649. An issuer is defined in the NM Uniform Securities Act at NMSA 1978, Section 58-13C-102R. If they are merely producing a form of currency and people want to buy it and later speculate on its value, it would not invite securities regulations.

Within the securities context, an issuer might be treated with certain exemptions regarding registration, either of themselves, as the salesperson of the security, if there is no broker-dealer, or in regards to the securities product, itself. The economic realities of the offering, such as to whom the offer is made and how the transaction positions the buyer with other purchasers, secondary markets, or other considerations must be made to determine if a security is present and if regulation is appropriate.

The Securities Division suggests that the language from HB649 that “...such a licensee may issue creative and innovative cryptovalued, without registration or licensing as a New Mexico securities product[,]” be accompanied by language that defined what “issue” meant, or further clarified that it would not have to register, “as long as the nature of the issuance did not create a security as defined by NMSA 1978, 58-13C-102DD.” (Most probably, such creation of a

security would be due to something meeting the requirements of the *Howey* test which provides the basis for the language of subsection 102DD(5)).

Similarly, NMAG comments on that same language, which allows licensees to issue creative and innovative cryptovalve, without registration or licensing as a New Mexico securities product. NMAG notes that it is not clear what the terms “creative cryptovalve” and “innovative cryptovalve” mean, as those terms are not defined within the Act. As drafted, NMAG warns, it appears that these exceptions may be exploited to avoid otherwise having to register or license securities products

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