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## FISCAL IMPACT REPORT

SPONSOR: Garcia, M.P.      DATE TYPED: 01/24/01    HB 71  
 SHORT TITLE: Amend Liquor Control Act      SB \_\_\_\_\_  
 ANALYST: Valdes

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Fiscal Im- pact		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Alcohol and Gaming Division, Regulation and Licensing Department

### SUMMARY

#### Synopsis of Bill

House Bill 71 proposes to add a new section of the Liquor Control Act to provide for the excusal or recusal of administrative hearing officers.

#### Significant Issues

A party to an administrative hearing could file a notice of excusal with the department when there is a reasonable doubt that the hearing officer or director can make a fair and impartial decision for any of the following reasons:

- When the director or hearing officer has a personal bias or prejudice concerning a party or its representative,
- When the director or hearing officer has a pecuniary interest in the outcome of the hearing,
- When the director or hearing officer in previous employment served as an attorneys, advisor, consultant or witness in the matter.

Upon receipt of a notice of excusal, which must be filed at least three days before the scheduled hearing date, neither the hearing officer or director could hear the case. An alternate hearing officer would have to be appointed immediately.

No party may excuse more than one hearing officer.

The bill contains an emergency clause.

**PERFORMANCE IMPLICATIONS**

This bill might impact the Alcohol and Gaming Program outcome performance measure which proposes to reduce the number of days required to resolve an administrative citation.

**FISCAL IMPLICATIONS**

Fiscal impact to the department could be significant. If hearing officers are excused, the department would have to either contract for or hire additional hearing officers. An appropriation is not provided to fund additional expense of the department.

**ADMINISTRATIVE IMPLICATIONS**

The procedure for appointing an alternate hearing officer is not specified.

**TECHNICAL ISSUES**

It appears the intent of the bill is to address an administrative hearing and a preliminary hearing. Because an administrative hearing is not defined, it is unclear if this is the intent. Additionally, "party" is not defined. The bill does not describe a procedure of how someone becomes a party to a hearing.

The bill requires that once the department receives a notice of excusal, the jurisdiction of the hearing officer and director terminates immediately. However, there is no procedure established for determining how an alternate hearing officer is appointed to hear the case. The bill does not specify who is responsible for appointing an alternate hearing officer.

**OTHER SUBSTANTIVE ISSUES**

Upon request of a party, if the hearing officer or director fails to recuse himself and it appears that grounds exist, the apparent grounds for recusal shall be made to the director or hearing officer. The director or hearing officer would then be required to provide full disclosure of all facts to support his refusal. The party may appeal the decision of the director or the hearing officer to the Attorney General who, upon review of the apparent grounds for recusal, shall render a decision in writing regarding the recusal of the director or hearing officer.

MV/ar