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## FISCAL IMPACT REPORT

SPONSOR: Vigil DATE TYPED: 02/27/01 HB 659  
 SHORT TITLE: Carry Case for a Loaded Firearm SB \_\_\_\_\_  
 ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act, HB 310, SB 131, SB 132, and SB 241 also propose legislation to regulate firearms/handguns.

### SOURCES OF INFORMATION

- LFC Files
- Department of Public Safety (DPS)
- Corrections Department (CD)
- Children Youth and Families Department (CYFD)
- Attorney General (AG)
- Administrative Office of the Courts (AOC)
- Bernalillo County Metropolitan Court (BCMC)

### SUMMARY

#### Synopsis of Bill

HB659 makes it a crime to carry a loaded, uncased firearm on public property including in a personal vehicle on public roadways. Penalties for violating the provisions of the Act include confiscation of the firearm and a fine of \$1,000. Exceptions to the requirements are 1) law enforcement personnel who are on active duty or in transit to or from a duty station; 2) military personnel on active duty in possession of a government-issued firearm; 3) using firearms at an authorized firing range; 4) licensed hunter on public property hunting within the hunting areas during a lawful hunt period and other hunting exceptions; 5) persons authorized to carrying a concealed, loaded firearm.

Significant Issues

DPS reports the most significant issues presented by passage of the proposed legislation are its likely unconstitutional nature, and its complete divergence from the current statutory structure.

**PERFORMANCE IMPLICATIONS**

This section should explain how the bill will affect the performance of relevant agency programs.

Highlight any relevant performance measures and discuss how performance targets would be impacted by the bill. If the bill would expand a performance-based budgeting program, suggest measures that could be used to assess the effectiveness of the expansion.

Performance measures include output, outcome, efficiency and quality measures.

**FISCAL IMPLICATIONS**

DPS reports there is an immense fiscal impact on the department from passage of the proposed legislation. Although the legislation does not state that it is criminal in nature, paragraph B states that any person who violates the provisions of the section shall have his firearm confiscated and shall be fined \$1,000. This likely violates Article II, Section VI, of the New Mexico Constitution, as well as the most fundamental concepts of procedural and substantive due process, both in the United States Constitution and the New Mexico Constitution. Enforcement of this would be problematic at best, and would likely have tremendous fiscal impact on DPS. It is unknown whether passage of the proposed legislation will affect any federal appropriation or any other local, state or federal matching fund. However, it can be assumed that there would be impact in decreased federal funding due to the possible unconstitutional nature of the legislation.

BCMC reports if court caseloads are significantly impacted by the potential for numerous prosecutions, additional appropriations would eventually be needed to obtain sufficient resources (Judges, staff, space, equipment, etc.) to handle the increased caseload.

AOC reports it will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws or amendments to existing laws have the potential to increase caseloads and/or judge-time spent on cases in the courts, thus requiring additional resources to handle the increase.

**ADMINISTRATIVE IMPLICATIONS**

DPS reports there is likely tremendous administrative impact from passage of the proposed legislation based on the concerns referenced above.

AOC reports there will be administrative implications from passage of this bill.

## **TECHNICAL ISSUES**

According to the AG, one exception to the Bill is when a person who is hunting an unlicensed species and who is in possession of or carrying an appropriate firearm. This section, section D (5), is somewhat confusing in that there are no “unlicensed species” specifically enumerated in Chapter 17, Game and Fish Act. Rather, there are species under that law which require a license to be hunted (game animals), which are enumerated in the Act, and there are other species (non-game animals), which do not require a license to be hunted, which are not enumerated in the Act. There are no unlicensed species. If the intent of the drafters of this Bill is to allow persons to carry loaded and uncased firearms when hunting coyotes or other animals not requiring a license to be hunted, it might be preferable to word this section accordingly. One possible suggestion for such wording is:

(5) a person who is hunting a non-game animal as defined in the Game and Fish Act and who is in possession of or carrying an appropriate firearm.

## **OTHER SUBSTANTIVE ISSUES**

The AG indicates Section D (5) might allow a large loophole in the law by enabling people to carry a loaded and uncased weapon as long as they indicate they are shooting a non-game species. Such exemptions currently do exist even in the New Mexico Constitution, Article II, Section 6, which allows individuals to bear arms for lawful hunting purposes.

Possible impact on the Interstate Commerce Clause of the US Constitution in that it may add increased costs to the seller and ultimately the buyer of a firearm, although it is questionable how substantial those costs will be. Even so, it is probable that such a requirement would be sustained if a constitutional claim of this nature were to be made because the regulation presumably intends to protect the safety of the state’s populous by safely storing loaded weapons

Also may impact Article II, Section 6 of the New Mexico Constitution, which allows individuals to carry firearms for lawful purposes as long as the weapons are not concealed. Bill would require in addition, that all loaded weapons be carried in a commercial case.

DPS reports one of the most substantive issues presented by the proposed legislation is its drafting, as no procedures are spelled out for the confiscation or forfeiture of a firearm, or for the implementation of the fine system. The proposed legislation is also very likely unconstitutional as it is violative of the New Mexico Constitution at Article II, Section VI, regarding the right of citizens to bear arms for security. Additionally, as mentioned above, the statutory section is likely violative of the due process provisions of the federal and state constitutions.

On a policy level, the proposed legislation is a complete change of New Mexico’s law regarding the carrying of a loaded, concealed firearm in the private means of conveyance. Additionally, at (D)(1), the proposed legislation deviates drastically from the current statutory scheme found in Section 30-7-2, regarding individuals who may carry a loaded, concealed firearm. The proposed legislation states that peace officers who are on active duty and who are in transit to or from a duty station would be exempted. This is problematic as most peace officers in the State of New Mexico carry loaded and concealed firearms on their person while off duty. This is done in complete accordance with departmental policies and procedures. It is interesting to note that the proposed legislation states that individuals who have a concealed carry permit are completely exempted from this legislation. It seems odd that individuals with much less training, those carrying a concealed weapons permit, would stand in a position superior to police officers when carrying loaded and concealed firearms. This seems to be an irreconcilable inconsistency within the legislation.

Finally, it should be noted that the proposed legislation is completely at odds with the existing statutory structure; however, no laws are repealed by the passage of this legislation. Thus, if this law were to be enacted, the state would be faced with a statutory construction problem, in that this law, the newest on the books relative to carrying firearms, would be in contravention to the existing statutory structure, and the state constitution.

BCMC reports the sole punishment authorized by the Bill is confiscation of the uncased firearm and a \$1,000 fine. Subsequent confusion as to various consequences resulting from a criminal (misdemeanor versus felony) record could be avoided as to which courts will have jurisdiction and whether offenders are intended to be prior felons. Does the Bill intend this to be a “misdemeanor” level, criminal offense? See, NMSA 1978, § 31-18-15F(5) (a fine of up to \$5,000 is authorized for 4<sup>th</sup> degree felonies); § 31-19-1A (a fine of up to \$1,000 is authorized for a misdemeanor); and, cf., e.g., §§ 34-8A-3 and 35-3-4 (Magistrate and Metropolitan Courts are authorized to hear misdemeanor cases).

LAT/prr