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FISCAL IMPACT REPORT

SPONSOR Taylor DATE TYPED 02/24/05 HB _____

SHORT TITLE Business Fingerprinting Requirements SB 666

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	(\$29.0)	(\$29.0)	Recurring	General Fund
NFI	(\$24.8)	(\$24.8)	Recurring	Department of Public Safety

SOURCES OF INFORMATION

LFC Files
 Department of Public Safety
 Attorney General's Office
 Regulations and Licensing Department
 Economic Development Department

SUMMARY

Synopsis of Bill

Senate Bill 666 proposes to amend sections of the Liquor Control Act to change the fingerprinting requirements for persons who apply for liquor licenses in the State Of New Mexico.

Enactment of the proposed bill would:

Require that all corporate applicants, and corporations owning more than 10% "interest" in those applications, be qualified to do business in New Mexico.

Eliminate an exception in current law for corporations listed on national securities exchanges to the requirement of being qualified to do business in New Mexico;

Change the prohibition against a corporation holding a liquor license if a holder of more than 10% of the stock is ineligible, to prohibit a corporation from holding a license if a holder of a more than a 10% interest in the corporate applicant is ineligible.

Prohibit the issuance of a liquor license to a limited partnership if a holder of a 10% or

greater interest in the limited partnership would not be eligible for a license. Current law applies the restriction to partners.

Enact application requirements for limited liability companies and trusts applying for liquor licenses. Current law does not have application requirements for limited liability companies.

Allow qualified individuals to take fingerprints for liquor licenses. Current law limits fingerprinting to law enforcement personnel;

Specify the officers, directors, partners, beneficiaries etc. of different corporate entities who are required to submit fingerprints when their entity is applying for a liquor license.

Significant Issues

According to the Regulations and Licensing Department (RLD), once a person, whether they are officers, directors, shareholders, members or partners of entities that file regular reports with the United States securities and exchange commission and for individuals who have been fingerprinted for another New Mexico license, they will not be required to ever submit reprints. The Department asserts that currently, when any activity such as a transfer of ownership, lease, change of officers or other application is submitted, each person, officer, director, shareholders who owns 10% or more interest, members or partners are required to submit fingerprint updates if they have not submitted updates for the last three years.

RLD reports that not having the ability to request updated fingerprint cards may conflict with the fact that a convicted felon is prohibited from holding a liquor license. If, for example, cites RLD, the Alcohol and Gaming Division receives information that a person may have been charged with a felony and if the said person is convicted of a felony. A convicted felon may end up holding a liquor license or interest in a liquor license.

RLD predicts that the bill, if enacted, may in some cases result in only one or few persons being fingerprinted in complex organizational structures if several parent entities are held 100% by other entities.

According to the Economic Development Department (EDD), businesses would be required to file two complete sets of fingerprints of any owner, director or partner holding 10% or more of a business for a new or transfer of a liquor license.

PERFORMANCE IMPLICATIONS

The Alcohol and Gaming Division of the Regulation and Licensing Department will have to administer and interpret the new provisions with respect to business entities applying for liquor licenses.

According to the Department of Public Safety (DPS), enactment of this bill would enhance full disclosure of the persons involved in a limited liability company's structure and their financial responsibility thereby facilitating financial investigations of licensed liquor establishments and assisting in enforcement.

FISCAL IMPLICATIONS

RLD reports that repealing the resident agent requirement in the Liquor Control Act would reduce general fund revenue. Currently there is a \$50 application fee for each resident agent that is appointed and there were 580 applications submitted in FY04. 580 applications x \$50.00=\$29.0 thousand

The bill would also cause a reduction in the amount of dollars collected by New Mexico, Department of Public Safety. RLD asserts that each person who submits fingerprints to the Alcohol and Gaming Division is required to submit certified funds in the amount of \$31 per person fingerprinted and that the number of fingerprints submitted to the Alcohol and Gaming Division for the FY04 fiscal year was approximately 800. 800 submissions x \$31.00=\$24.8 thousand.

TECHNICAL ISSUES

RLD suggests that the meaning of “regular reports with the United States securities and exchange commission” is unclear.

The percentage of ownership or other interest in business entities applying for a license should be amended to be consistent throughout the act. The bill includes both “greater than ten percent,” and “ten percent or greater.”

RLD predicts that not having the ability to request updated fingerprint cards, may conflict with the fact that a convicted felon is prohibited from holding a liquor license and may result in a convicted felon holding a liquor license or interest in a liquor license.

RLD suggests that the bill be amended to give the Director of Alcohol and Gaming Division discretion to request fingerprint updates when it is in the best interest of the State Of New Mexico, or, when the Director has received information that would warrant requesting fingerprints for certain individuals.

OTHER SUBSTANTIVE ISSUES

Currently, according to RLD, the Liquor Control Act provides that before a new license is issued or transferred to a location, the Director is required to post notice of the application on the proposed licensed premises. The currently required posting provides persons who have an objection to a liquor license being issued or transferred to this location an opportunity to submit their written objection to the Director. Preliminary approval cannot be granted until such time that the twenty-day posting period expires. The bill would amend the language to provide that the posting period would expire at least ten days prior to the final approval of the license.

RLD predicts the Alcohol and Gaming Division would receive written protests after the license has already been granted final approval.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The proposed application, eligibility, and fingerprint requirements and restrictions will not be enacted and the Liquor Control Act would remain as currently stands.

EM/lg