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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/07
 LAST UPDATED 03/08/07

SPONSOR HHGAC HB CS/283/aHBIC/aSJC

SHORT TITLE Dee Johnson Clean Indoor Air Act SB _____

ANALYST Hanika Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$.1 see narrative		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 90, HB 353, SB 166

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Health Policy Commission (HPC)

Higher Education Department (HED)

Public Education Department (PED)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment clarifies a “cigar bar” as one that may sell food; and, will not be known as a “cigar bar” for the purposes of the Act if it fails to generate at least ten percent of its total annual sales from the sale of cigars in the calendar year after December

31, 2006.

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment removes language that declares protecting the public from certain health hazards and diseases by regulating tobacco smoking is the reason for enacting the Dee Johnson Clean Indoor Air Act.

Synopsis of Original Bill

The House Health and Government Affairs committee substitute changes the name of the Clean Indoor Act to the Dee Johnson Clean Indoor Air Act and attempts to establish minimum standards for the regulation of tobacco smoking. The committee substitute amends 24-16-2 NMSA 1978 pertaining to the Act's intent; amends 24-16-3 NMSA 1978 pertaining to definitions; and amends 24-16-4 pertaining to smoking in public places.

Changes to the Act's intent include:

- (1) Restricts the Act's focus to tobacco smoking;
- (2) Expands on health hazards to include danger from "secondhand smoke".

Changes to definitions include:

- (1) "Employer" is anyone with one employee or more;
- (2) "Smoking" includes "inhaling, exhaling, burning, carrying or holding";
- (3) "Smoking permitted area" includes a prohibition that "secondhand smoke" cannot infiltrate an area where smoking is prohibited.

Changes to areas smoking is prohibited include:

- (1) Any indoor workplace, public place or means of public transit; including during business hours of a home being used commercially to provide child or adult care.

The Committee Substitute also adds nine new sections to the Act to include:

- (1) Lists the public areas where smoking is permitted to include a business with fewer than two employees not commonly accessible to the public, a theatrical stage or film set or licensed tobacco manufacturing, marketing or distribution facility;
- (2) Prohibits smoking near entrances, windows and ventilation systems of workplaces and public places where smoking is prohibited;
- (3) Requires employers to adopt, implement, post and maintain a written smoking policy;
- (4) Requires employers to post clear signs at each public entrance designating no smoking and smoking permitted areas;
- (5) Designates the local fire, police or sheriff department to enforce the Act.
- (6) Imposes fines for noncompliance over the age of 18;
- (7) Prohibits retaliation by an employer against an employee, applicant, or patron for exercising any rights afforded them by the Act;
- (8) Allows local jurisdictions to enact more comprehensive smoke-free policies than the law.

FISCAL IMPLICATIONS

Although there is no appropriation considered with this bill, there is an unknown cost for state

agencies related to the posting of signs and enforcement of the provisions within the Act. The State will collect additional revenue based on the penalties section of the bill as follows; no greater than \$100 for the first violation, \$200 for the second, and \$500 for every fine thereafter.

HPC notes that employees who smoke also have a financial impact on their employers;

- Businesses lose an average of \$3,400 per year for every employee who smokes.
- Smokers average 6.2 missed days of work per year because of illness, compared with 3.9 days for nonsmokers.
- Employees who smoke have almost twice as much lost production time per week as nonsmokers.
- Businesses average \$2,189 in workers' compensation costs per employee who smokes compared with \$176 per nonsmoking employee.

In addition, employees who smoke cost more to insure. These higher costs are shared between smokers and nonsmokers alike. In some instances, these higher rates have forced employers to change the health insurance they offer by increasing employee premiums, cutting back on benefits or dropping insurance altogether.

SIGNIFICANT ISSUES

DOH states the primary purpose of enacting clean indoor air laws is to protect the public from exposure to secondhand smoke (SHS), a substance known to cause cancer in humans. Each year, more than 53,000 people die in the United States as a result of SHS exposure. SHS is the third leading cause of preventable death in the US. In 2006, the US Surgeon General concluded that there is no safe level of exposure to SHS.

PERFORMANCE IMPLICATIONS

Owners and managers of affected premises will be required to post signs and designate areas for smoking and non-smoking areas in order to be in compliance. Local fire, police and sheriff departments have additional enforcement duties placed upon them.

ADMINISTRATIVE IMPLICATIONS

Any additional administrative or fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 90, appropriates \$150 thousand annually to the Indian Affairs Department to promote tobacco cessation in southwestern Cibola County.

Relates to HB 353, appropriates \$1.3 million to research lung cancer detection.

Relates to SB 166, restricting the amount of nicotine in cigarettes sold in New Mexico.

TECHNICAL ISSUES

Private residences used for commercial purposes for child and adult care (pg 8 section 5 A) may expose their clients to secondhand smoke if smoking is allowed in the home outside of business hours. Requiring those residences to post signs only during business hours may mislead consumers to believe that smoking is prohibited on the premises even during non-business hours.

OTHER SUBSTANTIVE ISSUES

Data from DOH shows 20.3% of NM adults are current smokers, which is similar to the US smoking rate (20.8%). The smoking rates are highest among adults who are young (18-24 years), low-income (under\$20,000/yr), low education (less than high school diploma), and among the unemployed.

DOH's information about secondhand smoke and local ordinances and the costs of smoking revealed the following:

- 45% of New Mexicans are protected from secondhand smoke through local laws that entirely prohibit smoking in public places and/or worksites.
- About 8 in 10 working New Mexicans report having a smoke-free workplace
- Over three-fourths (79%) of New Mexicans do not allow smoking anywhere in their home.
- About 2,080 New Mexicans die annually from smoking
- An estimated 42,000 New Mexicans suffer with at least one serious illness from smoking.
- Annual smoking costs in New Mexico are \$853 million [\$425 million for direct medical costs; \$428 million for lost productivity].
- Each pack of cigarettes sold costs the State \$14.00 in smoking-attributable medical and lost productivity costs.
- 76% of New Mexicans believe that all indoor work-sites, including restaurants, should be smoke-free.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The name of the Clean Indoor Act will not be changed to the Dee Johnson Clean Indoor Air Act and smoking in all enclosed public places and workplaces in New Mexico, with some exceptions, including private residences (except those providing commercial child, adult or health care), private clubs, and retail tobacco stores will not be prohibited.

AHO/mt