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FISCAL IMPACT REPORT

SPONSOR Swisstack ORIGINAL DATE 2/21/07
LAST UPDATED _____ HB 1013
SHORT TITLE Talent Agencies Act SB _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$50.0	\$55.0	\$105.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Corrections Department (CD)

Department of Labor (DOL)

Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 1013 enacts the Talent Agencies Act, providing for licensing of talent agents. The Act applies to persons acting as talent agents in the entertainment industry, and not to an accredited university or college offering courses for employment in the entertainment industry or a person deemed exempt by the newly-created Talent Agencies Board (TAB), administratively attached to RLD.

The Entertainment industry is defined as the film, television, modeling and music industry.

Talent agent is defined as a person engaging in the occupation of procuring, training, promoting or attempting to procure employment for a performer in the entertainment industry in New Mexico.

HB 1013 provides for the granting of licenses to talent agents meeting the following requirements:

- (1) is at least eighteen years of age;

- (2) has shown to the satisfaction of the RLD familiarity with state labor laws;
- (3) has not been convicted of a felony offense in the last five years involving fraud or dishonesty;
- (4) demonstrates the payment of all applicable taxes owed to the state and local government or proves that the applicant is not subject to a tax; and
- (5) is otherwise qualified with experience and training or meets other requirements deemed necessary by the TAB.

Failure to renew a license by June 30 of each year shall cause the license to be suspended until payment of a late fee and the renewal fee is received by the RLD. Any license not renewed within one year from the date of the expired license will be automatically revoked.

HB 1013 grants authority to the Talent Agencies TAB to investigate allegations of violations of the Act and report violations to the RLD. RLD is required to: (1) enforce and administer rules necessary to carry out the provisions of the Act; (2) conduct hearings upon charges relating to discipline of a licensee or the denial, suspension or revocation of a license; and (3) maintain a roster of talent agents. The bill provides that the RLD may deny, suspend or revoke any license held or applied for under the Act if a licensee, registrant or applicant:

- A. made a false statement or gave false information in connection with an application for a license or renewal or reinstatement of a license;
- B. violated any provision of the Talent Agencies Act;
- C. committed or permitted any employee to commit any Act while the license was expired that will be cause for the suspension or revocation of a license or grounds for the denial of an application for a license;
- D. willfully failed or refused to render to a client services or a report as agreed between the parties for which compensation has been paid or tendered in accordance with the agreement of the parties;
- E. knowingly violated, or advised, encouraged or assisted the violation of, any court order or injunction in the course of business of the licensee;
- F. knowingly issued a worthless or otherwise fraudulent payroll check that can not be redeemed within two days of denial of payment by any bank; or
- G. violated a rule promulgated by the TAB that the TAB has determined may warrant denial, suspension or revocation.

HB 1013 provides that the Attorney General, a district attorney or a city attorney may institute an Action for a violation of the Act, including, but not limited to, an Action to restrain and enjoin a violation. Violation of the Act is a misdemeanor. The Act provides that a person injured by a violation of the Act or by breach of contract subject to that Act may bring an Action to restrain and enjoin a violation, or both. The amount awarded for damages for a violation of the Act may

be up to three times the damages actually incurred, but not less than the amount paid by the performer to the talent agent or person without a valid license acting as a talent agent. When a talent agent cannot or refuses to pay damages awarded by a final judgment, the judgment may be satisfied from the bond maintained by the RLD. A prevailing plaintiff shall be awarded reasonable attorney fees and costs. A court may award punitive damages if it determines, by clear and convincing evidence, that the breach of contract or violation of the Act was willful.

HB 1013 lists the following prohibited acts:

- It is unlawful for a person to act as a talent agent unless the person is licensed pursuant to the Talent Agencies Act.
- A person shall not make any representation or advertise as being a talent agent or as being employed by a talent agent unless the person or the person's employer is licensed pursuant to the Talent Agencies Act.
- Any waiver by the performer of the provisions of the Talent Agencies Act is deemed contrary to public policy, void and unenforceable. Any attempt by a talent agent to waive the performer's rights pursuant to the Talent Agencies Act is a violation of that Act.
- A license issued pursuant to the Talent Agencies Act is not transferable..

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions and civil actions brought under the Act. 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.

RLD claims TAB expenses will average \$5,000 for allowable per diem to cover nine members meeting at least twice a year. Staffing is averaged at \$45,000, which includes benefits and minimal travel expenses for one TAB administrator.

SIGNIFICANT ISSUES

No fund is created to administer the Act and the department rather than the TAB is tasked to establish licensing fees.

The Act focuses on agencies and only licenses individuals. There is no definition or licensing requirement for agencies.

The powers and duties of the TAB include regulating “standards of performance,” which is not defined and will grant overbroad authority to the TAB.

ADMINISTRATIVE IMPLICATIONS

There is no staffing authorized by the Act and RLD has no information regarding the number of “talent agents” that will be impacted and required to license in New Mexico.

TECHNICAL ISSUES

The AOC provided the following:

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- 1) Section 3(B) provides that the Act shall not apply to persons deemed exempt by the Talent Agencies TAB. There is no guidance in the Act, however, for the TAB to make such a determination of exemption from the provisions of the Act.
- 2) Section 11(C) provides that a person injured by a violation of the Act “or by breach of contract subject to that Act” may bring an action to restrain and enjoin a violation, or both. It is not clear whether the language is referring to a breach of contract subject to the Talent Agencies Act or a breach of contra

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