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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/07
 LAST UPDATED 2/21/07 HB _____

SPONSOR Martinez

SHORT TITLE Tobacco Settlement Supersedes Bond SB 335/aSJC/aSFL#1

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$.01 see narrative	Non-Recurring	Various

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Health (DOH)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor Amendment #1 strikes the SJC Amendment and reduces the maximum bond amount to \$100,000.0 (one hundred million dollars).

Significant Issues

Most states that have adopted an appeal bond cap allow a judge subsequently to increase the bond requirement if it is shown that a defendant is dissipating its assets to avoid paying a judgment. The SFL amendment did not restore this provision as proposed in the original bill.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment raises the maximum bond amount to \$250,000.0 (two hundred fifty million dollars). The Amendment further removes proposed language from the original bill regarding an appellant suspected to be dissipating assets being subject to the posting of a bond in the manner described in subsections A and B of 39-3-22 NMSA 1978.

Synopsis of Original Bill

Senate Bill 335 amends Section 39-3-22 NMSA 1978 to establish a maximum bond amount of \$25 million, regardless of the amount of the judgment, while appeals are pending in a civil action involving signatories of the Tobacco Master Settlement Agreement (MSA), regardless of the amount of the settlement. The cap on the bond amount may be lifted by a court, if the adverse party proves that a plaintiff whose bond has been limited to \$25 million is dissipating assets outside the ordinary course of business in order to avoid paying the judgment. Upon such proof, the court may require the appellant to post a bond in the manner described under Section 39-3-22.

SB 335 contains an emergency clause that the amendment takes effect immediately.

FISCAL IMPLICATIONS

New Mexico received over \$38 million from the MSA in 2005 and expects over \$29 million in 2006. The State allocates approximately 40% of its MSA revenue to tobacco and lung research and health programs. Many states have enacted appeal bond limits legislatively to protect what tobacco companies' claim will be a disruption in MSA revenue. Examples of recent non-legislative solutions through judicial rule making include a bond limit of \$100 million in Washington state; and \$125 million in Alabama for all MSA signatories, successors, and affiliates.

DOH believes appeal bond caps may jeopardize the payment of settlements to New Mexicans who may sue the cigarette companies, compared to successful plaintiffs in other states that do not have appeal bond caps. A recent appeal bond for a Philip Morris USA case was originally set at \$12 billion, greater than the proposed cap of \$25 million proposed in SB 335. A maximum bond amount of \$25 million may be considered insignificant considering the 2005 net revenues of \$18 billion in domestic tobacco sales for Altria Group, Inc, parent company of Philip Morris.

SIGNIFICANT ISSUES

DOH claims cigarette companies have been urging states to limit the bond amounts they must post during the appeal process. Parties that have been found liable for damages by courts of law must post appeal bonds to ensure that funds will be available to pay all court-ordered damages still owed to the plaintiffs once the appeal process has been exhausted.

PERFORMANCE IMPLICATIONS

Current law in New Mexico requires that in order to postpone the collection for a judgment until after the appeal, a defendant is required to post a bond that is double the amount of the judgment plus costs to stay the execution of the judgment during pendency of an appeal. The tobacco companies believe this makes New Mexico's appeal bond requirement burdensome.

Thirty-five states have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. Some states have passed legislation that applies broadly to all litigants, while other states have passed more limited legislation that applies only to MSA signatories, successors, and affiliates.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 166, limiting the nicotine content of cigarettes distributed in New Mexico.

OTHER SUBSTANTIVE ISSUES

DOH claims SB 335 has the potential of increasing funds available to tobacco companies for advertising and other purposes. In 2003, cigarette companies spent \$75.3 million to promote their products in NM, a 30.5% increase from the prior year. DOH further claims that 60% of NM middle school smokers smoke Marlboro, one of the three most heavily advertised brands. A 2002 survey by the Campaign for Tobacco Free Kids found that youth are twice as likely as adults to remember tobacco advertising.

CDC's 2005 national youth Risk Behavior Survey found that 23% of high school students smoked in 2005, up from 21.9% in 2003. CDC identifies deep cuts in state tobacco prevention funding and steep increases in tobacco marketing expenditure which are at record levels as the tobacco companies easily evade the minimal marketing restrictions in the 1998 settlement. From 1998 to 2003, tobacco marketing expenditures increased by 123% to at least \$15.4 billion, according to the Federal Trade Commission.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The appellant will be required to post a bond in the manner described under the current Section 39-3-22.

AHO/mt:nt:csd