F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	1/26/08
SPONSOR	SJC	**LAST UPDATED**	2/5/08
		HB	
SHORT TITLE	Business Entity Reporting & Penalties	**SB**	168/aSJC
		ANALYST	Earnest

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	**FY09**	**FY10**		
	($0.1)	($0.1)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Office of the Attorney General (OAG)

SUMMARY

Synopsis of the SJC Amendment

The Senate Judiciary Committee amendment makes the technical changes suggested by OAG and PRC. The term “report” is replaced by “return” for clarification. For non-profit entities, under this amendment, the reporting requirement and extension of time to file a report in current statute are left intact.

Synopsis of Original Bill

Senate Bill 168 amends the Corporate Reports Act to reduce from one year to 30 days the time the Public Regulation Commission (PRC) may grant an extension for filing a required corporate report. The bill require biennial reports, plus a $10 fee, instead of annual reports and reduces the penalty for failure file the report from $200 to $100.

FISCAL IMPLICATIONS

PRC estimates a minimal net fiscal impact between the decreases in late filing fees against the increase in the additional filing fee for biennial reports and civil penalty for failure to timely file such report. All fees collected by the corporations bureau are deposited in the general fund.

SIGNIFICANT ISSUES

Current law imposes a civil penalty of $200 for late filing of annual or supplemental reports. PRC may grant a one year extension, effectively making the report biennial. PRC indicates that entities can pay this amount or re-incorporate under a different name for a lower cost. This bill will assess a smaller late fee of $100 which is lower than the total cost to re-incorporate under another name given all costs associated with the transaction from the corporation to the PRC. The net effect of the bill would be to encourage business to maintain their corporate status within the State of New Mexico.

Further, PRC reports the reason for requiring limited liability companies to file biennial reports is to keep track of their existence. Currently, there is no method of knowing whether these entities are still in existence. Without information provided directly to the PRC that a limited liability company is no longer in existence, the name of the limited liability company cannot be used by another entity. More generally, the public has an interest in knowing that the database of a state agency is updated regularly and therefore reasonably accurate.

OAG indicates that the bill amends NMSA Section 53-5-7 to apparently eliminate a conflict between sections in that act as to whether for-profit corporate reports must be filed on an annual or biennial basis. The provisions would be consistent in requiring biennial corporate report filings.

ADMINISTRATIVE IMPLICATIONS

PRC would have to provide limited training to staff if this bill is enacted and the commission's database would have to be changed slightly to accept and electronically report biennial reports from limited liability companies. The changes would need to be disseminated to the public at nominal expense.

TECHNICAL ISSUES

PRC reports that the deleted text on page 6, lines 10 through 22, should remain intact and the current language of the statute kept as is.

OAG suggests that definitions for "report" and "returns" be added to the law. NMSA Sections 53-5-6 and 53-8-83 1978 contain references to both "reports" and "returns". This bill reduces the allowable extension of time for filing a "return" as required by the Corporate Reports Act and the Nonprofit Corporation Act from twelve months to thirty days, However, a review of those acts, and the PRC rules governing corporate filings (NMAC 12.3.2; 12.3.3), did not reveal any requirement for the filing of corporate tax returns with the Public Regulation Commission. It is possible that the use of the term "return" is intended to be synonymous with the term "report". However, the failure of the bill to eliminate extensions based upon the United States Internal Revenue Code as applied to for-profit corporations, while eliminating that language for non-profit corporations, implies that those terms are not synonymous.

BE/mt