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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR SCONC LAST UPDATED 3-13-09 HB

SHORT TITLE Public Peace, Health, Safety & Welfare SB 732/SCONCS/aSCONC

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 See <i>Fiscal Implications</i>	\$.1 See <i>Fiscal Implications</i>			Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From (Original Bill)

Attorney General's Office (AGO)

New Mexico Environment Department (NMED)

Gaming Control Board (GCB)

SUMMARY

Synopsis of SCONC Amendment

Senate Conservation Committee amendment to Senate Conservation Committee Substitute for Senate Bill 732 amends the legislation as follows:

1. On page 1, line 18, strike January 1, 2010 and insert August 1, 2010
2. On page 1, line 22, strike December 31, 2009 and insert July 1, 2010.

The Senate Conservation Committee amendment adds no appropriation to the legislation.

Synopsis of Original Bill

Senate Conservation Committee Substitute for Senate Bill 732 provides that: (1) beginning on Jan. 1, 2010, at the time an applicant submits a license application to a state agency in the executive branch of government, the agency must provide the applicant with a specific time frame for the agency's response to the application; and (2) by Dec. 1, 2009, each state agency must adopt rules establishing specific time frames for response to license applications. A rule may provide for a "mutual extension" of any deadline for agency action on a license, depending on the complexity of the licensing process and the economic impact of a delay in issuing the license. The substitute bill broadly defines "license" to include permits, certificates, approvals, registrations, charters, memberships, exemptions and other forms of permission required by law.¹

FISCAL IMPLICATIONS

NMED states that the legislation, "...would add significant costs to Environment Department programs. Environment Department permitting programs that would come within the reach of this bill include hazardous waste, groundwater quality protection, solid waste, air quality, liquid waste, utility operator certification and restaurant licenses. Additionally, because of the broad definition of 'license' (see discussion under Significant Issues), new regulations would have to be adopted that specify timeframes for thousands of 'approvals' that are activity-specific in nature."

SIGNIFICANT ISSUES

AGO indicates that the substitute for SB 732 will provide applicants with some idea of how long it will take an agency to process and act on a license application. The substitute bill provides a licensing agency with considerable flexibility in establishing appropriate deadlines for responding to license applications.

NMED brings forth a number of discussion items:

1. The definitions in the bill are overly broad.

The definition of a license on page 2 of the bill includes "the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption or other permission required by law". As an example of the burden this bill will place on agencies, the Environment Department issues thousands of different regulatory "approvals" each year, from simple issues like approval of training credits for a utility operator license, to more complicated and time consuming projects such as approval of a comprehensive work plan for cleanup of a waste unit at one of the national laboratories. Each of these "approvals" is dependent on the nature of the activity and therefore the Department would be required to undertake numerous activity-specific rulemakings. SB 732 SCONC Sub will result in agencies having to divert staff from permitting activities to rulemaking. Additionally, the definition "state agency" includes some boards and commissions that do not have staff or budgets to adopt rules

¹ Excerpted from AGO response dated 3-13-09.

for timeframes. For example, the Water Quality Control Commission is required by law to approve variances, alternative abatement standards and other statutory exemptions.

2. The July 1, 2010 rulemaking deadline should allow delays for good cause shown.

SB 732 SCONC Sub imposes a deadline of July 1, 2010 for the promulgation of all rules for response to all licenses issued throughout state government. The majority of those rules are anticipated to be adopted within the timeframe required. However, in a situation where, for example, there are particularly in-depth stakeholder discussions or where the U.S. EPA is not able to provide timely approval of a rule that affects a federally authorized program, flexibility should be allowed for good cause shown.

3. The criteria for extending deadlines in section 1.B should include additional criteria.

Criteria for extension of deadlines should at a minimum include the threat to public health or the environment, the extent of public concern regarding the licensing action, and the timeframes required for public hearings.

PERFORMANCE IMPLICATIONS

GCB, states, “This bill would significantly impair the ability of the Gaming Control Board to process applications. Often, delays in issuing licenses are due to factors beyond the control of the agency. Requiring the agency to adhere to strict deadlines, with extension only upon mutual agreement would result in the inability to thoroughly investigate the persons and organizations involved in the gaming industry, possibly resulting in suboptimal decision making. Compliance with this bill would run counter to the agency's statutory mandate to strictly regulate gaming to ensure that it is free of corrupt and criminal influences.”

NMED states, “The Environment Department’s ability to meet legislatively mandated performance and accountability measures could be limited if staff must be diverted from activities that protect public health and the environment to rulemaking for licensing timeframes.”

TECHNICAL ISSUES

AGO states, “The term ‘mutual extension’ in Section 1(B) is unclear. It could mean that the agency and applicant must agree to extend the deadline for issuing a license or that either the applicant or the agency may request an extension of the deadline.”

NMED states, “The January 1, 2010 date on page 1 line 18 should be changed to a date after July 1, 2010 so that rules can be promulgated before applicants are required to be notified of permit timeframes.”

ALTERNATIVES

NMED indicates that concerns about agency licensing actions not moving quickly enough are better addressed by looking at specific permitting programs to identify the barriers and problems, such as insufficient funding, and by addressing those issues on a program by program basis. For that, “Any problems with agency licensing may be dealt with surgically, because the broad approach of SB 732 SCONC Sub will have numerous unintended consequences.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AGO suggests, “Status quo for agencies that currently have no restrictions on the time they may take to process a license application.”

NMED states, “Issuance of licenses, including environmental permits, will proceed with no diversion of staff resources.”

AMENDMENTS

NMED suggests:

1. Redefine “license” to include any permit, permit modification, licensing action, or other government agency permission required by law.
2. Redefine “state agency” to mean any state agency, board, commission or department in the executive branch of state government that is authorized by law to grant licenses.

BW/mc