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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09  
 LAST UPDATED 3/3/09      HB \_\_\_\_\_

SPONSOR Wirth

SHORT TITLE Securities Act Repeal and Reenactment.      SB 362/aSJC

ANALYST Sanchez, C

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
NA	\$210.0	\$420.0	Recurring	Securities Enforcement Education
NA	\$210.0	\$420.0	Recurring	General Fund

(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
<b>Total</b>	NA	\$6.4	\$12.8	\$19.2	Recurring	Securities Enforcement Education

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of SFC Amendment

According to RLD, the Senate Judiciary Committee amendments are designed to clarify certain provisions in the proposed New Mexico Uniform Securities Act, to make technical corrections, and to retain the current statute of limitations for civil actions.

The amendments will:

- clarify coverage of settlements or similar agreements as investment contracts within the definition of a "security" in section 102DD;
- add from current law "a certificate of participation in a real property lease" as an exempt security under section 201.I;
- clarify and limit the grounds on which a civil penalty may be imposed on broker-dealers, agents, investment advisors and investment advisor representatives under section 412 B;
- replace the statute of limitations in Subsection J of Section 509 of the bill in order to retain the statute of limitations in the New Mexico Securities Act of 1986 for civil liability under the New Mexico Uniform Securities Act; and,
- make several other technical clarifying amendments.

Most changes are technical corrections or clarifications.

### Synopsis of Original Bill

According to the AGO, Senate Bill 362 repeals the "New Mexico Securities Act of 1986", NMSA Sections 58-13B-1 through 58-13B-57, and enacts the "New Mexico Uniform Securities Act" which substantially conforms to the model "Uniform Securities Act" adopted by the National Conference of Commissioners on Uniform State Laws in 2002, as amended in 2005. The Act is aimed at protecting investors against unfair, deceptive and fraudulent practices in the sale of securities. The Act involves licensing securities broker-dealers, financial advisers, and other investment professionals and by registering certain securities offered in New Mexico. The new Act contains seven Articles:

1. General Provisions (including title, definitions, etc.)
2. Exemptions from registration of securities;
3. Registration of securities and notice of filing of federal covered securities;
4. Registration and regulation of broker-dealers, agents, investment advisors, investment advisor representatives, and federal covered investment advisors;
5. Securities fraud and liabilities;
6. Administration of the Act and judicial review; and
7. Transition and applicability provisions.

The effective date of the new Act is January 1, 2010. However, the predecessor New Mexico Securities Act of 1986 would apply to all actions or proceedings that are pending on the effective date of the new Act or which may be instituted on the basis of conduct occurring before the effective date of the new Act, with some exceptions.

## FISCAL IMPLICATIONS

According to RLD, the Securities Division collects approximately \$17 million (\$16.9 million in FY 08) in licensing fees, securities registration and exemption fees, and civil penalties, most of which go to the general fund. SB 362 will mandate an annual licensing fee of \$50 for each individual agent. The current statute gives the Director the discretion to set the annual licensing fee as long as it does not exceed \$50 per year. The current fee, as set by rule, is \$40. During the current fiscal year, over 84,000 agents renewed their licenses. Based on this figure, SB 362 would enhance overall revenues from this source by at least \$840,000 per fiscal year. The bill would allocate \$5.00 of the licensing revenues to the Securities Enforcement and Investor Education Fund, a **non-reverting fund** to be used for expenses incurred in providing investor education programs and supporting costs associated with enforcement. The Division currently administers the Securities Education and Training Fund, established in 1989 (see Section 58-13B-57) and SB 362 would expand the eligible uses of the fund expenditures to include expenses associated with enforcement. Because the bill would not be effective until January 1, 2010, we have estimated the impact on FY 10 at 50%. Thus, SB 362 would generate approximately an additional \$420,000 annually to the general fund.

The LFC is concerned that allocating a large portion of revenues to a non-reverting fund will reduce the ability of the legislature to establish fund management and spending priorities.

The figures shown in the Estimated Additional Operating Budget Impact reflect the costs associated with the training, equipping and insuring of commissioned law enforcement personnel. Once again, costs for FY 10 are estimated at 50% for the half fiscal based on the bill's January 1, 2010 effective date.

## SIGNIFICANT ISSUES

This bill enacts, with some variation, the Uniform Securities Act adopted by the National Conference of Commissioners on Uniform State Laws in 2002, as amended in 2005.

Some of the differences noted between the Act adopted by this bill and the Uniform Securities Act adopted by the NCCUSL include the following: This bill adds definitions to Section 102; modifies Section 202 to exempt additional securities transactions from registration requirements; expands and elaborates on Section 508 relating to criminal penalties; requires in Section 601 that the Director of the Securities Division of the Regulation and Licensing Department be subject to confirmation by the State Senate, sets minimum qualifications for the Director, and allows the Director to appoint, with the approval of the Superintendent of the Regulation and Licensing Department, commissioned peace officers who have the powers of peace officers for the purpose of investigating and enforcing provisions of the new act and who must comply with the certification provisions of NMSA Section 29-7-6.

The bill would provide for a new police agency under the direction of the Director of the Securities Division. Peace officers employed by the Director must meet minimum qualification requirements set forth in NMSA Section 29-7-6 of the Law Enforcement Training Act, and must comply with those requirements within twelve months of employment or "forfeit their position." That section requires completion of a law enforcement training program approved by the New Mexico Law Enforcement Academy Board, and compliance with other qualification requirements set in that section and by that Board. The bill is unclear as to whether peace officers appointed by the Director will be subject to the provisions of the Personnel Act, NMSA Section

10-9-1 et seq), or exempt from the provisions of that Act. If they are considered to be “classified” employees, when the Personnel Act is read together with NMSA Section 29-7-6 as incorporated in this bill, it is unclear whether a peace officer appointed by the Director who fails to meet those qualifications within that time period automatically “forfeits” their position, or whether they would be entitled to notice, hearing, and the same rights as other classified personnel.

Section 508J differs from the uniform act adopted by the NCCUSL in that it provides “*when so requested by the director, the attorney general shall commission as a special assistant attorney general any attorney employed by the director or contracted with by the director and approved by the attorney general to assist the director in carrying out the director's duties, including providing legal advice and prosecuting offenders*”. It is unclear whether the Attorney General has the authority to approve the hiring or contracting of that attorney by the Securities Division Director, or whether his authority is limited to determining whether an employee or contractor of the Director should be granted a commission as a Special Assistant Attorney General.

### **PERFORMANCE IMPLICATIONS**

According to the AGO, section 508J of the bill allows the Attorney General, or the proper district attorney, to initiate criminal proceedings pursuant to the new act. NMSA 58-13B-39 of the current securities act contains similar provisions.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The New Mexico Securities Act of 1986 will continue to govern securities transactions in this state.

### **POSSIBLE QUESTIONS**

Does this bill do enough to protect investors against unfair, deceptive and fraudulent practices in the sale of securities?

Currently 50% of the revenue generated by SB 362 will be sent to the General Fund. Should a higher percentage of the revenue generated be sent to the General Fund?

CS/mt