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FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/18

SPONSOR Thomson/J. Martinez LAST UPDATED _____ HB 305

SHORT TITLE Hotel Employee Panic Buttons SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$10.0	\$10.0	Recurring	General Fund
		\$25.0		\$25.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	(\$20.0)	(\$20.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

Tourism Department (TD)

SUMMARY

Synopsis of Bill

House Bill 305 proposes to amend the Occupational Health and Safety Act requiring hotels to provide employees with panic buttons, to keep a record of accusations against a guest, decline services to any guest for up to three years, notify employees of any guest on a record of accusation, notify law enforcement if the employee consents, and post a notice on each hotel room door that the hotel protects employees against assault and sexual harassment by guests. The bill allows employees to request and receive a transfer to a different area for the duration of the guest's stay and receive paid time off to contact the police. Lastly, the bill provides for civil penalties against the hotel of up to \$500 for each day the violation continues.

FISCAL IMPLICATIONS

Budget cost for the initial year following enactment is estimated to be approximately \$25 thousand for the development of policies, training, and outreach. Recurring cost after the initial year is estimated to be approximately \$10 thousand per year for inspections and training of new staff.

The maximum penalty for violations of the provisions of HB 305 are \$500, compared to maximum penalties of \$126,749 for other provisions of the Act. The estimated revenue loss to the general fund is approximately \$20 thousand per year as a result of diverting enforcement staff time from inspections where significantly higher penalties would otherwise be collected. The overall fiscal impact is estimated to be \$30 thousand per year with the combined cost for inspections and training, and loss of penalty revenue to the general fund.

SIGNIFICANT ISSUES

The New Mexico Environment Department's (NMED) Occupational Health and Safety Bureau ("OHSB") enforces the provisions of the Act. Currently, the general duty provisions of the Act, Subsection 50-9-5.A NMSA 1978, require employers to, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." Under an employer's general duty, OHSB may issue citations to hotel employers who do not provide a workplace free from recognized serious hazards, including hazards of workplace violence. The maximum penalties for violations of the Act are currently \$12,675 for serious violations, and \$126,749 for willful violations, adjusted annually for inflation pursuant to NMSA 1978, Section 50-9-24(J).

HB 305 sets maximum penalties of up to \$500 per day for violations of the amended provisions for security measures. The maximum daily penalty of \$500 is significantly less than maximum statutory penalties for other violations of the Act, as contained in Subsection 50-9-24, which range up to \$126,749 for willful violations. During the 2017 legislative session, the Legislature passed SB 229, Occupational Health Federal Compliance, signed into law on April 6, 2017, to increase maximum penalties for violations of the Act to conform to federal law. The reduced maximum penalty contained in HB 305 is inconsistent with the 2017 legislation, and with federal law. This inconsistency would likely result in a finding that New Mexico is less effective than federal OSHA, and could jeopardize federal funding of the OHSB program.

HB 305 provides specific security requirements to protect hotel employees from acts of violence, while the current general duty clause contains no specific workplace violence requirements. Under the general duty clause, OHSB must prove that an employer could have known of the existence of a workplace violence hazard, that employee(s) were exposed, that the hazard was recognized by the employer or the industry, and that feasible corrective measures were available, prior to citing violations. Under the amended provisions contained in HB305, OHSB would be able to directly cite the amended provisions of the Act for an employer's failure to implement the prescribed controls, so long as evidence exists of employee exposure and the employer could have known of the existence of the hazard.

HB305 requires a hotel employer to maintain a list of all guests accused of violent or harassing conduct for five years from the date of the first accusation as well as to decline service for a

period of three years in certain circumstances. There are few controls on these requirements, and they create the potential for civil litigation between hotel employers and affected guests. Further, there is no indication to whether these lists shall be supplied to the OHSB as part of a compliance inspection or investigation. Without statutory authority to the contrary, OHSB may be required to provide such lists in a public records request pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 41-2-1 to -12. Disputes over the confidentiality of these lists or denial of service may unnecessarily draw the OHSB into civil litigation requiring significant expenditure of OHSB resources.

ADMINISTRATIVE IMPLICATIONS

According to NMED, its OHSB will have to write specific policies for enforcement, provide training for enforcement staff and the regulated public, and provide outreach to regulated establishments. Using current staffing, these additional activities will draw from existing resources and reduce the number of inspections in high-hazard industries including construction and oil drilling and servicing. OHSB may also need to petition the New Mexico Environmental Improvement Board to promulgate regulations in order to adequately execute its duties pursuant to HB305.

TECHNICAL ISSUES

According to NMED, the definitions for “employee” in HB305 is inconsistent with the current definition contained in the Act. HB305 sets a threshold of two hours of work within a work week for the definition of employee; under current provisions of the Act, there is no threshold number of hours worked for individuals to be considered employees. By not affording protection to employees working less than two hours per week, the definition contained in HB 305 could be construed as less protective, and therefore less effective, than the current protection provided under the Act’s general duty provision.

OTHER SUBSTANTIVE ISSUES

Potential expenditure of OHSB resources in development of an enforcement program, as well as additional expenditures in potential involuntary participation in civil causes of action arising from the HB 305 requirements

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