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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13
 SPONSOR HJC LAST UPDATED 03/16/13 HB 77/HJCS/aSPAC
 SHORT TITLE Firearms Transfer Act SB _____
 ANALYST Trowbridge/Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Undetermined*	Undetermined*	Undetermined*	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

*See "Fiscal Implications" below.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Public Safety (DPS)
 State Treasurer's Office

SUMMARY

Synopsis of SPAC Amendment:

The Senate Public Affairs Committee amendment to the HJC Committee Substitute for House Bill 77 would amend the substitute as follows:

1. The SPAC amendment would prohibit a registry of information regarding firearms transfer or ownership acquired as a result of compliance with the law.
2. The SPAC amendment would create an exception to the Inspection of Public Records Act (IPRA) so that information acquired by state agencies in enforcing the law would not be accessible by way of an IPRA request.
3. The SPAC amendment would create a contingency where the law would be repealed should federal law be amended to require background checks for private firearms transfers.
4. The SPAC amendment would limit the fee for a background check to \$25.

Synopsis of Original Bill:

The HJC Committee Substitute requires background checks for firearms transactions at gun shows and provides for reporting by the Administrative Office of the Courts (AOC) to the FBI's National Instant Criminal Background Check System.

The substitute requires a transferor at a gun show other than a federally-licensed gun dealer to request a background check of a prospective transferee (other than a federal firearms licensee or the holder of a valid New Mexico gun license) to ascertain his or her eligibility to possess a firearm. The background check must be conducted by a federal firearms licensee. If the check reveals that the transferee is prohibited from receiving a firearm, the federal firearms licensee shall inform the parties of that fact and the transfer shall not take place. The Committee Substitute for HB77 requires that a gun show organizer arrange for one or more federal licensees to be on the premises of the gun show to obtain the required background checks. It also requires prominent signage at gun shows regarding the background check requirements and any fee that may be charged.

The background check requirement will not apply to the transfer of antique or relic firearms.

CS/HB77 specifies that a transferor that complies with the background check requirements shall be immune from civil liability unless he or she knows that the recipient is likely to commit an unlawful act or transfer the firearm to an unqualified third party.

CS/HB 77 specifies that unlawful purchase or receipt of a firearm and unlawful transfer of a firearm shall be misdemeanors; failure to retain forms or post required notice at a gun show is a petty misdemeanor.

The CS/HB77 requires the AOC to report to the National Instant Criminal Background Check System any information from court proceedings relating to an individual's eligibility to possess firearms. The AOC is directed to transmit only such information as necessary to identify the person. Information transferred must only be used for the purpose of inclusion in the National Instant Criminal Background Check System. A person reported to the FBI by the AOC may inspect and correct any information in the report and may petition for re-determination. If a re-determination is made, the AOC must report it promptly to the FBI.

FISCAL IMPLICATIONS

The Attorney General's Office (AGO) indicates The SPAC amendment creates no new fiscal implications beyond those identified in the HJC substitute. Costs of compliance of the HJC substitute, as well as investigation and prosecution of offenses created by this bill could create a financial burden on relevant agencies. The Department of Public Safety (DPS) indicates that if not enacted New Mexico is in jeopardy of a 10 percent penalty of the JAG/Byrne Federal grant money. The Department receives grant funding through the JAG/Byrne grant program. Other local law enforcement entities that are sub recipient grantees of the JAG/Byrne through the Department could also potentially be impacted.

SIGNIFICANT ISSUES

The Attorney General's Office reports:

The SPAC amendment creates no new legal issues beyond those identified in the HJC substitute.

The Administrative Office of the Court (AOC) states, the SPAC amendment provision for the district court's redetermination to be de novo codifies what would be the practice in the absence of legislative direction. While not necessary, it does not appear to raise any significant issue.

The AOC notes, the SPAC amendment provides contingent repeal in the new section 11 is apparently directed at the concern that there may be changes in federal law that would make the enactments of HB 77 inconsistent with those prospective changes. This concern appears to arise in part because, as amended, HB 77 refers to specific provisions of federal law, including 18 U.S.C. sections 922(d)(4) and (g)(4). A more general reference to have state practices conform to federal law might avoid the perceived need for a contingent repeal section.

The Public Defender Department (PDD) states, the SPAC amendment would make it a misdemeanor to fail to transfer firearms in accordance with the proposed law, and a petty misdemeanor to fail to display required signage at gun shows or to arrange for FFLs to be present for the transfers. It would make clear that no public roster or registry is permitted or required to be kept by authorities, and that any records are immune from inspection under IPRA. The SPAC amendment defines "transfer" as the sale, lease, delivery or other passing of possession or control of the firearm. It would appear that no background check would be required for firearms transactions between unlicensed individuals outside the gun show. Thus, if a person displayed his firearms at the show and arranged to later meet to transfer, the proposed law would be avoided. It would add a section stating that the law would be repealed on enactment of a federal law covering the same areas.

The PDD notes that because of the definition of "gun show" as any event at which more than twenty-five firearms are on site and available for transfer, enactment of CS/HB 77 would require that any inheritance of twenty-five or more guns be transferred through an FFL. A survey of NM FFLs listed on GunBroker [<http://www.gunbroker.com/FFL/searchforFFL.aspx>] reveals typical transfer fees in the \$30 to \$40 range for each firearm. The death of a gun collector could thus result in substantial fees for his heirs.

HB 77 defines "transfer" as the sale, lease, delivery or other passing of possession or control of the firearm. It would appear that no background check would be required for firearms transactions between unlicensed individuals *outside* the gun show. Thus, if a person *displayed* his firearms at the show and arranged to later meet to transfer, the proposed law would be avoided.

The Administrative Office of the Courts (AOC) states that the CS/HB 77 substitute does not appear to present any significant issues with regard to the its reporting requirements. In fact, it appears to codify the AOC's current reporting practice and to formalize the challenge provisions that now exist in practice without a specific statutory framework. However, while the language in the substitute is consistent with current law, there is a potential for Congress to make changes to the NICS law. It might improve CS/HB 77 substitute to simply state in section 9B that the AOC is required to make reports regarding court determinations of mental health "as required by the National Instant Background Check System or its successor" instead of codifying the current

requirement to report a person “adjudicated as a mental defective or committed to a mental institution.”

NOTE: HB 442 includes numerous provisions that are analogous to CS/HB 77. Language in HB 442 does raise several significant issues addressed in the AOC’s bill analysis of HB 442. CS/HB77, while covering the same ground as HB 442, resolves the issues raised regarding HB 442.

The AGO indicates that because the bill does not bar acquisition of firearms to anyone not already barred by federal law, it is unlikely to be successfully challenged on grounds it violates the Second Amendment to the United States Constitution or Article II, Section 6 of the New Mexico Constitution.

AGO also states that in Section 7, the bill contains criminal penalties for those who transfer or receive, or attempt to transfer or receive, firearms at gun shows without a firearm background check. However, this section does not contain any *scienter* requirement on the part of the person transferring, receiving, or attempting transfer or receipt.

AGO reports in Section 8, the bill contains criminal penalties for persons who fail to arrange for a federal firearms licensee to conduct background checks or who fails to display a notice regarding the requirement of background checks. As in Section 7, the substitute bill contains no *scienter* requirement on the part of the person who fails to do either of these things. Additionally, Section 8 is unclear on who might be charged for this offense.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The PDD indicates the AOC reporting, etc., portion of CS/HB 77 addresses similar subject matter to HB 442.

The AGO notes that HB 114 – “PROHIBIT ENFORCEMENT OF FEDERAL GUN LAWS” (Nora Espinoza), would criminalize the enforcement of federal laws or regulations pertaining to firearms, firearm accessories, or ammunition if applied to circumstances involving a firearm, firearm accessory, or ammunition owned or manufactured and remaining within the borders of the State of New Mexico. Additionally, HB 114 would render as unenforceable any federal firearms law or rule banning specific firearms or accessories or requiring registration of same

TECHNICAL ISSUES

The AGO recommends amending Sections 7 and 8 to include language requiring the showing of intent on the part of the person committing the offense.

ALTERNATIVES

A clear exception could be added for transfer of firearms to one’s heirs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

No background checks at gun shows will continue. DPS states that currently NM is not in compliance with the 2008 NICS Improvement Act. Not enacting this amendment would put NM in jeopardy of a 10 percent penalty of the JAG/Byrne Federal grant money.