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## FISCAL IMPACT REPORT

SPONSOR: Youngberg                      DATE TYPED: 03/11/03    HB 792

SHORT TITLE: Concealed Handgun Carry Act                      SB \_\_\_\_\_

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund/OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$0.1 Significant	\$0.1 Significant	Recurring	New Concealed Handgun Carry Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 23, HB 916

### SOURCES OF INFORMATION

Responses Received From  
 Department of Public Safety (DPS)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General (AG)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Bill 792 enacts the “Concealed Handgun Carry Act,” providing for statewide, uniform

standards for the issuance of concealed handgun licenses.

The Department of Public Safety (DPS) is authorized to begin issuing licenses that shall be valid for a period of four years. The department shall promulgate rules necessary to implement the provisions of the Act.

Applicants for licenses must meet minimum qualifications as defined by the Act, and DPS is required to investigate individuals' qualifications.

All fees collected by the Act shall be placed in a concealed handgun carry fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund, but may instead be used to maintain the state's criminal history database. Money in the concealed handgun carry fund is appropriated to the department to carry out the provisions of the Act.

Section 30-7-2 NMSA is amended to allow a person with a valid license issued by a state contiguous to New Mexico to lawfully carry a concealed weapon.

The bill repeals Sections 29-18-1 through 29-18-12. (Laws 2001, Chapter 219)

#### Significant Issues

The Attorney General (AG) notes that the bill repeals the current unenforceable, statutory provisions, replacing them with nearly identical language. The current provisions are unenforceable based on a New Mexico Supreme Court order ruling that a local option provision was unconstitutional. This bill does not include a local option provision. AG notes that the Supreme Court did not rule on whether the overall licensing proposal was permissible under Article II, Section 6.

The bill does not provide for an appeal process for revocation or suspense of a license, although the title of Section 7 includes the language "right to appeal." (SEE ALSO TECHNICAL ISSUES)

The bill amends Section 30-7-2 to allow a person with a license from a neighboring state the right to carry a concealed handgun in New Mexico. Under current law, unlawful carrying of a deadly weapon is a petty misdemeanor. AG notes that accepting licenses issued by neighboring states and not all states may conflict with the Privileges and Immunities clauses of the U.S. Constitution.

DPS reports that it will be both difficult and expensive to investigate applicant qualifications as provided by the bill. Specifically, the department indicates that it will be difficult to ensure that an applicant is not under indictment for a felony in New Mexico or any other state, that an applicant is not otherwise prohibited by federal law or the law of any other jurisdiction from purchasing or possessing a firearm, that an applicant has not been adjudicated as mentally defective and that an individual is not addicted to alcohol or controlled substances.

The bill requires that DPS issue or deny a license within 60 days of receiving an application. DPS notes that it currently takes eight to ten weeks to process a background check, indicating that the bill's provisions regarding departmental response and those governing investigation of

qualifications for licensure are incompatible.

## **FISCAL IMPLICATIONS**

The provisions of the bill will likely have a significant fiscal impact on the Department of Public Safety (DPS). Although the legislation creates the concealed handgun carry fund, it is unknown whether accrued revenues will cover the fiscal impact to DPS. The department indicates that although the legislation provides for a \$100 application fee, background checks currently cost \$31. The department reports that \$69 is not sufficient funding to cover other costs incurred in processing an application.

The bill does not contain an appropriation. DPS indicates that without an appropriation to initiate the process, the department will not have the resources to carry out the provisions of the Act in FY04. DPS notes that the department will need to invest in additional computer hardware, software development, and staff to administer the application process.

DPS estimates that the department will need an additional attorney and support staff personnel to address increased litigation resulting from the Act.

Any fiscal impact on the judiciary will be proportional to the number of court cases initiated to handle appeals.

## **TECHNICAL ISSUES**

The AG notes the following concerns:

- Section 3(E) provides a definition of handgun which differs from the definition provided in NMSA 1978, Section 30-7-2.2. The reference to a projectile being expelled as a result of an explosion is not accurate, as the ignition of powder actually ejects the projectile.
- Section 5(A)(9) does not detail the criteria DPS is to use in determining whether an individual is addicted to alcohol or controlled substances.
- Section 6(D) states that DPS shall conduct an appropriate check on available records. It is unclear what constitutes appropriate.

DPS reports that Public Law 92-544 requires that information acquired through a nationwide criminal history inquiry not be disseminated beyond the State Identification Bureau. Amending the bill to include a confidentiality clause would assure compliance with this law.

AOC notes that an amendment to the bill might include language detailing an applicant's right to appeal the denial of a license to district court.

**JCF/njw**