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FISCAL IMPACT REPORT

SPONSOR Sanchez, M DATE TYPED 02/22/05 HB _____
 SHORT TITLE Convenience Store Safety Act SB 506
 ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 1068

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Environment Department (NMED)
 Worker's Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

Senate Bill 506 enacts the Convenience Store Safety Act, establishing specific security requirements for convenience stores, providing for enforcement by the Environmental Improvement Board (EIB) of NMED, creating a private cause of action for violations of the Act, and creating an exception to the exclusive remedy provisions of the Workers Compensation Act.

Security Requirements: Senate Bill 506 requires convenience stores to meet minimum lighting requirements and prohibits the placement of signs on windows and doors in the area between 3 feet and 11 feet above ground. The bill establishes cash management procedures during evening and night hours. The bill requires annual safety training for employees and requires that at least 2 employees be on duty between the hours of 8 pm and 6 am unless the doors are locked and customers are served through a window or the employee is in a bullet-resistant booth.

Senate Bill 506 also requires convenience stores to maintain a video surveillance system that utilizes at least two cameras and provides for off-premises monitoring between the hours of 8 pm and 6 am. Electronic records from the surveillance systems must be stored for 4 years.

The bill requires convenience stores to utilize an alarm system that, when activated, directly notifies law enforcement. It also requires that every employee be provided an individual panic alarm that must be worn at all times and must be linked to a monitoring or law enforcement agency. The bill requires the cash register to be viewable from the outside and requires that at least two telephones be available in specific locations within the store. The bill requires the store to have a height marker installed at the entrance.

Enforcement and Penalties: Senate Bill 506 charges the EIB with enforcing its provisions. It gives the EIB the authority to conduct inspections and investigations and to issue civil penalties not to exceed \$500 per violation per day. The measure creates a process by which convenience store owners can appeal penalties to the secretary of NMED.

Private remedies: Senate Bill 506 creates a new cause of action by allowing an individual, including an employee, who has been injured as a result of a crime occurring in a convenience store that failed to comply with a provision of the Act to bring a private suit to recover actual damages plus reasonable attorney fees and costs. The claimant is not required to show negligence or fault on the part of the store owner. The owner shall be strictly liable upon a showing that at the time of the crime, the store failed to comply with the Act. The store owner may not raise the defense of comparative negligence. The private remedies are not available to an individual who was injured while committing a crime.

Workers compensation: Senate Bill 506 makes an exception to the exclusive remedy provisions of the Workers Compensation Act by allowing employees to bring civil suit for injuries and to collect workers compensation for the same incident.

Significant Issues

The EIB recently enacted regulations that address many of the same areas as those addressed by Senate Bill 506. The regulations went into effect in December 2004 and, according to NMED, required a significant dedication of staff hours over two years to develop. This bill would override these regulations and enact a new set of requirements. NMED indicates it would have to promulgate another set of rules to implement this act, requiring the commitment of another 2.5 FTE for one year.

NMED also indicates that the bill is in conflict with the state's agreement with the federal government. New Mexico's Occupational Health and Safety Act (OSH Act) contains provision for enforcement, inspections, penalties and administrative procedures that are required by the federal government. The provisions of the measure that conflict with the OHS Act could lead to a loss of authorization and funding from the federal government.

The bill creates an exception to the exclusive remedy provisions of the Workers Compensation Act. The exclusive remedy provisions provide that employees who are injured on the job are entitled to compensation through the workers compensation system and do not have to win a lengthy court battle to show negligence or fault on the part of their employer. The trade off for this benefit is that they are pre-empted from bringing a civil suit to recover damages. Senate Bill 506 would erode this trade-off and create a basis for additional exceptions in the future.

The measure allows for private remedies for individuals injured as a result of a crime committed in a convenience store that didn't meet the requirements of the Act. However, the bill does not

require a showing that the owner was at-fault or negligent, nor does it allow for a comparative negligence defense. Thus, a store owner whose store had some kind of minor violation of the Act would be liable for the entirety of damages even if that minor violation did not contribute to the crime or the injury or if the employee was responsible for the violation of the Act.

FISCAL IMPLICATIONS

The bill will result in cost increases to NMED to promulgate new rules. NMED estimates that it will require 2.5 FTE for one year to create new rules. There may be a minor cost increase to the courts as a result of private suits authorized by the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 506 conflicts with Senate Bill 1068 which enacts the Reasonable Precautions for Convenience Stores Act.

TECHNICAL ISSUES

NMED raises the following technical issues:

The proposed Act defines the term “Convenience Store” differently than has been defined in previous legislation and 11.5.6 NMAC. The SB506 definition appears to define a “Late Night Convenience Store” instead.

Senate Bill 506 conflicts with provisions of the Federal Occupational Safety and Health Act, the New Mexico Occupational Health and Safety Act (OHS Act), 11.5.1 NMAC, 11.5.5 NMAC and would void 11.5.6 NMAC.

Provisions of SB506 limiting penalties associated with violations potentially conflicts with penalty assessments designated by 11.5.1 NMAC.

Provisions of SB506 direct employers to request a public hearing with the secretary conflict with the Occupational Health and Safety Review Commission Rules (11.5.5 NMAC). 11.5.5 NMAC requires employers to file a notice of contest with the Review Commission and provides different timeframes for NMED administrative processing for a notice of contest.

All portions of SB506 that affect changes to the NMED/OHSB State Plan Agreement with the Department of Labor/OSHA will require federal approval prior to implementation.

POSSIBLE QUESTIONS

Is this bill necessary given that NMED issued new regulations for convenience stores only a few months ago?

Does the creation of an exception to the exclusive remedies provision of the Workers Compensation Act set a precedent for future carve-outs?

EF/lg:yr