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FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 3/2/05 HB _____

SHORT TITLE Reasonable Precautions for Convenience Stores SB 1068

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			(\$70.0)	Recurring	General Fund
			(\$70.0)	Recurring	Federal Funds

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	(\$70.0)	(\$70.0)	Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 1068 would enact the “Reasonable Precautions for Convenience Stores Act), codifying most of the provisions of Title 11, Chapter 5, Part 6 of existing state regulations with regard to employee safety in convenience stores. Substantive differences between existing regulations and the proposed bill include:

1. If a store does not have a major crime for two years, they would be exempt from the late-night security measures.

2. Where current regulations would require that the store be closed between 11 p.m. and 5 a.m. if other late-night security measures are not taken, SB1068 would require that, when the store is closed, signs would be posted stating it is closed and prohibiting transactions while stocking and custodial duties are performed. There are no specified hours for the closure in the bill.
3. The bill defines “department” as NMED, but does not specify that NMED would enforce the statutory provisions.
4. The bill does not provide penalties for violations of most of its provisions.
5. Under existing regulations, if a security surveillance system malfunctions for eight hours or more, alternative security must be provided. In this bill, if the security surveillance system malfunctions, alternative security would not be required for 72 hours.
6. The bill would significantly lengthen the period of time allowed for convenience store owners to provide documents to NMED staff. In current regulations, documentation on employee training and inspection and maintenance of security surveillance and alarm systems must be provided to NMED staff within 48 hours of the department’s request (not including weekends and holidays). Senate Bill would require that these records be made available to NMED staff within 120 days (about 25 weeks) of the department’s request (not including weekends and holidays).
7. The bill would allow convenience stores to use, as a security alarm system, an in-house, 24-hour employer-staffed central monitoring capacity away from the convenience store and with the ability to notify law enforcement or a private security agency of an unlawful act in progress.

Significant Issues

Beginning February 1, 2005, convenience stores in New Mexico were required to comply with new regulations promulgated by NMED to protect convenience store employees. These regulations apply to stores open between 11 p.m. and 5 a.m. and would require them either to have two workers on duty or to limit public access to store clerks through bulletproof glass or other safety features. These regulations supplement previous mandates for safety cameras, panic alarms and adequate lighting.

SB1068 would replace those regulations with largely unenforceable provisions with regard to convenience store employee safety, because the bill does not specify an enforcement agency for most of its substantive provisions and does not specify compliance penalties for the same provisions.

NMED indicated the following concerns about SB1068:

1. SB1068 provides for penalties only if the employer fails to make documentation available upon request of the department within one hundred twenty days. There would be no penalties for violating other provisions. Currently those penalties are specified in other state OSHA statutes which would not apply to the provisions in this bill.
2. The exemption from late-night security measures could have tragic consequences by eliminating the very precautions that caused the store to prevent crimes for two years without crime. This exemption was rejected by the Environmental Improvement Board during its deliberations on the regulations last year.
3. The bill does not delegate statutory authority for any state agency to implement or enforce any of its provisions.

4. The time period specified for the employer to provide documentation is unreasonably long and would make it difficult for the Occupational Health and Safety Bureau to meet mandatory time limits on enforcement actions.
5. It is possible that a store that remains open 24 hours per day would be entirely exempted from employee security measures.

FISCAL IMPLICATIONS

General fund and federal fund expenditures would decrease reflecting elimination of NMED's role in enforcing most convenience store employee safety regulations.

ADMINISTRATIVE IMPLICATIONS

NMED would be unable to administer the provisions of SB1068 without statutory authority to do so under the Act. Even with statutory authority, NMED would also require statutory penalties to enforce provisions other than the provision of documents for which penalties are specified.

Section 4 of SB 1068 provides uneven requirements that would force the enforcement agency to apply inconsistent standards to convenience stores throughout the state. As written, this section would require convenience stores open between 11 pm and 5 am to provide either: one of five staffing precautions and provide clear lighting at night, or apply for an exemption from the staffing or lighting requirements. The lighting requirement should be a stand alone requirement for all convenience stores.

OTHER SUBSTANTIVE ISSUES

This bill appears to be an attempt to amend an existing state agency rule, 11.5.6. NMAC. The proponents of this bill have had substantial opportunities to present these amendments to the rulemaking authority. SB 1068 represents an attempt to subvert the authority granted by the Legislature to the Environmental Improvement Board in NMSA 1978, Section 74-1-8 to promulgate rules and standards relating to the Occupational Health and Safety Act, NMSA 1978, Section 50-9-1, *et.seq.*

SB 1068 does not provide the Environment Department with the authority to implement its provisions through rulemaking or other means. Without such authority, the Department will be unable to enforce this Act. Additionally, the state Occupational Health and Safety Bureau is a state plan program under the federal Occupational Safety and Health Act. The federal Act requires that the state OSHA statutes and rules comply with the state plan requirements. The state OHSB would not be able to enforce SB 1068 as it does not comply with federal OSHA state plan requirements.

DH/yr