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FISCAL IMPACT REPORT

SPONSOR: Russell DATE TYPED: 02/04/01 HB 277
 SHORT TITLE: Citizen's Safety Act SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
See Narrative			Recurring	New Fund Created

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB 148 (with minor differences)
 Relates to HB 287 and SB 148

SOURCES OF INFORMATION

Attorney General's Office (AGO)
 Administrative Office of the District Attorney (AODA)
 Administrative Office of the Courts (AOC)

No Response

State Treasurer (ST)
 Office of Indian Affairs (OIA)
 Department of Public Safety (DPS)
 Association of Counties

SUMMARY

Synopsis of Bill

The Act provides for statewide, uniform standards for the issuance of concealed handgun licenses for security and defense. The Act provides as follows:

- i) Definitions are contained in Section 3.
- ii) Licenses. The department of public safety is authorized to begin issuing licenses in July, 2001. Each license is valid for 4 years. (Section 4) The department may promulgate rules regarding licensure, confiscation, and provisions to allow property

- owners and employers to disallow the carrying of a concealed weapon on that person's property. (Section 12)
- iii) Applicants. Applicants for a license must meet minimum criteria including being a U.S. citizen and New Mexico resident (or being stationed in the armed forces here), not a fugitive from justice, not a felon or under indictment for a felony, not convicted of a misdemeanor offense involving a crime of violence in the previous five years, mentally competent, and not addicted to drugs or alcohol and having completed a firearms training course. (Section 5 and 8) The application must include several statements under oath, pay a fee of \$50.00, and provide two full sets of fingerprints and other certified documents proving that the applicant meets the minimum requirements. (Section 6) There is a \$50.00 renewal fee of a license. (Section 7)
 - iv) Issuance of a License. The department is required to investigate whether the person is qualified to receive the license. The fingerprints are forwarded to the federal bureau of investigation for a national criminal records check. The sheriff is required to check the records to verify the accuracy. (Section 6) The department has 60 days to issue the license or deny it, giving grounds for the denial. An applicant who is denied a license may submit more information and can seek judicial review of the denial. (Section 7)
 - v) Court Review. The district court has jurisdiction to review a denial of a license. If the department is reversed, the applicant may be reimbursed the costs of bringing the appeal. (Section 7).
 - vi) Citizen Safety Fund. All fees collected by the Act shall be placed in a Citizen Safety Fund to fund the department so that it may carry out the provisions of the Act. Any funds remaining do not revert back to the general fund. (Section 13).
 - vii) Amendment. Section 30-7-2 NMSA is amended to allow a person with a license to carry a concealed weapon lawfully. The amendment also adds a penalty of misdemeanor when a person unlawfully carries a deadly weapon. (Section 14).

Significant Issues

This bill has significant New Mexico constitutional and federal tribal jurisdictional issues.

FISCAL IMPLICATIONS

The bill creates the new Citizen Safety Fund (Section 13) and the money in the fund is appropriated to the Department of Public Safety to carry out the provisions of the Act. Balances do not revert to the general fund.

The amount of revenue is unknown. Each application requires a non-refundable fee not to exceed \$50.00. Each license expires at the end of four years. If the license is lost, stolen or destroyed, the duplicate license fee is \$15.00. The renewal fee is \$50.00. The late fee for renewal is \$15.00. It is unknown how many people would apply for a concealed handgun license.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The Act would have a significant administrative impact on the Department of Public Safety. However the fee revenue from the applications would be applied to carry out the provisions of the act.

TECHNICAL ISSUES

1. Section 3(D) provides the definition of a handgun. That definition is different than the definition provided in Section 30-7-2.2.
2. Section 5 (A)(9) does not define "residential treatment facility." With the variety of alcohol and controlled substance treatment options available, this term may need a specific definition.
3. Section 6 (D) states that DPS shall conduct an appropriate check of available records. It may be helpful to DPS to explain what this means with an "including, but not limited to" list.
4. Section 7 (G) does not explicitly state that the refresher firearms course must be approved by the department. (Compare with Section 5(A)(10)).
5. Section 5(B) provides that a license will be denied to anyone convicted of a misdemeanor offense "involving crimes of violence." This language is vague, and fails to specifically include misdemeanor weapons charges.

RELATIONSHIP

HB 277 is very similar to SB 148. However, SB 148 includes the following additional conditions for a license:

- (8) proof of United States citizenship, if applicant not born in the United States; and
- (9) a description of the categories of action, whether semi-automatic or not semi-automatic, of the concealed handguns that will be lawfully carried by the licensee and the caliber of ammunition used for the concealed handguns.

In addition, SB 148 would require DPS to maintain a database of all licensees, with the information contained therein available to all law enforcement agencies; would allow for private employers to prohibit the carrying of concealed handguns during a work shift; and would make it a misdemeanor to unlawfully carry a weapon upon second or subsequent conviction.

OTHER SUBSTANTIVE ISSUES

1. All concealed weapons bills raise the question of what to do with Article II, Section 6 of the New Mexico Constitution. It reads: "No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons."
2. Section 6 (B)(3) states that an employee shall not be liable unless he/she has actual knowledge that licensee should not receive a license. This provision may implicate, and arguably provide less protection to the employee as provided in, the Tort Claims Act, Sections 41-4-4 & 41-4-12.
3. Section 7 does not provide for an appeal process for revocation or suspension of the license. (Compare with appeal process for denied applicant).
4. Section 11 states that this bill will apply to tribal land, except if a tribe passes its own law prohibiting concealed weapons. The Attorney General's Office believes that this may interfere with tribal jurisdiction. The Fourteenth Amendment to the United States Constitution provides that Indians are citizens of the state in which they reside. However in 1987, the United States Supreme Court held that if a state court jurisdiction over Indians or activities on Indian land would interfere with tribal sovereignty and self-government, the state courts are

generally divested of jurisdiction as a matter of federal law. Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9 (1987). Whether this provision would be deemed legal would depend on whether a court would consider handgun regulation incident to tribal sovereignty and self-government.

5. According to the proponents of this type of legislation, allowing individuals to lawfully carry handguns may reduce the risk of becoming a crime victim, and may reduce the crime rate for certain offenses. On the other hand, some law enforcement agencies believe that this legislation would increase the indiscriminate use of handguns and thereby increase crime.

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