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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/16
SPONSOR Cook/Ivey-Soto **LAST UPDATED** 02/11/16 **HB** 250/a HAFC

SHORT TITLE Uniform Money Services Act **SB** _____

ANALYST Keyes

REVENUE (dollars in thousands)

Estimated Revenue				
FY17	FY18	FY19	Recurring or Nonrecurring	Fund Affected
\$650.0-\$1,050.0	\$350.0-\$450.0	\$350.0-\$450.0	Recurring	Money Services Regulatory Fund

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$21.0	\$298.0	\$298.0	\$617.0	Recurring	Money Services Regulatory Fund

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of HJC Amendment

The amendment provided by the House Appropriations and Finance Committee states a change to the drafting of the bill:

“on page 61, line 13, strike ‘appropriated’, and insert in lieu thereof, ‘subject to appropriation by the legislature’”.

Synopsis of Bill

House Bill 250 enacts the Uniform Money Services Act that sets forth regulation and licensing guidelines for money services. The Act was drafted in 2000 and was recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). The American Bar Association approved the Act in 2004. New Mexico is one of the few states that do not currently have a similar regulation in place.

The term “money services” includes money transmission, check cashing or currency exchange. These money services businesses include companies such as Western Union, MoneyGram and PayPal. These services do not include the United States or a department or agency such as the United States postal service or a state, county, city or other governmental agency/subdivision of a state; nor a bank or a bank holding company, credit union, an attorney or an operator of a payment system if it provides processing, clearing or settlement services in connection with wire transfers, credit card transactions, debit card transaction, stored value transactions, automated clearinghouse transfers or similar funds transfers (There are more exclusions named in the bill).

HB 250 provides that a person engaging in the business of money transmission must be licensed pursuant to Article 2 of the Uniform Money Services Act. HB 250 requires all licensed money transmitters to post a surety bond for as long as the Director of FID requires, but for at least five (5) years after the licensee ceases to provide money services in New Mexico. House Bill 250 repeals §58-20-1 NMSA 1978 “Business of selling negotiable checks, drafts, and money orders regulated” effective July 1, 2017. House Bill 250 further requires the Director of FID to promulgate the necessary rules to transition licensees pursuant to §58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

The Financial Institutions Division (“FID”) of the Regulation and Licensing Department is charged with administering and enforcing the Act.

HB250 will allow New Mexico to join 47 other states in regulating and licensing money services businesses (MSBs). The Financial Institutions Division (FID) of the Regulation and Licensing Department (RLD) will serve as the regulatory agency and the first line of defense against illegal activity funding that is often conducted through money transmitters.

This bill is a Uniform Act that has been enacted by Alaska, Arkansas, Iowa, Puerto Rico, Texas, U.S. Virgin Islands, Vermont, and Washington. HB250 has been tailored to meet the needs of New Mexico and has been reviewed by Uniform Law Commissioners for the State of New Mexico. New Mexico continues to be the only southern border state that does not regulate money services businesses.

HB 250 provides statutory authority for regulatory examinations of money services businesses. The examinations will provide a new and valuable avenue for FID to detect illegal activity and to refer such activity to the proper authorities.

As proposed, HB 250 will promote compliance with the Bank Secrecy Act (BSA), 31 U.S.C. 5311, et seq., and applicable provisions of the Patriot Act (Pub. Law 107-56), which were enacted to detect and deter terrorist funding, money laundering, and human trafficking payments.

Fraud victims are often instructed by scam-artists to transmit money through money transmitters because the scammers know there is currently no recourse for the victim upon relinquishing the funds. The same mechanism is also known to be utilized by terrorist organizations in their attempts to acquire funds.

HB 250 will require the person transmitting funds to provide some form of identification as defined by federal regulation 31 CFR 1010.312. This information will allow for tracking potential illegal activity; however, it will also allow individuals who are not engaged in illegal activity to continue to transfer money to family/friends/associates in the United States and in other countries and to do so in a safe and fair manner.

FISCAL IMPLICATIONS

With implementation of this bill, FID projects that the initial licensing of existing MSBs will generate between \$650 thousand and \$1,050 thousand in licensing revenues. In subsequent years, it is projected that renewal revenues should be between \$300 thousand and \$450 thousand. Since FID does not currently regulate MSBs, it is difficult to accurately project total revenues. The projections are based on a conservative estimate of companies and delegates that would be required to be licensed in New Mexico.

In the first year, FID's budget impact is projected at \$21 thousand. Expenses anticipated to be incurred by the Division will include travel per diem and vehicle expenses related to necessary examinations. Expenses are expected to increase to \$298 thousand in FY2018 with the addition of three examiners funded from the Money Services Regulatory Act. These expenses would be ongoing and sustainable based on projected revenues.

The projections are based on a range of 100 to 200 licensees and 10,000 delegates. Total number of delegates in the state is unknown, however, based on figures received from Arizona, this number appears to be reasonable. Revenue projections do not include examination and amendment fees that will be addressed by regulation.

AOC has noted that new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

RLD offers the following statement:

Businesses having fiduciary duties and responsibilities to the citizens of New Mexico should have appropriate reporting mechanisms in place in order to better protect against fraud, money laundering and possible terrorist activities.

In the past, if a state regulatory agency became aware of suspicious financial activity, the information was relayed to federal agencies such as the Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC) for investigation and/or action. Under current federal law and regulation, FinCEN has sanctioned state regulators' examination reports to be utilized in lieu of FinCEN performing examinations. As a result, examinations of money transmitters by the Internal Revenue Service and state regulators are more important than ever to the effort to detect and prevent unlawful money laundering operations.

Under HB250, FID will be able to offer regulatory guidance to money services businesses on proper internal controls, ongoing monitoring and reporting suspicious activity. FID will be better able to assist these businesses in protecting themselves and their legitimate customers from possible criminal activity throughout the course of the transaction.

PERFORMANCE IMPLICATIONS

AOC notes that the courts participate in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

Pursuant to HB250, FID will license money services businesses through the Nationwide Mortgage Licensing System (NMLS). The NMLS is a nationwide data base already in use in New Mexico and many other states that for mortgage loan licensing and related purposes. HB250 will provide for FID to expand its use of the NMLS to more effectively evaluate applications for licenses and better monitor the activity of licensees.

FID will conduct examinations of money services businesses to insure the safety and soundness of each licensee and authorized delegate. These examinations will monitor the financial stability of money services businesses enabling them to meet their financial obligations to the consumer.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB250 will compliment and be a companion to the following:

- Bank Secrecy Act, 31 U.S.C. 5311, et seq., (also known as the Currency and Foreign Transaction Reporting Act) – requires that cash transactions in excess of \$10,000 be reported to the US Treasury on a Cash Transaction Report (CTR) and that suspicious activity be reported on a Suspicious Activity Report (SAR).
- The New Mexico “Money Laundering Act,” found at §30-51-1 to -5, NMSA 1978: Made money laundering a criminal offense under state law in New Mexico.
- Money Laundering Control Act of 1986 (Pub. Law 99-570): Federal Act under which money laundering may be prosecuted.

- Patriot Act was enacted to detect terrorist funding and requires that Suspicious Activity Reports (SAR) be filed on suspected terrorist funding.

TECHNICAL ISSUES

This bill does not contain a sunset date. The LFC recommends adding a sunset date.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Money transmission (except the sale of checks and money orders), check cashing and currency exchange activities in New Mexico will continue to be unregulated.

New Mexico will remain a safe harbor to conduct money transmissions for illegal activity, and the state will remain vulnerable to the perpetrators. The security of New Mexico and the United States will remain at risk as illegal activity continues to evade detection and prosecution.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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