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FISCAL IMPACT REPORT

SPONSOR	<u>Borrego/Lujan</u>	LAST UPDATED	<u>2/16/2023</u>
SHORT TITLE	<u>Closed Captioning Act</u>	BILL ORIGINAL DATE	<u>House Bill 288</u>
		ANALYST	<u>Gray</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
New Mexico Attorney General's Office		\$150	\$150	\$300	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Department of Cultural Affairs (DCA)

Commission for the Deaf and Hard of Hearing (CDHH)

SUMMARY

Synopsis of House Bill 288

House Bill 288 contemplates creating the Closed Captioning Act which would require certain locations to provide closed captioning. The bill requires that closed captioning be available at a “place of public accommodation,” defined as any place open to the public where commerce is carried out that also displays television programming to provide closed captioning. The bill defines a nonexhaustive list of establishments that meet the definition of place of public accommodation.

HB288 requires enforcement from the New Mexico Attorney General’s Office (NMAG) and provides a civil penalty not to exceed \$250 for an initial violation and \$500 for subsequent violations.

The bill requires a person that owns or manages a place of public accommodation to activate close captioning on all television receivers that are turned on and operating in public areas during regular hours with some exceptions.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The Office of the Attorney General estimates that enforcement of HB288 will require additional staff. This analysis assumes that enforcement costs will be equivalent to one coordinator and one assistant FTE, for a total recurring operating budget impact of \$150 thousand. The agency may be able to absorb these costs in the existing budget or staff due to vacancies, but this analysis assumes the agency will be unable to absorb those costs in their budget.

SIGNIFICANT ISSUES

Over 48 million Americans have a hearing loss in at least one ear across the United States that can benefit from captioning. The Americans with Disabilities Act (ADA) requires captioning in some contexts, including but not limited to concerts, university lectures, healthcare, and legal services. Existing federal law does not go as far as HB288 proposes.

HB288 does not outline the investigations process to challenge or appeal any penalties imposed. The bill places enforcement under NMAG and may pose enforcement challenges. The bill does not authorize enforcement to include other law enforcement or other state agencies charged with regulatory enforcement.

The Alcohol and Beverage Control Division (ABC) of the Regulation and Licensing Division licensees with televisions visible to patrons, will need to comply with the requirements established by the bill. HB288 does not authorize ABC for enforcement.

According to analysis from NMAG, the definition used in HB288 closely mirrors the definition of “public accommodation” in the federal ADA. However, other New Mexico laws have uniformly defined the term “public accommodation” as “any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private.” New Mexico case law exists interpreting the uniform definition of “public accommodation,” which may be inapplicable if a different definition is used in the Closed Captioning Act. The use of a different definition of the term in the Closed Captioning Act may lead to confusion or possible litigation about whether certain businesses are considered “public accommodations” under some State laws but not others.

TECHNICAL ISSUES

Analysis from NMAG offers that, to avoid confusion and possible future litigation, it might be appropriate to amend the definition of “place of public accommodation” to mean, “any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private.”

OTHER SUBSTANTIVE ISSUES

Background Information on Closed Captioning. Full scale captioning began in 1980 after several experiments with captioning throughout the 1970s. Captioning on televisions has since been available to anyone with a Television Receiver that can decode the transmission of the service. Over time there have been several innovations to make this process streamlined and ubiquitous in all programming here in the United States. The Television Decoder Circuitry Act of 1990 and subsequent amendments which itself is an amendment of the Communications Act of 1934 is a federal law that went into effect in 1993 and states that all TV receivers with picture screens 13 inches or larger manufactured or imported for use in the United States have a built-in decoder circuitry that displays captions. These caption services also are ensured to be available even as new technologies are developed through this act.

In 1996, the Telecommunications Act required digital televisions receivers to also contain caption decoding technology. In 2010, the Twenty-First Century Communications and Video Accessibility Act required broadcasters to provide captioning on televisions programs redistributed on the web and for HDTV decoding boxes to include a button that controls the closed captioning in the output signal. In 2012, the FCC also adopted rules establishing captioning access in programming delivered through the internet which also meant that closed captioning access is built into consumer electronics at a level that all but guarantees availability to be turned on.

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