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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09

SPONSOR Lundstrom LAST UPDATED _____ HB 146

SHORT TITLE Department of Motor Vehicles Act SB _____

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate *		Nonrecurring	State General Fund
	Indeterminate *		Nonrecurring	State Road Fund
	Indeterminate *		Nonrecurring	Co & Mun Funds
	Indeterminate *		Nonrecurring	Various other state funds

(Parenthesis () Indicate Revenue Decreases)

* Refer to Fiscal Impact

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Possibly significant *	Possibly significant	Possibly significant	Recurring	Taxation & Revenue Department
		Possibly significant *	Possibly significant	Possibly significant	Recurring	Department of Motor Vehicles
		Possibly significant *	Possibly significant	Possibly significant	Recurring	Department of Motor Vehicles

(Parenthesis () Indicate Expenditure Decreases)

* Refer to Administrative Impact

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 146 creates a new cabinet level agency called the “Department of Motor Vehicles” (DMV) whose purpose is to create a single, unified department to administer and enforce laws and exercise functions concerning motor vehicles currently administered, enforced and exercised by transferring responsibilities of the Motor Vehicle Division (“MVD”) of the Taxation and Revenue Department (“TRD”) and the Motor Transportation Division (“MTD”) of the Department of Public Safety (“DPS”).

The Motor Vehicle Department consists of three (3) divisions; Motor Transportation Division, Motor Vehicle Division and the Administrative Division.

FISCAL IMPLICATIONS

According to the Taxation and Revenue Department (TRD), the fiscal impact to revenues cannot be determined, but it is presumed that reorganization, such as proposed in this bill, could create very substantial challenges and distractions for tax and fee administration in the short run. Under such conditions revenue compliance efforts could be expected to suffer to some extent. Additional undetermined additional operating budget impact related to creating a new department would be incurred, such as, additional budget requirements for DMV (over and above the current MVD budget). However, a detailed cost benefit analysis of the proposed reorganization has not been submitted.

The MTD shares a significant number of fixed assets, equipment, buildings and personnel with other divisions within DPS. It would take a significant amount of prior planning to fairly and equitably separate these assets between the DPS and Department of Motor Vehicles. The bill provides authority to transfer all appropriations, personnel, records, property, etc from MVD and MTD to DMV. It is impossible at this time to estimate the additional fiscal impact but TRD notes that a significant portion of MVD administrative support is provided for in other areas of TRD’s budget, as described below in Administrative Implications.

SIGNIFICANT ISSUES

Since the MTD was transferred from TRD to the Department of Public Safety (DPS) in 1998, a significant number of FTE have been transferred to other divisions in DPS to provide additional support in the areas of communications, information technology, legal, automotive shop and administrative services. Moving the Motor Transportation Police Division into a new cabinet level agency without additional administrative FTE would be detrimental to the division.

A merger of this magnitude could potentially create a major disruption of services to the public without a transition plan or a comprehensive study.

ADMINISTRATIVE IMPLICATIONS

According to TRD, there may be significant administrative impacts as a result of this Act in terms of the likely need to house personnel and records of the new DMV in one location; the need to cull out MVD driver and vehicle records from other TRD records and databases and,

similarly, the need to cull out MTD records from other DPS records and databases; the need to draft, publish and promulgate extensive rules and policies consistent with the bill's requirements; the bill creates an additional cabinet level department with attendant costs of additional exempt employees; the new DMV will require additional, new FTE's, infrastructure and equipment to carry out administrative duties specific to MVD issues including clerical, professional and IT functions and duties which are currently being provided to the overall duties of TRD and DPS.

Currently, a significant portion of the administrative support of the MVD is provided in TRD's budget. These functions include administrative services, information systems, revenue distributions, personnel, legal and the inspector general. In addition the Revenue Processing Division provides operational services in the areas of data entry, citation entry, microfilming and revenue processing. Separately supporting these functions in the new DMV would require more funding than is included in MVD's current budget. In addition, splitting these functions from TRD will involve creating some duplication of services. The current configuration of these services within TRD achieves cost savings because of the significant amount of overlap in responsibilities between TRD and MVD.

The DMV and the DPS would have to enter into an agreement with the New Mexico State Police to continue to provide radio communications to the Motor Transportation Police.

Policies and procedures from both the TRD and DPS would have to be merged into a new DMV policies and procedures manual. This is a process that would take a significant amount of time and effort to accomplish before July 1st, 2009.

Additional FTE would be required for: administrative services (payroll, human resources, procurement, finance, and budget), legal (attorneys, paralegals, and administrative support), internal affairs (investigators, EEO officer, and administrative support), and information technology (webmaster, CIO, programmers, help desk, server technicians, IT generalists, IT support personnel, and administrative support).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This legislation allows for the detention of commercial motor carrier vehicles that are delinquent in past taxes under a new section in 65-1-9 NMSA 1978. This is unnecessary since the Division is already authorized under 65-1-26 (E) to detain commercial motor carrier vehicles not in compliance with the Weight Distance Tax Act.

TECHNICAL ISSUES

TRD has identified the following:

In Section 13 (page 10, line 21) it appears that the amendment to Sec. 9-11-4 should delete a reference to the existing six divisions and refer, instead, to five proposed divisions and should re-identify the existing divisions as A-E.

Sections 43-45 are not identified as "New Material."

It is unclear whether the proposed Section 43 should follow after Sections 10 or 11 of the bill.

Section 7 of the bill refers to administratively attached agencies but there seems to be no other reference in the bill to any such intended or proposed attachments.

New Section 8 (E) at page 6 of the bill regarding the secretary's rule-making authority appears to be much more restricted than the comparable TRD provision in Section 9-11-6.2. The apparently restrictive authority proposed in the bill might give rise to a successful challenge to the DMV and the secretary's rule-making authority or authority to issue internal regulations, orders and instructions, and the restrictions might be held to be a limitation on the authority granted in Section 5 of the bill.

Section 9 grants the DMV access to records or information maintained by other agencies but provides no mechanism for gaining such access.

Section 16 at page 16 proposes to add a new 65-1-9(B) to authorize the DMV to collect other agencies' fees, taxes, etc. There is no corresponding provision regarding remittance of such funds to the state treasurer or to designated funds.

Section 24 (E) of the bill at page 31 defines "fleet" and the definition includes the phrase "in at least one other jurisdiction" without a definition of that phrase which might create confusion in terms of appropriate classification of vehicles as a "fleet."

The definition of "motor carrier" in the proposed amendment of Section 66-1-4.11 (F) of Section 25 at page 32 appears to be inconsistent with the existing related definitions in Section 65-2A-3 of "common motor carrier," "contract motor carrier," "incidental carrier," "interstate motor carrier," "intrastate motor carrier," "motor carrier," "motor carrier organization," and "motor carrier of persons." An apparently significant omission of the proposed new definition of "motor carrier" is the reference to compensation so it could conceivably be construed to all transports of persons or property with or without compensation.

The proposed definition of "public highway" at Section 27 (O), page 39 seems to be nearly identical to the existing definition of "state highway" at Section 28 (N), page 42, and the distinction between the two is unclear.

Section 42, at page 73 proposes to amend Section 66-12-6.8 to delete references to "state parks" but leaves in the word "division" without clarifying whether the bond will run to a division within the new DMV.

The new 65-1-9(C) refers to the DMV's law enforcement officers; however, it appears there is no statutory provision authorizing the DMV to hire or commission law enforcement officers or to use the commissioned officers of other agencies for purposes of enforcement of this act. In addition, the new subsection (C) proposing to authorize law enforcement officers to detain commercial motor vehicles until payment of outstanding taxes, fees or charges may be subject to several legal challenges. Since it may be argued that such a detention constitutes a summary suspension or revocation proceeding, it may be challenged on due process grounds. If the information available to the law enforcement officer is not current or is erroneous, the detention of the motor carrier or required payment of alleged outstanding fees may be challenged as an unlawful taking or confiscation of property or an undue burden on commerce. There is no allegation that such detention would be needed to protect the public safety or welfare and there is no other apparent support for a summary

detention as opposed to the more typical notice and hearing process before a seizure. The new section might be challenged as being inconsistent with Section 65-2A-27 as amended in Section 19 of the bill where summary procedures based on public safety are discussed and/or with Section 66-5-66(D) regarding revocations of commercial drivers licenses. Unless a mechanism is established to ensure that the law enforcement officer has the most up-to-date information about unpaid fees or taxes, an unlawful seizure or detention may give rise to tort claims act or civil rights challenges. The bill does not address a situation where the commercial motor carrier may have a pending administrative or judicial challenge to claimed taxes, charges or other fees. Particularly in those situations where the officer might be asked to detain a motor carrier based on moneys owed to a different state agency, the accuracy of unpaid amounts should be clearly established to remove the officer's discretion in determining delinquency.

This bill does not address the current organizational structure, mission and authority of the Motor Transportation Police. The current mission of the MTPD is: "To keep New Mexico's highways safe, to ensure the safe and legal operation of commercial motor vehicles and to prevent the introduction of illicit contraband into New Mexico while facilitating trade"

The Motor Transportation Police are the first line of defense against threats to homeland security from individuals utilizing commercial motor vehicles as a means of terrorism and perform a wide range of regulatory and enforcement activities statewide. The division guards against the introduction of illegal drugs, goods and harmful materials entering into New Mexico with minimal impact to legitimate trade through a variety of activities. These activities include highway patrol, accident investigations, crash reduction initiatives, drug interdiction, safety inspections of commercial motor vehicles, hazardous materials inspections, radiological monitoring, compliance reviews (safety audits) of motor carriers, size and weight enforcement and permit & tax compliance. The division is committed to strengthening New Mexico's border security by managing risks and interdicting threats before they enter our state.

The Department of Motor Vehicles Act does not address these issues and appears to dilute the mission and authority of the Motor Transportation Police by only concentrating on tax compliance and vehicle registration issues.

The bill does not address 65-1-38 NMSA 1978 through 65-1-45 NMSA 1978.

ALTERNATIVES

An alternative to creating a new cabinet level agency would be to transfer all duties and resources of the Commercial Drivers License and Commercial Vehicle Bureaus of the Taxation and Revenue Department and the Transportation Department of the Public Regulation Commission to the Department of Public Safety in an effort to create a "one stop shop" for the commercial vehicle industry. All transactions regarding commercial motor vehicles would be conducted within one (1) state agency instead of what is now being accomplished through three (3) state agencies. Not only would this result in more efficient and effective government by centralizing business functions, it would also enhance security within the commercial motor vehicle industry by better managing risks and preventing fraud. This would not require an appropriation or additional FTE.