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FISCAL IMPACT REPORT

| | | | |
|---|----------------------|---------|------------------------------|
| | ORIGINAL DATE | 1/30/09 | |
| SPONSOR <u>Griego</u> | LAST UPDATED | 3/16/09 | HB _____ |
| | | | 230/aSJC/aSFI #1 |
| SHORT TITLE <u>Commercial Driver's License Penalties</u> | | | SB <u>/aSFI #2</u> |
| | | | ANALYST <u>Lucero</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non- Rec | Fund Affected |
|--------------|------|--------------|------|----------------------|--------------------------|------------------|
| Total | | Substantial* | | | Non-recurring | Federal Grant** |

(Parenthesis () Indicate Expenditure Decreases)

* Refer to Fiscal Implications

** Additional costs could be charged to an existing federal grant

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Department of Public Safety (DPS)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SFI #2 Amendment

Senate Floor Amendment # 2 to Senate Bill 230 as amended by the Senate Judiciary Committee clarifies the definition of “camping body” to exclude “recreational vehicles unless used in commerce.”

Synopsis of SFI #1 Amendment

Senate Floor Amendment # 1 to Senate Bill 230 as amended by the Senate Judiciary Committee deletes SJC amendment #5 regarding the disqualification “of a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance ...”

Synopsis of SJC Amendment

Senate Judiciary Committee (SJC) amendment adds language defining “conviction” more specifically:

- 1) deletes in the definition of “conviction” in Section 66-1-4.3 NMSA 1978 of the Motor Vehicle Code that conviction “does not include the imposition of a sentence” and inserts

in lieu thereof that conviction “does not include a conditional discharge as provided in Section 31-20-13 NMSA 1978 or a deferred sentence when the terms of the deferred sentence are met:”

- 2) adds “a conditional discharge as provided in Section 31-20-13 NMSA 1978” to the definition of conviction as used in the New Mexico Commercial Driver’s License Act in Section 66-5-54;
- 3) amends Section 66-5-68 pertaining to Disqualification for CDL to read: “The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a ~~commercial~~ motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance ...”; and
- 4) makes the second violation by a driver convicted of violating an out-of-service order subject to a civil penalty of \$5,000.

Synopsis of Original Bill

Senate Bill 230 is intended to clean up and reorganize certain provisions of the Motor Vehicle Code, especially as they pertain to Commercial Driver License (CDL) holders, to bring it into compliance with federal CDL requirements. The bill has several components:

Section 1: Removes the authority that the Motor Vehicle Division (MVD) Director currently has to adopt regulations pertaining to the qualifications and disqualifications of CDL holders.

Section 2: Requires a person, generally a motor carrier company or operator, to report drug test results or refusals to submit to drug tests to the MVD of the Taxation and Revenue Department. The MVD must keep the results on file for 5 years.

Section 3: Repeals the current definition of “conviction,” which contains a specific reference to CDL holders, and replaces it with a definition of “conviction” that applies to the public in general.

Section 4: This section adds definitions specific to the New Mexico Commercial Driver’s License Act, including a definition of “commercial driver’s license holder” and “conviction.” A determination made by an administrative tribunal that a driver has violated the law and an assignment to a diversion program or driver improvement school are considered “convictions” under this definition.

Section 5: This section provides for lifetime revocation of a driver’s license if the driver uses a commercial motor vehicle in the commission of any drug trafficking offense.

Section 6: This section increases the civil penalty for violating an out of service order to \$2,500.00 (two thousand five hundred dollars) for a first offense and \$5,000.00 (five thousand dollars) for a second or subsequent violation. (Currently the fines are \$1,100.00 and \$2,750.00, respectively.)

Section 7: This section amends Section 66-8-135 to require MVD to retain for 5 years not only the records of CDL holders, but also the records of any person who was required to hold a CDL but was driving a commercial motor vehicle without a CDL.

FISCAL IMPLICATIONS

The provision that employers of commercial drivers report any positive drug tests and/or refusals, and that the Motor Vehicle Division (MVD) enter positive drug test results on the driver's motor vehicle record for inclusion in the Commercial Driver's License Information System (CDLIS), presents a substantial administrative burden to the MVD; these costs could be charged to the existing federal CDL grant. In addition, a procedural/policy change will be necessary for the collection of employer penalties for out-of-service violations.

- MVD 2.0 – Changes needed to collect, store and process data (240 hrs)
- Database (both SQL and DB2) – new tables to accommodate data (240 hrs)
- Mainframe batch application – new development to edit, process and post data (400)
- CDLIS application – new development to send information to and accept information from other states (600)
- CICS screen changes – new screens to display test results that are part of the driver record (600)

Total Hours: 2,080 x \$50.00 = \$104,000

Due to the extensive computer-system changes associated with capture of employer drug test results, all changes may not be fully implemented upon the effective date of the bill (July 1, 2009). It is unclear whether some delay in actual implementation might be acceptable, as long as the law itself is in place.

SIGNIFICANT ISSUES

The SJC amendment resolves a concern of the courts that there was not enough specificity and clarity in the definition of conviction. This language gives direction to the courts in their interagency interactions with the Motor Vehicle Division.

The amendments to New Mexico CDL provisions in this bill would bring New Mexico into compliance with federal CDL requirements. Therefore, if enacted into law, it will eliminate the risk of losing federal highway funds for non-compliance with federal CDL requirements.

The bill clarifies the differences in treatment of court actions taken against holders of CDLs and non-commercial drivers. While the federal law prohibits "masking" of commercial drivers' violations of law, and requires posting of deferred sentences or sentences such as required driving school attendance, the records of non-commercial drivers do not need to have these sentences recorded as convictions. This bill separates the definition of convictions for each of the types of driver's licenses.

TECHNICAL ISSUES

One of the main objectives of SB-230 is to be sure that non-CDL drivers who plead guilty but who are given deferred sentences and who then successfully complete the deferred sentence are not treated as having convictions on their records. The SJC amendment to SB-230 addresses and clarifies technical issues regarding the definition of "conviction" for non-CDL drivers.

OTHER SUBSTANTIVE ISSUES

TRD reports, that any state found to be in substantial noncompliance with the Federal Motor Carrier Safety Act (FMCSA) is subject to withholding of 5 percent of certain Federal-aid highway funds the first fiscal year and 10 percent the second and subsequent year(s) of noncompliance. FMCSA may also decertify the State's CDL program and prohibit the issuance of CDLs if a determination is made that the deficiencies affect a substantial number of either CDL applicants or drivers.

This bill brings New Mexico statutes more in line with federal regulations. NMDOT estimates the potential loss to the road fund is approximately \$10 million under the 5% penalty and \$20 million under the 10% penalty if New Mexico were not in compliance with FMCSA.

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