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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/09
LAST UPDATED 3/16/09 **HB** _____

SPONSOR Sanchez

SHORT TITLE Nuisance Ordinance Violations and Fees **SB** 519/aSfI#1/aHHGAC

ANALYST Aubel

REVENUE¹ (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$2,310.0*	\$2,310.0*	Recurring	Fine Increase—City of Albuquerque Red Light Program
	(\$31.6)*	(\$31.6)*	Recurring	DWI Drug Court Program
	(\$284.4)*	(\$284.4)*	Recurring	Metropolitan Court Bond Guarantee Fund
	\$2,608.6	\$2,608.6	Recurring	City of Albuquerque
	Indeterminate	Indeterminate	Recurring	Court Automation Fund
	Indeterminate	Indeterminate	Recurring	Traffic Safety and Education and Enforcement Fund
	Indeterminate	Indeterminate	Recurring	Judicial Education Fund
Handicap Parking**	Indeterminate	Indeterminate	Recurring	City of Albuquerque

(Parenthesis () Indicate Revenue Decreases)

¹Assuming that Albuquerque assesses the maximum fee of \$100.

*Approximate amount based on first five months of program initiated by Laws 2008, Chapter 91, are related to the red-light program only. Note that estimates have been significantly revised from the fiscal analysis for SB 101. Dollar amounts shown are derived from information provided by AOC and are discussed in the Fiscal Impact section below.

**According to the City of Albuquerque, the handicap parking fees are part of the parking revenue and are not distributed to the AOC as part of the “red-light” program. Laws 2008, Chapter 91, created confusion regarding the handicap fees—whether they were subject to the \$75 limit under the new “nuisance “ statute or still \$250-\$500 under the motor vehicle code. This part of the bill proposes to clarify the fees are subject to the \$250-\$500 range. It is unclear whether Albuquerque has been charging the \$250-\$500 or was limiting the fees to \$75. If the city has been charging \$75, this bill will increase the handicap fees by an indeterminate amount.

REVENUE² (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(\$146.2)*	(\$146.2)*	Recurring	DWI Drug Court Program
	(\$1,316)*	(\$1,316)*	Recurring	Metropolitan Court Bond Guarantee Fund
	\$1,462.3	\$1,462.34	Recurring	City of Albuquerque
	Indeterminate	Indeterminate	Recurring	Court Automation Fund
	Indeterminate	Indeterminate	Recurring	Traffic Safety and Education and Enforcement Fund
	Indeterminate	Indeterminate	Recurring	Judicial Education Fund
Handicap Parking**	Indeterminate	Indeterminate	Recurring	City of Albuquerque

(Parenthesis () Indicate Revenue Decreases)

²Assuming that Albuquerque does not choose to increase fees from \$75 to \$100.

Relates to HB 343

Conflicts with SB 101

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Administrative Office of the Courts (AOC)

New Mexico Municipal League (NMML)

Governor’s Commission on Disability (GCD)

SUMMARY

Synopsis of HHGAC

The House Health and Government Affairs Committee Amendment to House Bill 519/aSFL#1 strikes the Senate Floor Amendment in its entirety, which reasserts the ability of AOC to direct the 10 percent DWI drug court allocation without being tied to the municipality that generated the fines.

Synopsis of SFL#1

The Senate Floor Amendment #1 clarifies that the 10 percent credited to DWI drug court programs to those programs “serving the municipality.”

Synopsis of Original Bill

Senate Bill 519 amends Section 3-18-17 NMSA 1978. For large municipalities (those with a population of 200 thousand or more as of the last federal decennial census), the bills increases fines for traffic violations from \$75 to \$100 and aligns fines from violating handicap parking regulations with Section 66-7-352.5 NMSA 1978 -- which will increase the fee from \$75 to a range of \$250 to \$500. After deducting for vendor costs, the bill redistributes the net penalties, fines, fees and costs for the red-light camera program as follows:

- 50% remitted to the State Treasurer for distribution to the Administrative Office of the Courts (AOC) to be credited as follows:
 - 10% to the DWI drug court programs and
 - 90% to the New Mexico Finance Authority (NMFA) for deposit in the Metropolitan Court Bond Guarantee Fund;
- 50% shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a traffic violation program.

SB 519 further adds clarifying language that specifies if the annual audit determines that the amount retained by the municipality for its costs are in excess of the amount authorized, the amount in excess shall be distributed to the State Treasurer and distributed according to the 10% DWI drug court programs and 90% NMFA formula. A new provision establishes a hearing process for contested nuisance ordinance offense or violation.

For municipalities with a population less than 200 thousand, SB 519 specifies the distribution of net fees for traffic violations (after vendor costs), as follows:

- 50% remitted to the State Treasurer for distribution to be credited as follows:
 - 65% to the Court Automation Fund;
 - 20% to the Traffic Safety and Education and Enforcement Fund; and
 - 15% to the Judicial Education Fund;
- 50% shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a traffic violation program.

The bill adds an audit requirement for these smaller municipalities and then applies the same audit and hearing processes as for the larger municipalities.

FISCAL IMPLICATIONS

Table 1 provides the fiscal impact assuming that the City of Albuquerque imposes the fee increase from the current \$75 to \$100 as proposed by the bill. This fiscal impact is based on the AOC analysis of the red light program currently implemented in the City of Albuquerque for the portion of the bill relating to municipalities with a population over 200 thousand. Essentially, the increase in fees mostly offsets the new distribution formula in which Albuquerque retains 50 percent of the net receipts.

The increase of fees from \$75 to \$100 would yield an approximate annual increase in receipts of \$2.3 million to \$9.2 million, assuming a similar pattern of traffic violations. Assuming the

vendor costs remain the same at \$4 million, the net proceeds for distribution are \$5.2 million. The chart below compares estimated fiscal impact of SB 519 to the current program. After increasing fees and allowing Albuquerque to retain 50 percent of receipts, the DWI Court Program will receive about \$31.6 thousand less and the Metropolitan Court Bond Guarantee Fund would receive about \$284.4 thousand less.

Current Allocation Under Current Program (\$75 fees) (in thousands)		
Net Estimated FY10	10% DWI Drug Courts	90% MCGF
\$2.9 million	\$292.5	\$2,632.1
New Allocation Under New Fees (\$100 fees) (in thousands)		
Potential Allocation Under SB 519		
Net Estimated FY10	10% DWI Drug Courts	90% MCGF
\$5.2 million	\$260.1	\$2,347.7
City of Albuquerque	50%	\$2,608.6

If the City of Albuquerque chooses not to impose the fee increase to \$100 but retains the \$75 limit, the fiscal impact of SB 519 would as indicated in Table 2 and detailed below:

Current Allocation Under Current Program (\$75 fees) (in thousands)		
Net Estimated FY10	10% DWI Drug Courts	90% MCGF
\$2.9 million	\$292.5 thousand	\$2,632.1
New Allocation Keeping \$75 Fee (in thousands)		
Potential Allocation Under SB 519		
Net Estimated FY10	10% DWI Drug Courts	90% MCGF
\$2.9 million	\$146.2	\$1,316.1
City of Albuquerque	50%	\$1,462.3

AOC states “that it is not possible to determine what revenue could be generated by tickets in municipalities other than a municipality with a population of two hundred thousand or greater as of the last census. Only Albuquerque has such a program in operation. News reports state that the City of Las Cruces has signed a contract with Redflex for three or four cameras and after a testing and warning period will begin sending tickets to violators sometime in April 2009. The article states that Redflex would receive \$28.00. Based on that figure, if the fee is set at \$100, the court automation fund could receive \$23.40, traffic safety education and enforcement fund could receive \$7.20 and judicial education fund court receive \$5.40 for each citation.”

SIGNIFICANT ISSUES

Laws 2008, Chapter 91 (Senate Bill 442) amended the nuisance abatement provisions set forth in Section 3-18-17 NMSA 1978 by providing that, with respect to any municipality (including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the New Mexico Constitution), penalties or fines and costs or fees imposed by an ordinance for failure to obey a traffic sign or signal (including a red light violation) or for a speeding offense or violation shall be limited as follows:

- the total amount of the assessed fines, fees and costs shall not exceed \$75.00;
- the total amount of the assessed fines, fees and costs shall be distributed to the AOC, of which:

- 10 percent shall be credited to driving while intoxicated (DWI) drug court programs;
- 90 percent shall be transferred to the New Mexico Finance Authority for deposit into the Metropolitan Court Bond Guarantee Fund; and
- Beginning with fiscal year 2009, the municipality shall cause an audit of the program to be conducted by the state auditor or an independent auditor.

According to NMFA, the primary intent of SB 442 was to provide a revenue source to eliminate some, if not all, \$950 thousand special appropriations that the AOC had been receiving from the Legislature to meet debt coverage on the Metropolitan Court bonds issued by NMFA on behalf of OAC. The pledged revenues from the AOC were insufficient to meet the debt service requirements of a 1.22 ratio as outlined in the bond covenants. By dedicating 90 percent of the net amount assessed in penalties, fines, fees and costs of the Albuquerque “red light” camera program” to the Metropolitan Court Bond Guarantee Fund, this ratio could be achieved without additional appropriations.

Any funds deposited into the Metropolitan Court Bond Guarantee Fund support bond payments and help ensure that NMFA will be able to make all future payments until the bonds are retired. According to the revised estimates provided by the AOC, SB 519 would not impact the ability to meet the bond repayment requirements because the new estimate for proceeds of \$2.3 million is significantly higher than the \$950 special appropriations used for this purpose.

However, responding agencies have cautioned that the data is based on only five months of revenues and it is not guaranteed because it depends on Albuquerque continuing its red light camera program.

SB 519 adds language to define that the penalties and fines for parking in a handicap zone would be assessed according to Section 66-7-352.5 NMSA 1978. According to DFA, “it is unlawful for any person to park a motor vehicle not displaying a special registration plate or a parking placard in a designated accessible parking space for persons with significant mobility limitation. It is also unlawful for any person to park a motor vehicle in such a manner so as to block access to any part of a curb cut designed for access by persons with significant mobility limitation.”

AOC points out that according to U.S. Census Data (2005-2007 American Community Survey, over 300 thousand residents in New Mexico over the age of 5 years are living with at least one disability. The majority of these individuals, almost 280 thousand, are 16 years of age and older. Accessible (“handicapped”) parking spaces allow individuals with disabilities the opportunity to access the same businesses that the general population enjoys. HB 343 standardizes the penalties assessed for interference with this access by unlawfully parking in handicapped reserved spaces.

The Governor’s Commission on Disability (GCD) receives numerous complaints regarding abuse of accessible parking spaces – people illegally parking in an accessible parking space, including the access aisle for a wheelchair lift/ramp. Current State law (Section 66-7-352.5 NMSA 1978 - SB444) provides for a fine of no less than \$250.00 and no greater than \$500.00.

SB 519 provides for a hearing process that includes a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality. The rules of evidence and the hearing itself shall follow the rules of evidence and civil procedure for the district courts.

ADMINISTRATIVE IMPLICATIONS

AOC notes there may be a minimal administrative impact on the City of Albuquerque by creating another place where nuisance proceeds must be deposited in a specified amount, and indirectly on the AOC as a result of an increased fiscal management responsibilities for tracking and depositing the correct allocation of proceeds.

CONFLICT, RELATIONSHIP

SB 519 conflicts with Senate Bill 101, which would divert 7% of the receipts received by AOC to the Brain Injury Fund.

SB 519 relates to several other bills:

HB 343 makes the same revision regarding handicap parking;

HB 263 Raises the Court Automation Fee for civil filings; and

HB 542 raises the judicial education fee in traffic and misdemeanor violations.

TECHNICAL ISSUES

AOC points out that not every district court has a civil division. The agency suggests that an alternative would be to have the chief judge of the district court appoint the hearing officer for hearing contested nuisance ordinance offense or violations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Additional revenue for Albuquerque traffic programs and costs will not be generated. Penalties assessed for violations related to handicap parking will not be standardized and handicapped individuals may experience difficulty in finding parking in Albuquerque. Fees from traffic fines in smaller communities will not help fund the three funds. A hearing process for contested citations will not be available.

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