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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/14

SPONSOR Brown LAST UPDATED _____ HB 355

SHORT TITLE Chemical Tests for DWI SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 355 in Section 2 would amend the Implied Consent Act to require a law enforcement officer in the case of an accident resulting in death or great bodily injury, and having reasonable grounds to believe that the person was driving under the influence of drugs or alcohol, to request the driver submit to a chemical test of blood, breath or both. Furthermore Section 2 would exempt persons from the test if the test would interfere with emergency medical treatment.

Section 5 would amend the act so that the arresting officer would no longer be required to charge the offender and instead requires the offender to be charged with a violation of Section 66-8-102 NMSA 1978. This presumably would free up the arresting officer to complete other required tasks and allow other officers on the scene to charge the offender.

Section 6 adds language stating that if a person involved in an accident resulting in death or great bodily injury refuses to submit to a chemical test a judge can issue a search warrant. A newly added subsection B would require a law enforcement officer to seek a warrant authorizing chemical tests. Further language would revoke a person's privilege to drive if they refuse to

submit to a chemical test. The bill would also revoke the privilege to drive upon positive test results in these types of accident cases.

Section 7 would add language for revocation hearings in the subsection that lists what the revocation hearing shall be limited to, requiring the motor vehicle department to show whether the person was involved in an accident resulting in death or great bodily injury. Additional language requires the division to enter an order sustaining the revocation if the person was involved in an accident resulting in death or great bodily injury.

FISCAL IMPLICATIONS

HB 355 may increase the workload of the judiciary; every accident resulting in death or great bodily injury would now have the possibility of a search warrant for a blood test. This requires an issuance by the court.

SIGNIFICANT ISSUES

The bill would remove some discretion from law enforcement officers and force them to request any driver “involved in the accident resulting in death or great bodily injury to a person” to submit to a chemical test of blood or breath or both if there are “reasonable grounds to believe” the driver was driving while intoxicated, instead of leaving it up to the officer to decide whether to request a test. It would also require an officer to seek a warrant authorizing the chemical tests as soon as possible if the driver refused to be tested voluntarily. However, no warrant can be issued unless there is probable cause which is a higher standard than reasonable suspicion.

The following was provided by AODA:

The bill would add, “involved in an accident resulting in death or great bodily injury” while driving while intoxicated, to the existing criteria, to trigger administrative proceedings by the motor vehicle department for license revocations because of a driver’s refusal to submit to a blood or breath test requested by a law enforcement officer or a test with results at or above the legal limit. Some people could have administrative proceedings instituted without being arrested for DWI, or felony charges. Since laboratory tests to analyze blood samples can take from weeks to months, the administrative license revocation procedures could be done promptly in many cases involving death or great bodily injury if there was reasonable belief by a law enforcement officer that the driver was intoxicated. The administrative proceeding could be done if a driver suspected of DWI was in an accident causing death or great bodily injury had not been arrested.

Additionally, the bill does not discriminate between a driver who causes an accident resulting in death or great bodily injury, or someone who was simply driving and just happened to get involved in an accident that resulted in death or great bodily injury, if an officer reasonably believed they were DWI.

The AGO provided the following:

The Bill in section 5 simplifies the language of Section 66-8-110(C) NMSA 1978 by removing wording stating that “the arresting officer shall charge the person” and

replacing that wording with “The person tested shall be charged....” This change will make it so that the individual arresting officer will be able to work on other duties related to the arrest and investigation (dealing with the vehicle, drafting reports, securing videos or other evidence, etc) while a second officer can prepare and file the charging documents (using information provided by the arresting officer and/or others.)

The language of Section 1, subsections (C) and (D) may serve an un-intended result of slowing law enforcement down from seeking breath/blood chemical testing of offenders in these types of crashes. Under current law an officer is already empowered – under the Implied Consent Act – to seek chemical testing in any case where the officer has probable cause to believe the suspect has committed a DWI. Also, under current law, if the suspect refuses to cooperate with testing, officers already know they can go to a magistrate or district court judge and get a search warrant for DWI chemical testing. By imposing a new provision making it so that an officer – dealing with a crash involving death or serious bodily injury – “shall” “request” the person to submit to testing imposes a new step on a process officers are already familiar and may cause confusion.

The language of new subsection (D), creates an exception for cases where a chemical test “would interfere with or delay the provision of emergency medical treatment to any person involved in the accident.” This language has the potential to create uncertainty for law enforcement officers on the scene as to what is required of them at any given moment. It is also possible this proposed language could cause officers to be concerned about liability (professional/civil) if an officer unintentionally “interferes with or delays” someone from receiving treatment when the officer is trying to have chemical testing evidence collected.