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FISCAL IMPACT REPORT

SPONSOR: Larranaga DATE TYPED: 2/27/03 HB 249/aHCPAC

SHORT TITLE: Limited Driver's License Availability SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 245

Relates to, and possible conflicts with, HB 189, HB 250, HB 327, HB 333, HB 335, HB 341, HB 405, HB 415, SB 16, SB 84, SB 93, SB 242, SB 245, SB 248, SB 259, SB 260, SB 262, SB 263, SB 264, SB 267, and SB 313.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		Significant (See Narrative)	Recurring	Federal Highway Construction Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

New Mexico State Highway & Transportation Division (NMSHTD)
 Bernalillo County Metropolitan Court (BCMC)
 Administrative Office of the District Attorney's (AODA)
 Department of Public Safety (DPS)
 LFC Files

SUMMARY

Synopsis of HCPACA Amendment

The House Consumer and Public Affairs Committee Amendment inserts the following language into the title: *“Providing for immobilization of a subsequent offender’s Motor Vehicle”*.

The Amendment further inserts language into the bill providing that upon any subsequent conviction, as a condition of probation, a subsequent offender is required to have the motor vehicle he was driving immobilized for a period of five days. An exception is made if the immobilization of the motor vehicle causes an undue hardship to the subsequent offender’s immediate family or the family of the owner of the motor vehicle. The cost of the immobilization will be paid by the subsequent offender.

The insertion of the language provided for in this amendment would have a positive impact on New Mexico’s Federal Highway construction fund. The Federal interim final rule provides that, to avoid a transfer of funds, a State must meet certain requirements. The Amendment would allow New Mexico to be in full compliance with these requirements and the fund would cease to be sanctioned.

Synopsis of Original Bill

House Bill 249 amends Section 66-5-35, 66-8-102 and 66-8-111 of the NMSA 1978. House Bill 249 eliminates the current procedure by which an individual could obtain a limited license by having an ignition interlock device installed on their vehicle. It denies limited licenses to subsequent DWI offenders under any circumstances.

Under House Bill 249, only a first time DWI offender could receive a limited driver’s license if

1. The offender is enrolled in a DWI school and;
2. Has valid auto insurance, and has proof of employment, or is in school, and needs to travel to and from, or
3. Has enrolled in treatment

House Bill 249 also increases the minimum jail sentence for a second offense to not less than 5 consecutive days (increased from 72 hours). Finally, House Bill 249 provides that a subsequent DWI offender who refuses to submit to a chemical test during a DWI investigation will have his license revoked for a period of one year. The bill eliminates any exceptions to this mandatory term of revocation.

Significant Issues

Currently, New Mexico’s Federal Highway construction fund is being sanctioned (by way of a transfer) yearly for not having all of the following repeat DWI offender laws in place. The sanctions have resulted in transfers totaling \$12 million.

The Federal interim final rule provides that, to avoid a transfer of funds, a State must meet the following requirements (for 2nd and subsequent DWI offenders):

1. A minimum one-year license suspension. The offender cannot be eligible for any driving privileges, such as a restricted or hardship license. Currently, New Mexico does not meet this requirement, but would with enactment of this bill.
2. Impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles. The State's law must require the impoundment or immobilization of, or the installation of an ignition interlock on, all motor vehicles owned by the repeat intoxicated offender. To comply with this criterion, the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, or that the ignition interlock system be installed at the conclusion of the suspension period. Currently, New Mexico does not meet this requirement, but would with the amendment.
3. An assessment of their degree of alcohol abuse, and treatment as appropriate. The State's law must require that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the law must authorize the imposition of treatment as appropriate. Currently, New Mexico does comply with this requirement.
4. Mandatory minimum sentence. The State's law must impose a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service. Currently, New Mexico does not meet these requirements, but would with the enactment of this bill.

The consequences for driving on a revoked license must be significant and readily enforced in order to make the revocation provisions meaningful and effective. DWI offenders are known for their failure to comply with court orders prohibiting their driving. At this time, driving on a revoked license is a misdemeanor, the penalty for which may be a term of incarceration. Thus, if diligently enforced, the result could be a considerable rise in the number of DWI offenders incarcerated.

An increase in the mandatory penalties will likely result in more DWI offenders going to trial, rather than entering into plea agreements. This will impact the District Attorneys Office, Public Offenders Office, Courts and, if convicted, the Corrections Department

FISCAL IMPLICATIONS

If New Mexico came into compliance with all Federal requirements for the federal highway construction fund, the fund would cease to be sanctioned. The Department's Federal Highway construction fund has been sanctioned \$3 million in FY00, \$3 million in FY 01, and \$6 million in FY 02.

The administrative impact on the DMV, state and local law enforcement agencies, the courts and the Corrections Department will result in higher costs for these agencies.

ADMINISTRATIVE IMPLICATIONS

The heightened enforcement activities required of the DMV and state and local law enforcement personnel may result in a need for additional FTE and budget resources.

The District Attorneys Office, Public Defenders Office, Courts and Correction Department will see an increase in trials, number of persons incarcerated, and length of incarceration.

TECHNICAL ISSUES

The Administrative Office of the District Attorney's (AODA) suggests that an alternative would be to provide for use of the interlock device on convictions of any first DWI, not just an aggravated DWI; to not eliminate the availability of a limited driver's license for a second DWI nor increase the mandatory minimum sentence for that offense; and finally to make a third DWI a felony.

OTHER SUBSTANTIVE ISSUES

The AODA suggests the bill has significant implications for social policy. The AODA states that although the bill is intended to deter DWI and more severely punish those convicted of DWI, whether the increased punishment and consequences for subsequent DWI's will have a salutary effect is highly questionable. The AODA indicates the legislation providing for interlock devices of the repeat offender's vehicle has the most promise for preventing subsequent DWI arrests.

The Department of Public Safety (DPS) correctly states that the bill eliminates the current procedure by which an individual could obtain a limited license by having an ignition interlock device installed on their vehicle. The bill denies limited licenses to subsequent DWI offenders under any circumstances. It is the concern of DPS that this may have an undesirable effect of forcing individuals faced with license revocation and no option to obtain limited driving permit privileges legally of breaking the law and driving without licensing privileges or insurance in order to support themselves or their family.

FC/lr:yr