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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 3/09/03 HB 925

SHORT TITLE: Motor Vehicle Code Revisions SB

ANALYST: Gilbert

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$2,300.0	\$2,500.0	Recurring	Local Government Corrections Fund
	*\$0.1 See Narrative	*\$0.1 See Narrative	Recurring	Municipal Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received

Taxation and Revenue Department (TRD)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 925 converts certain misdemeanors to civil violations, increases fines and fees, clarifies a provision concerning the blocking of traffic, and provides for other penalties.

Sections 66-5-205 E, 66-5-229 C, 66-7-3, all of Chapter 66 Article 7, 66-8-7 A and B, 66-8-10, 66-8-114, 66-8-116 66-8-116.1, 66-8-116.2, 66-8-116.3, 66-8-117, 66-8-123, 66-8-126, and 66-8-130 are amended to change criminal misdemeanors into civil penalties.

HB 925 amends sections to explicitly declare some violations as misdemeanors, and thus remaining consistent with current law:

- Section 66-5-231 NMSA 1978 is amended to specify that persons forging evidence of financial responsibility are guilty of a misdemeanor and shall be sentenced pursuant to provisions of Section 31-19-1 (sentencing authority for misdemeanors).

- Section 66-7-202 is amended to specify that persons involved in a collision who fail to stop or comply with provisions of Section 66-7-203 (duty to give information and render aid) are guilty of a misdemeanor and shall be sentenced pursuant to Section 39-19-1.
- Section 66-7-301.1 is amended to specify that persons not obeying traffic-control devices, or removing or altering traffic control devices in a construction zone are guilty of a misdemeanor and shall be sentenced pursuant to Section 39-19-1.

Significant Issues

The amendments within 66-7-202 and 66-7-204 require drivers involved in traffic crashes move their vehicles from the roadway in every instance. This could disturb or destroy evidence needed by traffic crash investigators.

According to the Administrative Office of the Courts (AOC), decriminalizing traffic cases will have a major impact on the judiciary. The entire code should be looked at to see which violations should be criminal and which should be civil. The AOC identifies the following areas of concern:

This bill could impact the collection of fees on traffic cases, especially penalty assessment cases, heard in magistrate and metropolitan court. Section 35-6-1 states that fees should be collected upon conviction from persons convicted of violating any provision of the motor vehicle code. Section 35-6-1 (D) defines “convicted” as the defendant has been found guilty of a criminal charge. If all of the penalty assessment misdemeanors are now civil cases, it does not appear that magistrate court judges and metropolitan court judges will be required to assess and collect and not waive, defer or suspend fees on those cases.

If magistrate court judges and metropolitan court judges are no longer required to assess and collect and not waive, defer or suspend fees, this bill might impact collections and might violate Section 34-9-16. That section states: *Any law imposing court facilities fees, authorizing the collection of court facilities fees or directing deposits into the court facilities fund or distribution of the money in the court facilities fund to the New Mexico finance authority shall not be amended, repealed or otherwise directly or indirectly modified so as to impair outstanding revenue bonds that may be secured by a pledge of the distributions from the court facilities fund to the New Mexico finance authority, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.*

Section 23 of this bill makes a failure to appear “unlawful” as opposed to a misdemeanor offense.

FISCAL IMPLICATIONS

Local government corrections fees average about \$1.6 million annually. This bill would double the current fee from \$10.00 to \$20.00 in counties not served by a metropolitan court (all counties except Bernalillo), and would also allow a new \$10.00 fee to be imposed in Bernalillo County. This Taxation and Revenue Department (TRD) estimate assumes 35% of Motor Vehicle Code violations handled in magistrate and metropolitan courts are handled in Bernalillo County Met-

ropolitan Court.

Section 66-8-116.3 is amended to allow an additional \$25.00 penalty assessment “automation fee” if a traffic citation is issued by use of an automated enforcement system. The revenue is to be distributed to the municipality issuing the citation.

* Presumably, “automated enforcement system” refers to a camera system used to monitor traffic and issue citations. The City of Albuquerque recently tested such a system, but is not currently using it to issue citations. No other municipalities are currently using an automated enforcement system.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

The new “automation fee” is to be credited to the municipality issuing the citation. There is no restriction on the use of funds. There is no requirement that the municipality use the automation fee to finance an automated enforcement system, or any other related activity.

ADMINISTRATIVE IMPLICATIONS

The AGO believes this bill will have a major impact on how the courts handle traffic cases and collect fees and fines owed on traffic cases. Currently, if someone fails to appear in court when he or she has signed a citation stating that they will appear, a summons or order to show cause is sent to them. If they ignore that, a bench warrant is issued.

If a person has been convicted and does not pay or complete community service in lieu of payment, a summons or order to show cause is sent to them. If they ignore that, a bench warrant is issued. According to HB 925, if someone failed to appear for a traffic case, the court would order a default judgment (although the bill does not explicitly state that) and the court would get a judgment. The issue of collections in civil cases contemplated in this bill could create many administrative challenges.

Additionally, when a bench warrant is served, a fee of \$100 is assessed and collected. The money is used to fund the magistrate and metropolitan court bench warrant programs. The programs employ clerks and staff to work at collecting money owed to the state for fees and fines. The money is also used for warrant roundups and other programs aimed at collecting money owed to the state.

Motor Vehicle Division (MVD) forms on which traffic citations are issued will need to be revised, because current citations make what would become obsolete references to “guilt” and “misdemeanor”.

CONFLICT

HB 925 amendments to 66-8-9(A) conflict with changes made to 66-7-3.

TECHNICAL ISSUES

According to the TRD, this bill would impair the MVD's authority to suspend or revoke licenses of habitual traffic law violators as outlined below:

Under Section 66-5-30, Paragraph A(3), the Motor Vehicle Division (MVD) is authorized to suspend or revoke the license of a person who "has been convicted with such frequency of offenses against traffic laws or regulations governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways." Under Section 66-1-4.3, "conviction" means "the alleged violator has entered a plea of guilty or nolo contendere or has been found guilty in the trial court and has waived or exhausted all rights to an appeal." Convictions only apply to criminal violations, such as misdemeanors and felonies. A conviction is an adjudication of guilt. Motorists would not be found guilty of, or convicted for, civil violations. Thus changing motor vehicle infractions from misdemeanors to civil violations may impair MVD's authority to suspend or revoke licenses of habitual traffic law violators.

Similarly, the bill could impair the state's ability to report motor vehicle violations under the Driver's License Compact (Section 66-5-49 NMSA 1978). The compact allows New Mexico to report convictions to other member states. This ensures that motorists clear up all matters in one state before becoming licensed in another. However, provisions contained in the compact explicitly state that "convictions" shall be reported. As discussed above, civil violations do not result in convictions.

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