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FISCAL IMPACT REPORT

SPONSOR Al Park DATE TYPED 01/24/2005 HB 104

SHORT TITLE Prohibit State Vehicles for DWI Convicts SB _____

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Corrections
 Department of Transportation
 Attorney General' Office
 NM Public Defender's Office

SUMMARY

Synopsis of Bill

HB 104 would prohibit a state employee from operating a state vehicle if convicted two or more times for driving under the influence of drugs or alcohol, or has been convicted once for aggravated driving under the influence of drugs or alcohol. A conviction would include convictions pursuant to equivalent municipal or county ordinances, or a law of any other jurisdiction or territory of the US, or of a tribe. The provisions of the bill would not be retroactive and only DWIs that occurred on or after July 1, 2005 would be considered.

Significant Issues

As written, convictions that occur on or after July 1, 2005 would prohibit a state employee from

driving a state vehicle. In time, even if the convictions were very old and/or the employee had not had any convictions since that time the employee would continue to be prevented from driving a state vehicle. The Public Defender's Office raises the question if this bill conflicts with the Criminal Offender Employment Act § 28-2-2. This holds that "the legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible." And the agency questions if there is a conflict with subsection (B) (2) of that act, which specifically exempts misdemeanor convictions as a basis for determining eligibility employment with the state?

Determination whether an employee has had DWI convictions may be problematical, if not impossible, for some agencies who do not have access to the criminal convictions databases of all of the specified jurisdictions. Would a specific agency, such as the Department of Public Safety, be charged with collecting and maintaining this information on behalf of all state agencies, and disseminate the information as appropriate?

The Department of Corrections points out that it is unclear as to whether the proposed statutory prohibition is already covered by State Motor Vehicle Regulations promulgated pursuant to existing provisions of the Transportation Services Act. These regulations define "authorized driver" as a state officer or employee who holds a current, valid driver's license. The regulations further provide for suspension or revocation of state vehicle operator privileges for receiving a DWI citation and provide for termination from employment for conviction of DWI, and which provide that state vehicle operator privileges are invalid upon revocation, suspension or expiration of driver's licenses.

From a fiscal or public policy standpoint, it may not be desirable to impose greater driving prohibitions against state employees who may otherwise hold valid driver's licenses.

FISCAL IMPLICATIONS

This bill provides for no appropriation. If agencies are responsible for conducting records searches for convictions and determining whether the conviction is a second or subsequent conviction for all of its employees and applicants, there would be fiscal implications associated with the costs of conducting those searches and maintaining an appropriate database of employees. If employees do in fact lose their state vehicle driving privileges this may lead to their not being able to perform their job and result in a separation (voluntary or involuntary). Separations could result in litigation costs, and require agencies to absorb the cost of hiring and training employees to fill the positions of the separated employees.

ADMINISTRATIVE IMPLICATIONS

Agencies do not have immediate access to criminal charges and conviction information. How would the individual employer/agency be made aware of the convictions, and whether they were a first, second or subsequent offense, particularly since the convictions can be accumulated from a variety of state, federal and tribal jurisdictions? Would a single agency, such as GSD, SPO or DPS, be the "keeper" of the conviction records, and advise other agencies if and when their employees and/or applicants have received a second or subsequent conviction?

TECHNICAL ISSUES

How is “state vehicle” defined? This bill would not prohibit an employee from driving their private vehicle while on state business, unless the term is defined to include leased, rented and personal vehicles. In any of these cases, the State would continue to have liability for accidents that occurred while the employee was performing state business.

OTHER SUBSTANTIVE ISSUES

This bill only pertains to current state employees. The hire eligibility of applicants with similar convictions records is not addressed.

AMENDMENTS

Include a definition of “state vehicle” to include any motor vehicle or equipment operated by an employee while on state business.

Add a similar provision that applies to applicants for state employment for any position requiring that he or she drive a state vehicle as a part of their job duties.

Add a period of time after which a conviction would no longer be considered, so long as the employee (or applicant) has had no subsequent convictions.

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