F I S C A L   I M P A C T   R E P O R T

SPONSOR HBIC **DATE TYPED** 3/4/2005 **HB** 152/HBICS/aHBIC

SHORT TITLE Commercial Goods On Publicly-Owned Facilities **SB**

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			unknown		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	unknown			

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)
Energy, Minerals, and Natural Resources (EMNR)

SUMMARY

Synopsis of HBICS/aHBIC

Committee Substitute for House Bill 152 1) Amends Sec. 67-3-12 to repeal the prohibition against commercial enterprises in controlled access areas, 2) Amends Sec. 67-3-12, NMSA 1978, to allow the State Transportation Commission (STC) to allow commercial enterprises on Department-owned land, or land leased to or from the state, 3) Limits the effect of the amendment to Sec. 67-11-9 (repeal the prohibition against commercial enterprises) to department-owned land, 4) Requires STC to adopt rules to implement the statute, 5) Allows STC to sell, exchange or lease Department property to carry out commercial activities on NMDOT land, 6) Directs all revenues from this activity to the road fund, and 7) Excludes interstate highways from the effect of the bill.

Significant Issues of HTRC/CS/aHBIC

Committee Substitute for HB 152 expands, or clarifies, the authority of STC to sell, lease or exchange Department-owned properties and facilities. If this bill is enacted, the STC's specific authority will be articulated in one clear statement of law. This will allow STC to "sell, lease or exchange" NMDOT property and facilities for commercial purposes in general. This provides NMDOT with more flexibility when considering how to make the best, most efficient use of its assets.Over the last decade, there has been emergence of many creative public-private partnerships resulting in new and different ways of approaching the management of rights of ways and state owned facilities. Private or commercial use of State highway rights of way and facilities continues to receive a great deal of attention in both the public and private sectors. The original HB 152 simply amended Sec. 67-11-9 to remove a prohibition against allowing commercial activities in controlled access areas.

The substitute bill also requires STC to promulgate rules for implementation. This authority (or duty) is placed amended Sec. 67-3-12, and allow STC/NMDOT the flexibility in deciding how to use, sell, lease or exchange its properties in the most efficient manner.

The ability to balance multiple issues and concerns does not seem to deter the high level of state interest in advancing the concept of privatization / commercialization in offering more to the motoring public than just rest rooms and parking. This will allow activities such as the sale of New Mexico products in the facility where co-location exists with Tourist Welcome Centers- **Promoting New Mexico**.

Synopsis of Bill

HB 152 would amend Section 67-11-9 NMSA 1978 by revoking the current statutory prohibition on commercial enterprises (e.g., gasoline service stations) on publicly owned or leased controlled access facilities (that is, a highway or street especially designed for through traffic).

Significant Issues

Lands near controlled access facilities that in the past have been restricted from development will be opened to development likely leading to more gas stations, convenience stores or retail market spaces along freeways and perhaps in or near state parks.

The DOT points to opportunity for privatization/commercialization in rest areas. Additional opportunities will allow activities such as the sale of New Mexico products in the facility where co-location exists with Tourist Welcome Centers- **Promoting New Mexico.**

Implementation of these services presents many challenges.

- Possible concerns from local communities and businesses already located on freeway corridors at interchanges will be raised about the competition from these new service rest areas.
- Adjustments in federal statutes and state statutes must be made in order to allow such practices to occur.

Interstate System:
Current federal transportation law (Section 111 of Title 23, United States Code relating to agreement on the use of access right-of-way on the Interstate system) prohibits the privatization or commercialization on Interstate rest areas. There are currently proposed changes to this legislation in the SAFETEA federal appropriation bill that if passed would allow for commercialization of rest areas along interstate highways.

- Greater convenience could be provided to the motoring public through easier access to food and rest area along Interstate and non-interstate routes
- The operational costs expended on maintenance and security could be used to meet other pressing DOT transportation needs
- Subject to the type of commercialization agreement, rest areas could be transformed from a funding drain to a transportation generator.

Non-interstate/state owned right of way:
The proposed change in state law will allow the DOT to begin exploring opportunities in private commercialization within the non-interstate/ state owned right of way highway system. Currently there are 6 rest areas of non-interstate status, they are:

1. Butterfield Rest Area- located on US 180, approx. 12 mi. North of Deming
2. Mesa Rest Area- located on US 285, approx. 40 mi. North of Roswell
3. Waldrop Rest Area- located on US380, approx. 70 mi. East of Roswell
4. Maljamar Rest Area- located on US 82, approx. 70 mi East of Carlsbad
5. Blackwater Draw Rest Area- located on US 70, approx. 6 miles East of Portales
6. Rio Grande Gorge Rest Area- located on US 64, approx. 7 miles west of Taos

FISCAL IMPLICATIONS

The use of public/private partnerships presents a large, untapped opportunity for the state. There are many creative solutions being presented and promoted throughout the country. The potential for substantial financial benefit interests both parties.

OTHER SUBSTANTIVE ISSUES

The Energy, Minerals and Natural Resources Department is concerned that any proposed commercial enterprises along "controlled access facilities" should be subject to appropriate environmental and/or cultural review and regulations. Some "controlled-access facilities" may have been acquired using federal funding, which may then trigger the federal NEPA process.

The Department f Transportation see other areas that present themselves as opportunities for private enterprise to enter into public-private partnerships with the state DOT's for the mutual benefit of both parties.

- The concept of "Value In Kind". With VIK a DOT can enter into an agreement that allows a private company to provide a product (e.g. bus shelter, bench, trash receptacles, etc.) in exchange for the opportunity to advertise and generate revenue.
- Other potential ideas identified for public-private partnerships include variations on the use of Intelligent Transportation Systems (ITS) components such as highway advisory radio, variable message signs, or other devices. These approaches plan on using these devices as a means for providing safety messages along with advertisements.

ALTERNATIVES

The state will not be able to pursue public/private opportunities for commercialization within state owned access such as state parks and highway rest areas. There is potential for financial benefit, creating a revenue generating stream. As with the DOT such revenue allow the department to not have to divert monies to the maintenance and security costs from other transportation needs.

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