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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 02/09/05 HB 472

SHORT TITLE Lower Blood Alcohol Content for DWI Convicts SB _____

ANALYST Ford

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with

HB 282, HB 492, HB 493, HB 494, HB 502, HB 506, SB 154, SB 81, SB 587, SB 603

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Attorney General (AGO)

Corrections Department

Department of Health (DOH)

Department of Public Safety (DPS)

Department of Transportation (DOT)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 472 lowers the legal blood or breath alcohol concentration (BAC) for persons with a prior DWI conviction from .08 to .06.

Significant Issues

Section 66-8-102 NMSA 1978 provides four means of committing DWI:

1. driving while under the influence of intoxicating liquor,
2. driving while under the influence of any drug to the degree that renders the driver incapable of driving safely,

3. driving with a BAC of .08,
4. driving a commercial vehicle with a BAC of .04.

A person can be arrested for, and convicted of, DWI even if his/her BAC is below the legal limit. This requires the presentation of proof that the offender was impaired, which could include such evidence as observation of erratic driving, physical appearance, slurred speech, and field sobriety tests. The BAC provisions create a rebuttable presumption that a person is driving while intoxicated, which tends to make conviction more likely. House Bill 472 would add another means by which an individual can commit DWI: driving with a BAC of .06 after having been convicted of a prior DWI.

According to DPS, the process of arrest of a suspected DWI offender includes finding probable cause, which is based on field observations. Based on this information, the officer will make the decision of whether or not to make an arrest. The officer does not know the suspected offender's BAC until the arrest is made and the driver submits to a breath or blood test.

Because officers do not know the BAC of a suspect before making an arrest, this bill is not likely to lead to more DWI arrests. Rather, it would increase the likelihood that prior offenders who are arrested based on field observations are actually convicted of DWI.

PERFORMANCE IMPLICATIONS

Both the Department of Transportation and the Department of Public Safety have performance measures related to reducing alcohol-related accidents, injuries and fatalities. To the extent that lowering the legal BAC for prior offenders improves conviction rates, reduces recidivism and/or serves as a deterrent, this bill could help the departments improve on their performance measures.

FISCAL IMPLICATIONS

This bill may result in minor cost increases to the courts, PDD, AGO and AODA because of increased workload. There may also be cost increases to Corrections because of increased population. However, if the bill results in a lower alcohol-related accident rate, these cost increases would be off-set by cost savings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Numerous bills have been introduced to address the DWI problem. Several of those bills propose to amend the same sections as those amended by House Bill 472, including House Bills 282, 492, 493, 494, 502, and 506 and Senate Bills 154, 581, 587, and 603. While these bills would amend the same sections, they do not propose substantive changes to the provisions relating to BAC.

OTHER SUBSTANTIVE ISSUES

Three other states, Maine, North Carolina and Wisconsin, have laws with a lower BAC for repeat offenders. According to DOT, a recent study by the National Highway Traffic Safety Administration on the effect of Maine's law concluded:

“We conclude from Maine’s experience that, when included in a State’s arsenal of DWI countermeasures, a lower BAC law can be effective in reducing fatal crashes involving convicted DWI offenders, and in reducing alcohol-related fatal crashes involving convicted DWI offenders. We also conclude that such a law can be enacted and implemented with essentially no negative effects on a State’s DWI control system.”

EF/yr