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FISCAL IMPACT REPORT

ORIGINAL DATE 2/02/2007
 LAST UPDATED 3/14/2007 **HB** 491/aHTPWC/aHJC

SPONSOR Silva

SHORT TITLE Commercial Driver's License Requirements **SB** _____

ANALYST Moser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(\$9,977)	(\$20,269)	Recurring	Federal Highway Funds
	(\$150+)	(\$300+)	Recurring	MTD Fed Funds

(Parenthesis () Indicate Revenue Decreases)

Amounts shown above reflect projected revenue decreases if HB 491 is not enacted.

Duplicates: SB 435

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Department of Transportation (NMDOT)

Administrative Office of the Courts (AOC)

NM Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC amendment

The House Judiciary Committee amendment to House Bill 491 makes technical corrections to ensure that compliance with federal requirements regarding those individuals possessing a commercial driver's license. Specifically, this amendment addresses records retention issues.

Synopsis of HTPWC amendment

The House Transportation and Public Works Committee amendment to HB491 changes the language as was suggested to make these changes applicable only to drivers who possess a commercial driver's license (CDL).

Synopsis of Original Bill

House Bill 491 creates a new section of the New Mexico Commercial Driver's License Act that prohibits "masking" of convictions and amends portions of the Motor Vehicle Code (MVC), Section 66-1-1et. seq. NMSA 1978. The provisions of the newly created section are written in order to bring the Act into compliance with the federal Commercial Motor Vehicle Safety Act regarding the "masking" of commercial driver's license violations. A failure to make these changes will result in significant sanctions being levied against the state's federal highway funds. HB491 has an emergency provision contained within the Bill.

FISCAL IMPLICATIONS

The NMDOT states that it has been advised by the federal government that the state risks losing approximately \$30 million in federal highway funds if it does not enact the masking provisions and amend the definition of conviction provided in the bill. This loss of revenues would continue until these federal sanctions are lifted, and would amount to approximately \$20 million a year beginning in 2009. The probability of the imposition of these sanctions is high.

SIGNIFICANT ISSUES

The state of New Mexico will lose approximately \$10 million this year and \$20 million every year thereafter if provisions regarding CDLs are not brought into compliance with federal law. The prohibition against "masking" and the amended definition of "conviction," are intended to address certain provisions in New Mexico law that the federal government perceives are obstacles to the enforcement of DWI and CDL laws. "Masking" occurs when a court takes action against a driver charged with a violation of the Motor Vehicle Code that has the effect of hiding or nullifying what is, in effect, a conviction, that is, an adjudication of guilt. Courts may do this by deferring sentencing and dismissing charges if a driver complies with the court's orders, for example. These orders may require a driver who would otherwise have a conviction posted against his driver's record to enter a diversion program such as traffic safety or DWI school. If the driver completes the school satisfactorily, the court typically will dismiss the citation or charges.

The provisions of HB 491 go well beyond the requirements needed to address compliance with regard to federal statutes (49 CFR §385.5) and CDL compliance. The proposed bill addresses these issues by prohibiting the practice of masking and by redefining "conviction" to include some of the more common forms of alternative sentencing, such as diversion programs and driver safety schools. The amended definition of "conviction" expands the current definition to all drivers, not just drivers with CDLs as required for federal compliance. More importantly, the proposed amendments make it difficult for a court to take any action against a driver without the action being considered a conviction under the Motor Vehicle Code.

Language is provided below in the "Technical Issues" section of this FIR which would allow this bill to be amended to reflect its intent.

The following highlights the changes as proposed within this bill:

- Section 1(N): amends the definition of "conviction" to include a determination that a person has violated or failed to comply with the law by an authorized administrative tribunal or an assignment to a diversion program or a driver improvement school.
- Section 2(M): amends the definition of "state" to include any state of the Republic of

Mexico or the Federal District of Mexico.

- Section 3(A): provides that only military personnel driving a motor vehicle owned or leased by the U.S. Department of Defense are exempt from licensure under the MVC.
- Section 4(S): provides that “state of domicile” means the state in which a person has true, fixed and permanent home and principal residence and to which the person has the intention of returning.
- Section 5(A): provides that a commercial driver’s license (CDL) shall not be issued to a person unless that person can establish New Mexico as that person’s state of domicile.
- Section 6(A): requires an applicant to pass a taxation and revenue department-required knowledge and skills test.
- Section 7(E): provides for when a CDL with a hazardous material endorsement shall expire.
- Section 8(I): requires the department to add on any other period of disqualification to the department’s own 120-day disqualification.
- Section 8(M): requires the department, when disqualifying, suspending, revoking or canceling a CDL to treat a conviction received in another state in the same manner as if it was received in this state.
- Section 10(T)(3): removes the definition of “conviction” from Section 66-8-102 NMSA 1978, governing DWI and penalties. (See HB 491 Section 1(N).)
- Section 11(G): provides that records showing a record of conviction by a court of law shall be open to public inspection for 55 years from the date of receipt.
- Additionally, HB 491, Section 9, prohibits action to prevent a conviction of a traffic control law violation from appearing on the driving record of a CDL holder, regardless of the vehicle or state in which the violation occurred.
- The Act contains an emergency clause.

DUPLICATION

This bill is a duplicate of Senate Bill 435.

TECHNICAL ISSUES

There is a technical problem with the definition of “conviction” in proposed Section 66-1-4.3 (N)(1)(b), which currently reads “(b) an authorized administrative tribunal;” As written, it expands the definition of “conviction” to all drivers, not just CDL drivers. The intent in 49 CFR §385.5 is that this definition should apply only to CDL holders.

To rectify this problem, it is recommended that the existing language be replaced with the following language:

“(b) an authorized administrative tribunal if the person who has violated the law or failed to comply with the law holds a valid commercial driver’s license;”

OTHER SUBSTANTIVE ISSUES

NMDOT states that federal law provides that “Any State found to be in substantial noncompliance is subject to the withholding of 5 percent of the Federal-aid highway funds that would otherwise be apportioned to that State under 23 U.S.C. §104(b)(1), (b)(3) and (b)(4) on the first day of the fiscal year following such State’s first year of noncompliance. Following the

second and subsequent year(s) of noncompliance, a State is subject to the withholding of 10 percent of these funds. FMCSA may also take action under 49 CFR § 384.405 to decertify the State's CDL program and prohibit the issuance of CDLs if a determination is made that the deficiencies affect a substantial number of either CDL applicants or drivers. This action is not linked to the withholding of funds and may be imposed at any time after the initial determination of noncompliance. Accordingly, commercial drivers would not be eligible to enter into diversion, deferral, or masking programs for the purpose of reducing the impact on drivers by diminishing the infractions' significance on their records.

Diversion programs have the consequence of obfuscating drivers' violation records, which is particularly problematic with multi-state drivers, who may have interred into numerous programs, in multiple jurisdictions. Additionally, definitions are inserted to define state of domicile, as well as minor linguistic changes clarifying the requirements of issuance of commercial driver's licenses. The new language substitutes a clause specifying a driver's domicile, for the currently written residency requirement.

GM/mt:csd