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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/12

SPONSOR Griego, P. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Commerical Drivers License Disqualifications SB 237

ANALYST Boerner

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
NFI	NFI		General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

See Fiscal Impact below.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Department of Transportation (DOT)  
 Administrative Office of the Courts (AOC)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

The bill provides that a person who uses *any* motor vehicle in an act resulting in a felony conviction for manufacturing, distributing or dispensing a controlled substance (or the intent of doing so) is disqualified for life from obtaining a commercial driver's license (CDL). Under current law, in order to be disqualified for life from obtaining a CDL, the offender has to be driving a commercial motor vehicle when the drug offense was committed.

The bill also expands the basis of disqualification from driving a commercial motor vehicle for convictions of two or three serious traffic violations within a three-year period if committed while driving a commercial motor vehicle, to committing the violations while driving any motor vehicle. The bill also adds that if the second, or third or subsequent, serious traffic violation conviction led to the disqualification from driving a commercial motor vehicle, the

disqualification periods would be sixty days and one hundred days, respectively.

**FISCAL IMPLICATIONS**

The DOT states that this bill would bring New Mexico into compliance with the federal Commercial Driver’s License Program requirement of lifetime CDL disqualification for a person who uses any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

Without the above provision, New Mexico could lose federal funds, primarily used for maintaining the state’s highway system, estimated at \$20 million as soon as FY13 and estimated at \$40 million in each ongoing year **if the federal government begins to enforce the regulation.**

**REVENUE (dollars in thousands)**

Estimated Revenue*			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	(\$20,000.0)	(\$40,000.0)	Recurring	DOT Federal-aid Highway Fund

(Parenthesis ( ) Indicate Revenue Decreases)

\* Amount of Federal-aid Highway Funds potentially withheld for state noncompliance with the federal CDL program based on DOT estimate of approximately \$400 million in Federal-aid Highway Funds received by New Mexico annually.

The Federal Motor Carrier Safety Administration regulation states:  
§ 384.401 Withholding of funds based on noncompliance.

(a) Following the first year of noncompliance. An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) Following second and subsequent year(s) of noncompliance. An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

[72 FR 36788, July 5, 2007]

**SIGNIFICANT ISSUES**

The DOT states that this bill would bring New Mexico into compliance with Federal Title 49 Transportation Part 384 State Compliance with Commercial Driver’s License Program. The federal regulation requires that a person who uses *any* motor vehicle in an act resulting in a felony conviction for manufacturing, distributing or dispensing a controlled substance (or the

intent of doing so) is disqualified for life from obtaining a commercial driver's license (CDL). Section 384.217 reads:

“The State must disqualify from operating a CMV for life any person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction of a first offense of using a CMV (or, in the case of a CLP or CDL holder, a CMV or a non-CMV) in the commission of a felony described in item (9) of Table 1 to §383.51 of this subchapter. The State shall not apply the special rule in §384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to §383.51 of this subchapter.”

The DOT states that any reduction in Federal-aid Highway funds would impair and delay current and future construction projects.

Finally, the TRD notes that New Mexico non-compliance with this federal requirement is an outstanding audit finding from the 2008 Federal Motor Carrier Safety Administration (FMCSA) audit. If New Mexico is found to be non-compliant, FMCSA can withhold highway funds.

### **PERFORMANCE IMPLICATIONS**

The DOT states that Federal-aid Highway funding is an important part of NMDOT's yearly budget. Any reduction in this funding would have a negative impact on NMDOT's performance measures.

The AGO points out that as a result of this bill, the MVD will have to link noncommercial driver's licenses and violations with a driver's commercial license and violations.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AGO states that commercial motor vehicle drivers will continue to commit these violations on their non commercial license with no impact on the commercial license.

The DOT notes that if this bill is not passed, NMDOT will be sanctioned millions of dollars each year of Federal funding for highways and operations. This will further impact the failing condition of the highway system.

### **ADDITIONAL INFORMATION**

The TRD provided the following additional detailed information about the federal CDL requirement and the 2008 FMCSA audit finding:

Interstate commerce is a federal issue and the federal government has preempted New Mexico with regard to how and to whom we issue CDLs. If we want to issue CDLs, and get federal monies because we do so, we are required due to federal preemption to do so in the manner proscribed by the federal government. The Federal Motor Carrier Safety Administrative (FMCSA) puts those requirements in regulation.

FMCSA regulations require that we take a lifetime disqualification action against any CDL holder who is convicted of using a motor vehicle to commit a felony “involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture,

distribute or dispense a controlled substance.” This disqualification is truly a lifetime disqualification period. The pertinent part of the disqualification table published by FMSCA (below) indicates that this type of conviction is not subject to a ten-year reinstatement.

New Mexico statute currently allows us to take the disqualification action but only when the person uses a commercial motor vehicle (CMV) when committing the felony. SB-237 amends Section 66-5-68 to meet federal regulations by requiring the lifetime disqualification action when a CDL holder uses any motor vehicle, commercial or non-commercial, to commit that particular felony.

Here are the current law, the federal regulation, and the 2008 audit finding New Mexico to be non-compliant on the issue:

Current law:

- Section 66-5-68E NMSA 1978:  
The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

The federal regulation:

- The Federal Motor Carrier Safety Administration, Code of Federal Regulations, Title 48, Section 383.51 states:
  - a) General.
    - (1) A person required to have a Commercial Learners’ Permit (CLP) or CDL who is disqualified must not drive a CMV.
    - (2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.
    - (3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.
    - (4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.
    - (5) The disqualification period must be in addition to any other previous periods of disqualification.
    - (6) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) must not be reinstated.
  - (b) Disqualification for major offenses. Table 1 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified,

depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement
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The 2008 FMCSA audit finding:

**49 CFR 384.217 – Drug Offenses**

**Item 307 – Impose Lifetime Disqualification For Drug Offense.** New Mexico does not have the express authority to impose a lifetime disqualification on a CDL holder convicted of using any type of motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance as required by 49 CFR § 384.217. NMSA § 66-6-68(E) applies only to violations committed in a CMV. *(Per 2008 Legal Review)*

New Mexico does not receive felony convictions from New Mexico federal courts for the offense of using a vehicle in commission of a felony involving manufacturing, distributing, or dispensing a controlled substance (ACD code A50). New Mexico is unable to identify such convictions to apply the lifetime disqualification for these offenses occurring in New Mexico. *(Per 2008 Operational Review)*

CEB/lj:amm