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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/13

SPONSOR Gallegos, D.M. **LAST UPDATED** _____ **HB** 487

SHORT TITLE Revoke Driver’s License for Drugs **SB** _____

ANALYST Boerner

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Indeterminate/ See Fiscal Implications	Indeterminate/ See Fiscal Implications	Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Department of Transportation – Traffic Safety Division (DOT)
 Attorney General’s Office (AGO)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 487 proposes to revoke the licenses of those criminally convicted of certain drug offenses. Specifically:

- Trafficking of controlled substance, as provided in Section 30-31-20 NMSA 1978;
- Distribution to a minor, as provided in Section 30-31-21 NMSA 1978;
- Distribution or possession with intent to distribute, as provided in Section 30-31-22 NMSA 1978;
- Possession of controlled substance, as provided in Section 30-31-23 NMSA 1978; or
- Attempt or conspiracy to possess, distribute or manufacture a substance the possession of which is prohibited under the Controlled Substances Act.

FISCAL IMPLICATIONS

This bill would amend current state law to bring it into compliance with federal laws. Specifically, Federal Title 23, Highways Part 192, Drug Offender's Driver's License Suspension, Section 192.4 reads:

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the State does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

Any reduction in federal highway funds would reduce, impair, and delay current and future construction projects.

However, a state can avoid the loss of federal funding if the governor certifies every year that the state is opposed to the enactment or enforcement of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders and also submits a written certification that the state's legislature has also adopted a resolution expressing its opposition to a law described in this section. The New Mexico Legislature passed such a resolution which will stand unless sentiment toward this section of substantially changes.

By failing to be in compliance with federal law, the federal government would withhold from the Department of Transportation (DOT) Federal-aid funding of approximately \$20 million the first year and \$40 million in each subsequent year of non-compliance.

SIGNIFICANT LEGAL ISSUES

The bill will likely increase the number of administrative license revocation hearings due to revocation of drug offender's licenses, possibly increase the number of criminal cases going to court and increase the need to hire more prosecutors on statewide basis.

The Attorney General's Office (AGO) provided the following scenario with respect to how this bill could potentially raise equal protection and due process legal issues:

In *State v. Tara Valdez*, 2013-NMCA-016, the defendant raised an Equal Protection argument because she had been convicted of driving while under the influence of oxycodone, diazepam and nordiazepam. She plead guilty to DWI under a drug scenario. The district court ruled that ignition interlock devices did not apply to her case because she was not impaired by alcohol. It also ruled that there was no rational basis under an Equal Protection argument as to why the defendant should be required to have an ignition interlock device installed on her car. The State appealed.

In this situation, convicted drug offenders can argue that their due process or equal protection rights are being violated because they are being singled out. Even if they are not part of a recognized protected class for an equal protection argument, they could argue that the list of

drugs outlined in this proposed new law is specifically geared towards a certain group and that certain criminal offenses are being targeted. Like the defendant in Valdez, the possible class of defendants in this situation could argue that the list of proposed criminal drug offenses in this bill reflects an over-inclusive application. Why are certain drugs emphasized and not others?

OTHER SUBSTANTIVE ISSUES

The AGO notes that with respect to the criminal offenses listed in this proposed bill, it will be difficult to prove a connection or an intent to distribute that should result in a revocation of a license in certain respects. More simply, there is not a direct connection between the offense (drug conviction) and the consequence (license revocation) as are the other acts listed under “mandatory.” Let’s say a defendant was convicted of trafficking cocaine. Perhaps the defendant is a drug dealer, but how will it be proven that the defendant actually ingests drugs that will affect his driving behavior/performance. He might merely be a drug dealer and not partake in drugs himself. If someone is clearly under the influence of a drug, prescription or otherwise, and gets convicted of that offense, then that person’s license should be revoked. However, to expand the list of drug offenses to include distribution to a minor (indeed a bad thing) will make it difficult to justify revocation of a license.

POSSIBLE AMENDMENTS

As per the discussion in “other substantive issues,” one could modify the type of offenses listed on page 5 lines 4 to 11 to ensure that there is a connection between driving privileges and the criminal offense.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill does not pass, and the governor does not again certify that he or she is opposed to the enactment or enforcement of this section, then the state could lose federal funding as described above.

CEB/svb