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FISCAL IMPACT REPORT

SPONSOR Youngblood **ORIGINAL DATE** 1/25/2016 **CS/HB 168 &**
LAST UPDATED 2/17/2016 **HB SB 254/SJCS**

SHORT TITLE Transportation Network Company Services Act **SB** _____

ANALYST Mulligan

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	\$20.0	\$20.0	Recurring	Transportation Division Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	Transportation Division Fund, Possibly General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Office of Superintendent of Insurance (OSI)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of Senate Judiciary Committee Substitute

The Senate Committee Substitute combines HB 168 and SB 254 and includes many of the same provisions of the original bills, with some changes. Specifically, when compared to HB 168 as amended by the House Judiciary Committee, the SJC substitute:

- strikes the purpose of the bill;
- includes "insurance" in the definitions;

- shortens the definition of “rider”;
- specifies a one-year term for permits issued to TNCs;
- eliminates the requirement for TNCs to maintain an agent in New Mexico;
- adds new requirements that the TNC display online the make, model, and license plate’s state of issuance of the driver’s vehicle;
- strikes the requirement for a TNC to provide fare calculation methodology on-line, but retains the requirement that TNCs disclose the fare calculation and fare estimate to riders before they enter the vehicle;
- requires TNCs to provide a receipt within 24 hours, rather than within “a reasonable period of time”;
- strikes apparently duplicative language (formerly Sec. 10(B)1 and (C) 1-3) that authorized the insurance requirements for a TNC driver to be met by “automobile insurance maintained by the [TNC] driver” or combination of the TNC and the driver;
- adds new language that requires the TNC’s insurance coverage to cover the driver if coverage maintained by the driver lapses or does not provide the minimum coverage required by the bill;
- requires insurance require by the bill to be obtained from a licensed New Mexico insurer under the Insurance Code;
- makes other changes to insurance provisions;
- strikes the section of the previous version of the bill (Sec. 13) that specifically states that TNC drivers are independent contractors and not TNC employees;
- further fine-tunes the zero-tolerance policies required of TNCs;
- relaxes the requirement, from “shall immediately suspend the . . . driver’s ability to accept trips . . .” to “immediately conduct an investigation” when complaints alleging violation of the zero-tolerance policy are received by the TNC;
- Increases the minimum age of drivers from 19 years old to 21 years old;
- Strikes the prohibition from using a farm tractor, mobile home, RV, semi tractor or tractor-trailer, bus, motorcycle, or tow car as a TNC vehicle; and
- Strikes the detailed list of specified items that must be inspected prior to a vehicle being placed in service as a TNC.

The committee substitute makes other, relatively minor changes the previous version and may contain other changes not noted in this FIR.

In addition, the SJC substitute may include a technical error, or at a minimum language that appears confusing; under the definition of TNC driver is included an individual who “accepts a prearranged ride” when in fact the driver would providing a ride to a rider, not accepting a ride. Alternative language could read, “agrees to provide a prearranged ride”.

FISCAL IMPLICATIONS

Fees collected go into a new non-reverting fund (the transportation division fund) and are appropriated to the PRC to carry out its duties under the act. It is unclear how much the bill will cost to implement, and how much revenue would be generated from the \$10,000 per-company per-year license fee. It appears that relatively few companies operate such services and would be prepared to register with the PRC and pay the \$10 thousand fee; PRC estimates that two companies would be subject to the bill and register.

In addition, although the revenue amounts appear to be limited, provisions of the bill create a new fund and provide for continuing appropriations from the fund through statute. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish annual spending priorities.

PRC reports that the adoption of rules under the Act, the processing of TNC applications, and the additional inspections or investigations, although requiring additional work, at this time, can be handled with existing PRC staff. However, experience regulating under this new program may reveal a need for additional FTE in the future, which could necessitate additional general fund need or an increase in the annual fee.

SIGNIFICANT ISSUES

The bill specifically excludes TNCs from the definition of “motor carrier” in current law (65-2A-1 NMSA 1978) and states that TNCs and their drivers do not provide taxicab, limousine, or shuttle services, and that a TNC driver’s vehicle is not a commercial or for-hire vehicle. The bill also specifically provides that TNC drivers are independent contractors and not employees. Taken together, the provisions may provide for disparate treatment of TNCs by providing a separate regulatory environment from the already-existing and long-standing body of laws and regulations that govern companies that operate as taxicabs, limousines, or shuttles and other similar personal transportation services.

PRC reports that it held hearings in 2014 and 2015 regarding the ability of ride-sharing companies such as Lyft and Uber to operate in the state, and the commission made a determination in April 2015 to allow such services. A unanimous vote declared PRC has the authority to regulate ride-sharing operations, a claim previously disputed by Lyft, and a second vote with one commissioner dissenting approved rules under which the services must operate -- rules that differed from those for taxicab companies. However, taxi companies opposed the ruling and appealed the commission’s decision. After the New Mexico Supreme Court reviewed the case and remanded it back to PRC to hear motions for reconsideration, the commission voted to vacate the rules, and ride-sharing services are again in an uncertain regulatory environment without rules that officially allow the services to operate and without any requirements they must follow. Either this bill or similar legislation will likely be needed to completely resolve the situation and formally allow ride-sharing operations in the state.

The Office of Superintendent of Insurance notes that current automobile insurance policies cover an entire continuous six-month or twelve-month period rather than just moments in time that depend on when a driver is logged in to the transportation network company’s digital network or when a passenger is in the driver’s car, as the bill provides. This may necessitate the creation by insurance companies of automobile insurance policies whose periods of coverage are triggered by electronic ride-sharing logs, which would need to be provided to the insurance company by the transportation network company. OSI also states that the \$1 million coverage limit while rides are being provided is, to its knowledge, in line with higher coverage limits required under the PRC for taxi service.

TECHNICAL ISSUES

The bill includes a 5 percent limitation on administrative costs of the fees collected by PRC. It is unclear what costs may be considered administrative, since many if not all of the activities that the PRC engages in could be considered administrative.

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