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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	<u>Neville/Wirth</u>	<b>LAST UPDATED</b>	<u>3/14/2023</u>
		<b>ORIGINAL DATE</b>	<u>2/20/2023</u>
<b>SHORT TITLE</b>	<u>Transfer Transportation Functions from PRC</u>	<b>BILL NUMBER</b>	<u>Senate Bill 160/aHGEIC</u>
		<b>ANALYST</b>	<u>Dick-Peddie</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMDOT Operating Costs	\$0.0	\$1,085.0	\$1,085.0	\$2,170.0	Recurring	State Road Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Public Regulation Commission (PRC)

New Mexico Department of Transportation (NMDOT)

## SUMMARY

### Synopsis of HGEIC Amendment to Senate Bill 160

The House Government Elections and Indian Affairs Committee amendment changes the effective date of the legislation to July 1, 2024, addressing some agency concerns about transferring the division mid-fiscal year. The amendment also includes a new temporary provision section allowing the Department of Transportation to review, repeal, and enact rules regarding the legislation before the legislation enactment date to prepare for the transition.

### Synopsis of Original Bill

Senate Bill 160 transfers the Transportation Division from the Public Regulation Commission (PRC) to the Department of Transportation (NMDOT), effective January 1, 2024. The transfer would include the responsibility for motor carrier regulation and enforcement, railroad safety enforcement, and ambulance standards, along with personnel, functions, money, appropriations, other property, and contractual obligations.

The bill also changes references in law, eliminating redundant permits pursuant to contracts, removing outdated references in the aviation and rural air service enhancement acts, and repealing provisions related to aviation common carriers and air traffic rules.

The effective date of this bill is January 1, 2024. Upon enactment, all contractual obligations of the PRC related to motor carrier regulation and enforcement, railroad safety enforcement, and ambulance standards will transfer to NMDOT. Rules, orders, and decisions of the PRC related to those matters will remain in effect until repealed or amended.

Nearly identical legislation (Senate Bill 198) passed the House of Representatives during the 2022 regular legislative session, but died on the Senate floor on the last day of the session.

## **FISCAL IMPLICATIONS**

Senate Bill 160 does not appropriate any funding to NMDOT for the responsibilities transferred under the bill. The state road fund would pay for FTEs, contractual agreements, and other costs associated with the transfer of PRC division.

The legislation would transfer 15 FTE from PRC to NMDOT. NMDOT estimates those FTE would cost just over \$1 million annually to fully staff, with an additional \$25 thousand necessary for miscellaneous costs for a total of \$1.08 million annually from the road fund. NMDOT notes this figure does not include annual salary increases or other operational expenses, including operational services for which the state road fund is intended.

## **SIGNIFICANT ISSUES**

NMDOT notes that although the responsibilities Senate Bill 160 transfers from PRC to NMDOT are transportation-related, the regulatory framework formerly exercised by PRC would be entirely new functions for NMDOT. Significant coordination would be required with PRC, the PRC staff transferred to NMDOT, and existing NMDOT staff. As part of the integration of the transfer, the State Transportation Commission may also need to amend existing policies or adopt new policies. Both PRC and NMDOT emphasize that currently, PRC Transportation Division is not a self-contained entity. Transportation-related hearings and rule-making procedures are conducted by the PRC itself, which already has attorneys, hearing officers, and technical staff that do not exist at NMDOT.

PRC expands on the agency's existing capacity for hearings and regulation:

The procedural rules currently utilized at the PRC will not carry over or apply to the Division proceedings at NMDOT under SB160. New procedural rules appropriate to the Division will need to be in place before the transfer so that there is no disruption in the adjudications and the statutory timeframes for decisions. The promulgation process for new rules typically takes at least 6 months to complete.

The hearings at DOT serve the Uniform Licensing Act (“ULA”) (Chap. 61, Art. 1 NMSA 1978) for DOT-licensed providers, including driving schools. The ULA applies only to construction industries, manufactured housing, agencies that administer professional or occupation licenses and ‘other state agencies to which the ULA is applied by law’. *See* §

61-1-2A. The Motor Carrier and Transportation Network Carrier (TNC) hearings are not subject to the ULA.

Currently, PRC final decisions regarding Motor Carriers are reviewed in the first instance by the NM Supreme Court. *See* § 65-2A-35. Yet NMDOT final decisions are subject to initial review by the District Court “pursuant to the provisions of **Section 39-3-1.1 NMSA 1978**”. *See* § 61-1-17. The PRC recommends that the Motor Carrier appeal process be aligned with DOT’s current appeal process to increase the accessibility of appeals and to reduce the burden on the Supreme Court.

NMDOT notes:

SB160 transfers PRC’s railroad safety enforcement duties to the NMDOT. The PRC currently has an agreement with the Federal Railroad Administration (FRA) to coordinate PRC’s and FRA’s joint railroad safety enforcement duties. As SB160 transfers railroad safety enforcement staff positions, responsibilities, and contractual obligations to NMDOT, this will create a conflict of interest regarding the NMDOT-owned railroad and NMDOT’s agents in performing safety enforcement activities on that railroad. Railroad safety enforcement activities related to the NMDOT-owned railroad would need to be performed by Federal Railroad Administration staff, which will require either modifying the existing agreement with FRA that will be transferred under the bill or entering a new agreement with FRA to avoid the conflict of interest.

NMDOT also notes that the electronic docketing system currently used by PRC will also need to be integrated into the Department of Transportation.

## TECHNICAL ISSUES

Section 62 of the bill strikes the specified fees in the Motor Carrier Act and directs NMDOT to determine the fee amounts by rule. PRC notes NMDOT is not authorized to promulgate rules regarding these fees until after the transfer occurs, and the promulgation process typically takes at least six months. During this period, the amount of the fees will not be discernable and therefore fees could not be imposed. PRC suggests including a temporary provision in Section 80 allowing NMDOT to promulgate rules ahead of the transfer with any effective date to be restricted to the date of the transfer.

The PRC also notes the following technical issues and proposed solutions:

SB160 strikes references to the “Transportation Division” and replaces them with a reference to the “Traffic Safety Bureau”. However, the DOT identifies only the existence of a Traffic Safety Division and not a Traffic Safety “Bureau”. The bill’s language should correctly identify the structural unit.

Sections 3-5: The PRC is not aware of any carriers subject to the fees of **Section 3**, as motor carriers and aircraft carriers are excluded, and the fee does not apply to railroad companies. Recommend striking these sections entirely.

Section 18E and 19: The Pipeline Safety Bureau will be severed from the Transportation Division and will stay with the PRC. The unit structure identified in Section 18E is not aligned with the requirements of the Executive Reorganization Act, § 9-1-4, wherein a

bureau is a subset of a division. Currently, pursuant PRC rules, the Transportation Division Director has a responsibility to receive critical pipeline safety notices and reports, and to play a role in pipeline inspections and disputes. The PRC will need time (6 months) to amend these rules.

The legislation would sever the Pipeline Safety Bureau from the PRC's Transportation Division. The unit structure identified in Section 18E is not aligned with the requirements of the Executive Reorganization Act, § 9-1-4, wherein a bureau is a subset of a division. Currently, pursuant PRC rules, the Transportation Division Director has a responsibility to receive critical pipeline safety notices and reports, and to play a role in pipeline inspections and disputes. The PRC will need time (6 months) to amend these rules.

## ALTERNATIVES

PRC notes other state agencies that might be able to better take on the roles of the transportation division:

The Inspectors of the Transportation Division may be more appropriately placed with the Department of Public Safety (DPS). Under the Motor Carrier Act, inspectors “shall have the powers of peace officers” for purposes of enforcement. *See* § 65-2A-4B. PRC employs inspectors but not peace officers. DPS also currently has limited obligations under the Motor Carrier Act. *See* §§ 65-1-6, 65-2A -19 and -29.

The regulation of ambulances and ambulance services is currently split between the PRC Transportation Division and the Department of Health (DOH). Both regulatory groups may be more appropriately placed with the Department of Homeland Security and Emergency Management (DHSEM) to both centralize the oversight functions and potentially gain increased federal funding, particularly for rural ambulance services.

ADP/rl/ne