

safely operating an aircraft; or

--the person has an alcohol concentration of four one hundredths or more in his blood or breath.

- Penalties for “FWI” are as follows:

--A first offense carries a maximum sentence of 90 days in jail, a maximum fine of \$500, or both and

Second and subsequent offenses carry a maximum sentence of 364 days in jail, a maximum fine of fine \$750, or both.

- The bill requires that a report of each conviction be forwarded, by the court in which the conviction occurred, to the FAA flight standards district office having jurisdiction.
- The bill provides that any plea of guilty to FWI shall include at least a plea of guilty to the violation of one of the subsections of Section 3 of the Act, also providing that no municipal or county ordinance prohibiting the operation of an aircraft while under the influence of intoxicating liquor or drugs shall be enacted that provides for a different unlawful alcohol concentration level.
- The bill provides methods similar to the DWI statute for taking breath and blood alcohol tests and contains implied consent provisions and provides that offenders shall pay a \$65 laboratory fee upon sentencing to cover the cost of such tests.
- The bill provides that a person who is dead, unconscious or otherwise incapable of refusal shall be deemed not to have withdrawn the consent provided by the Flying While Intoxicated Act.
- The bill provides that test results of a test may be introduced into evidence in a civil or criminal action, and that a test result of four one hundredths or more for tests taken within three hours of the alleged offense creates a rebuttable presumption that a person is in violation of the provisions of the Act. If the test is administered after three hours, the result is admissible as evidence of the alcohol concentration and the trier of fact shall determine what weight to give the test result.
- The bill provides that if a person is convicted of FWI, the trial judge is required to inquire into past convictions for FWI before sentence is entered in the matter.
- The bill amends Section 24-1-22 NMSA, regarding the scientific laboratory of DOH, providing that testing techniques or methods promulgated and approved by DOH apply to those alleged to have committed FWI.

FISCAL IMPLICATIONS

AOC notes that the bill will likely present administrative costs to the office, as it will receive the balances in the crime laboratory fund collected pursuant to the Act, then paying these funds to

the scientific laboratory division of the department of health upon invoice.

Any additional fiscal impact on the judiciary will be proportional to the degree of enforcement of the provisions of the bill. District attorneys, PDD and the courts may see increased caseloads, necessitating additional resources.

CD notes the potential for a small increase in costs due to increases in the number of offenders in the department's probation and parole programs.

DPS notes that, in the absence of additional resources, officer time spent enforcing provisions of the bill represents a decrease in time spent in other areas.

TECHNICAL ISSUES

DOH reports that its scientific laboratory DOH does not have a process in place for approving medical personnel or facilities to withdraw blood or to conduct chemical testing. DOH recommends striking the following language (page 5, lines 24 & 25):

“...approved by the scientific laboratory of the department of health...”

DPS notes a potential conflict with the 4th Amendment, regarding search and seizure laws when entering aircraft premises.

RELATES

Relates to SB 434 (Boating While Intoxicated Act)

JCF/njw