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## FISCAL IMPACT REPORT

SPONSOR Lopez DATE TYPED 2/1/05 HB \_\_\_\_\_

SHORT TITLE Child Helmet Safety Act SB 147

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$20.0		\$0.1	Recurring	General Fund

Duplicates HB 265

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

DDPC-Brain Injury Advisory Committee  
 New Mexico Department of Transportation (NMDOT)  
 Children, Youth and Families Department (CYFD)  
 Department of Health (DOH)  
 Attorney General's Office (AOG)

### SUMMARY

#### Synopsis of Bill

SB 147 appropriates \$20 thousand from the general fund to the DOH, and enacts the Child Helmet Safety Act requiring a person 17 years of age or younger who is a user, operator or passenger of a bicycle, in-line or roller skates, non-motorized scooter or skateboard on public roadways, public bicycle paths, public skateboard parks or other public rights of way to wear a protective helmet that is fastened securely upon his head with the straps of the helmet at all times.

The Child Helmet Safety Act is intended to reduce the incidence of traumatic brain injury, death and disability. Penalties for noncompliance of the Act include community service, requiring proof of purchase of a helmet subsequent to being cited, or a \$25.00 fine. The Act would also require establishments that rent or sell bicycles, scooters, skateboards or skates to provide helmets to the renters. Owners of these establishments and owners of skateboard parks are not civilly liable in the event of physical injuries sustained as a result of customer's failure to wear a

protective helmet. Failure to wear protective headgear is not admissible as evidence of negligence in any civil action.

### Significant Issues

The AGO reports many states have similar legislation requiring persons under a certain age to wear protective headgear, which meets specific safety standards, when operating or when a passenger on bicycles, scooters, skateboards or skates. The language of these related statutes ranges from a brief directive to detailed language specifying the types of roadway on which the statute applies, graduated penalties including financial fines and educational programs to improve public safety. The proposed New Mexico legislation is the latter type statute.

The DOH reports:

- The average traumatic brain injury incidence rate is 95 per 100,000 population (Center for Disease Control and Prevention, 2002). Twenty-two percent of people who have traumatic brain injuries die from their injuries. Unintentional injuries is the leading cause of death among individuals under the age of 45 in both New Mexico and the United States. Between 1996 and 2000, traumatic brain injury was the cause of 2.84 per 1,000 children under the age of 15 in New Mexico.
- According to a 1998 report by the National Institutes of Health, there are 5 million new head injuries in the United States each year. Of that number, 2 million sustain brain injuries that result in lifelong difficulties in the areas of work, school and family. About 100,000 of the most severely injured never return to meaningful, productive lifestyles (Brain Injury Resource Center).
- Twenty states and the District of Columbia have already passed helmet laws. There has been a 45% reduction in Traumatic Brain Injury in states where bicycle helmets have been passed. Georgia and Oregon were the most recent states to pass similar laws, and the results showed a 20% increase in compliance within the first year without extensive enforcement efforts. Two thirds of all bicycle crash deaths occur as a result of brain injury and nearly half of hospitalizations from bicycle injuries among children under age 14 were due to traumatic brain injury (National Pediatric Trauma Registry).
- Dr. C. Everett Koop, Sc.D, former Surgeon General and Chairman of the National SAFE KIDS Campaign states that brain injury is the leading killer and disabler of children. New research unveiled by the National SAFE KIDS Campaign this year reveals that 47% of children hospitalized for bike-related injuries suffer from a traumatic brain injury. Less than half of those surveyed wore a helmet every time they rode a bicycle, and less than a third wore a helmet while riding scooters, skateboards or inline skates (National SAFE KIDS Campaign, 2003). SAFE KIDS claim that wearing a helmet on any wheel-related activity can reduce the risk of brain injury by 88%.
- For skateboard users, injuries increased more than 100% between 1994 and 1999 and the large majority of hospitalizations were for head injuries. The Consumer Product Safety Commission report 29% of serious scooter injuries in 2000 were head injuries and 25% of those head injuries had resulted from a collision with an automobile. An estimated 76,000 minors were injured seriously enough while in-line skating in 1996 to require emergency medical care (American Academy of Pediatrics 1998).

The Brain Injury Advisory Committee notes:

- An article published in the *CDC Public Health Law News* Jan 19, 2005, the results of a study support the enactment of helmet legislation for children. The study's objective was to determine whether the bicycle safety helmet legislation in California, enacted in 1994, was associated with statistically significant reductions in head injuries among bicyclists under age 17 who were subject to the law. The California bicycle helmet legislation was found to be associated with a reduction of 18.2% in the proportion of traumatic brain injuries among the injured bicyclists 17 years of age and under. The youngest riders, aged 0-9 years, had the greatest decrease in the proportion having traumatic brain injuries as the primary injury diagnosis.
- According to the Consumer Product Safety Commission, each year approximately 130,000 children under the age of 15 go the hospital emergency departments with bicycle related brain injuries. According to the Bicycle Helmet Safety Institute, medical research shows that 85% of bicyclists' brain injuries can be prevented by wearing a bicycle helmet.
- Statistics from the National SAFE KIDS Campaign indicate that in 2001 more than 40 percent of all bicycle related deaths were due to brain injuries and approximately 75% of all bicycle related brain injuries occur among children ages 14 and under.

## PERFORMANCE IMPLICATIONS

SB 147 relates to the DOH strategic plan Program Area 1: Prevention and Disease Control, Strategic Direction: Improve the Health of New Mexicans.

The NMDOT believes the use of helmets would have a positive impact on their goal of reducing injuries related to bicycles.

## FISCAL IMPLICATIONS

SB 147 appropriates \$20 thousand from the general fund to the DOH for a statewide radio campaign on helmet safety, a direct-mail campaign targeted at business owners affected by the provisions of the Child Helmet Safety Act (\$5,000), and provide financial assistance to community groups and foundations that sponsor events promoting protective helmet safety and providing helmets to low-income families (\$15,000).

The appropriation of \$20 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

In the case of permanent disability, hospital treatment for the first year may cost \$125,000 to \$150,000, and much of this expense passed on to the taxpayer. It also currently costs New Mexico taxpayers \$56,000 per year to provide even a mildly disabled person employment (The New Mexico Brain Injury Advisory Council), and the related costs to family much greater.

The AGO reports SB 147 may increase administrative costs to law enforcement and the court system ultimately affected.

The appropriation requested in SB 147 was not included in the agencies budget request submitted to the LFC and reviewed in 2004.

### **ADMINISTRATIVE IMPLICATIONS**

Agencies note minimal concerns for any additional impact on existing staff and program structures.

The AGO says the issue in SB 147 is whether parents of children should be subject to penalties for their children's violations. The AGO further states SB 147 applies penalties only if the child is under twelve and this raises a disparity in the treatment of parents that have responsibility for minor children, dependant on whether the child is under twelve years of age or under seventeen years of age.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB 265

### **TECHNICAL ISSUES**

AMENDMENT proposed to delete the term "non-motorized..." under Section 3, DEFINITIONS, paragraph H, allowing for the inclusion of the new generation of motorized scooters for children.

The AGO reports on constitutional considerations:

By analogy to motorcycle cases, most states do permit the exercise of police power in requiring motorcycle operators to wear head protection. There is an argument that such a requirement actually protects the individual and not the health and safety of the general population. In State v Betts, 252 NE 2d 866, Ohio Mun. (Aug.22, 1969), the Court cautioned that police power should not be used to abrogate personal liberty or property rights, and that any legislative inhibition of individual liberty must be supported by facts demonstrating a compelling public need. Mere speculation or incidental public benefits are insufficient. The Court held that the State had no legitimate concern with whether individuals "cracked their heads" while motorcycling and therefore the requirement that motorcyclists on a highway wear protective gear bore no substantial relation to the public health safety and morals. However, there is a large body of common law that supports legislative requirements for protective headgear, both for motorcyclists and minor bicyclists. These cases provide constitutional support by finding that the wearing of helmets is a societal problem and the financial and emotional costs of such injuries cannot be viewed solely on a personal level.

The AGO has the following additional comments:

- Section 4, B, (2) "Helmet Use Requirements--Civil Penalties..." is vague and ambiguous. "... (2) issue warnings only" appears to negate the penalties contained in the statute.
- Section 4, C – vague as to who is responsible for directing the violator to a law enforcement body or a local safety community organization.

- Does not define “local safety community organization” under definitions.
- Does not define who will administer and supervise community service.
- Does not indicate if there is a maximum financial penalty for repeat offenders.
- Section 4, E, refers to “court of this state” and does not clarify type of court. Other states have amended their statues to remove action in district court and specify the municipal court system.
- There is no appeal process for parents who are ultimately responsible for paying financial penalty. This is a violation of due process and may be unenforceable.

### **OTHER SUBSTANTIVE ISSUES**

Injury to the brain occurs when the head is suddenly accelerated and/or decelerated during an accident. There may or may not be a period of unconsciousness. Persons with mild traumatic brain injury show emotional instability, impaired concentration and memory, and reduction in their ability to “multi-task”. This impaired attentiveness and emotional instability predisposes them to further injuries.

The Centers for Disease Control and Prevention (CDC) states that traumatic brain injury from all causes is at or above the 90<sup>th</sup> national percentile in five New Mexico counties, at or above the 75<sup>th</sup> percentile but less than the 90<sup>th</sup> national percentile in 7 New Mexico counties, with the remaining counties less than the 75<sup>th</sup> national percentile for persons of all ages (1989-1998). The DOH report wearing a helmet resulted in a reduction of head injury by 85% and traumatic brain injury by 88% (Insurance Institute for Highway Safety and CDC). They further report 76,000 minor children were injured seriously enough while in-line skating in 1996 to require emergency medical care (The American Academy of Pediatrics 1998).

### **ALTERNATIVES**

None noted.

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

Children under the age of 18 years will not be required by law to wear a secured helmet while operating or as a passenger of bicycles, skates, scooters and skateboard on public right of ways and be at risk for sustaining life altering injuries or die from traumatic brain injuries.

### **POSSIBLE QUESTIONS**

How many individuals on NM’s Waiver programs have a long term disability from a head injury?

**AHO/lg**