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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/10
 LAST UPDATED 02/08/10 **HB** _____

SPONSOR SPAC

SHORT TITLE No Driving While Texting **SB** 89 & 188/SPACS

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	*Indeterminate	*Indeterminate	Recurring	General Fund
	*Indeterminate	*Indeterminate	Recurring	Various

(Parenthesis () Indicate Revenue Decreases)

*See Fiscal Impact

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Department of Health (DOH)

Department of Transportation (DOT)

SUMMARY

Synopsis of Senate Public Affairs Committee Substitute

Senate Public Affairs Committee Substitute for Senate Bills 89 and 188 enacts a new section of Section 66-7-358.1 NMSA, the Motor Vehicle Code. The bill prohibits the use of a hand-held wireless communications device to write, send, or read a text message while driving except to report illegal activity, summon emergency medical or law enforcement help, prevent injury to another person or property, and when the car is lawfully parked.

The bill defines a “hand-held wireless communication device” as a device for the transfer of information without the use of electrical conductors or wires, including a wireless device.

The bill clarifies that a person is not in violation of the law if the person uses a voice-operated or hands-free device that allows the user to write, send or read a text message without the use of either hand; except to activate or deactivate a feature or function on the device.

Under the bill, penalties for violating the texting law would carry a “penalty assessment misdemeanor” as identified in Section 66-8-116 NMSA 1978 and would carry a \$50.00 fine for the first violation and \$100.00 for a second and any subsequent violation.

FISCAL IMPLICATIONS

There is no way to estimate the number of penalty assessment citations that might be issued for violation of the text message prohibition. The \$50 and \$100 fine would be directed to the General Fund, additional add-on fines of \$44 or \$50 would be directed to various recipient funds (Local Government Corrections Fund, Traffic Safety Training Fee, Court Automation Fund, Judicial Education Fund, Judicial Facilities Fee, and Brain Injury Fund).

This bill would have no impact, fiscal or otherwise, on the Public Defender Department as there is no right to counsel on a fine or offenses that do not have the possibility of a jail sentence. It is only where a sentence is a possibility, that the right to counsel attaches. The public defender statute itself provides that "the district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in any court within the district with any crime that carries a possible sentence of imprisonment." NMSA 1978, § 31-15-10.

SIGNIFICANT ISSUES

The bill does not clarify whether it is a "primary" offense - meaning a police officer could pull over a driver for a texting violation alone. Some states that prohibit texting while driving do so as a "secondary" offense, in which an officer could only take action if the motorist were also committing another violation such as speeding

Thus far, seven states ban all drivers from using a cell phone while driving, 19 states have enacted bans on texting for all drivers, and 21 states have banned cell phone use for young drivers. In New Mexico, only Albuquerque and Santa Fe have enacted cell phone bans.

An estimated 20 percent of drivers are sending or receiving text messages while behind the wheel, according to a Nationwide Insurance study. According to another poll, that number skyrockets to 66 percent when drivers 18 to 24 are isolated.

PERFORMANCE IMPLICATIONS

The New Mexico Department of Transportation (NMDOT) Traffic Safety Bureau is the lead agency responsible for behavioral programs aimed at improving behavioral aspects of highway and traffic safety.

The bill relates to the FY2011 DOH Strategic Plan to: "Reduce intentional and unintentional injury."

RELATIONSHIP

Relates to HB10 "Prohibit Cell Phones While Driving"

TECHNICAL ISSUES

It is unclear whether it would be illegal to type directions into a digital map or global positioning system (GPS) device.

OTHER SUBSTANTIVE ISSUES

According to information provided by the Department of Health, the National Safety Council estimates at least 28% of all traffic crashes (1.6 million crashes) each year are directly caused by drivers using cell phones and texting (NSC, 2010). Additionally, the Virginia Tech Transportation Institute conducted several large-scale naturalistic driving studies on the effect of driver distraction (in particular cell phone use) on more than six (6) million miles of driving. These combined studies provide risk estimates for a crash or a near-crash event for a distracted driver compared to a non-distracted driver. Specifically, drivers of light vehicles/cars while dialing a cell phone had a 2.8 times greater risk for crash/near crash; while talking/listening to a cell phone had a 1.3 times greater risk for crash/near crash; and while reaching for an electronic device had a 1.4 times greater risk for crash/near crash. Drivers of heavy vehicles or trucks while dialing a cell phone were 5.9 times more likely to have a crash/near crash; while reaching for an electronic device were 6.7 times more likely to have a crash/near crash; and while text messaging were 23.2 times more likely to have a crash/near crash than non-texting drivers (Virginia Polytechnic Institute & University, 2009).

An Australian-based study on the effects of texting while driving among young drivers found that the amount of time spent not looking at the road was 400% greater for texting drivers, missed lane changes increased 140% for texting drivers, and unsafe following distance to other vehicles was 150% higher for texting drivers. A study comparing distracted drivers to impaired drivers found that the use of a mobile communication device, whether it was hands-free or hand held, while operating a motor vehicle is the equivalent to driving while impaired with a blood alcohol of .08 (Strayer, Drews, & Crouch, 2006).

The NMDOT notes that the National Highway Traffic Safety Administration suggests that model programs for Graduated Driver Licensing should have requirements for teens to ban cell phone or texting use while driving. In 2005, the National Transportation Safety Board called for all states to enact bans on the use of cell phone devices for all novice or provisional drivers under the age of 18 to protect young drivers from the hazards of distracted driving.

ALTERNATIVES

Several states ban novice drivers such as those with a provisional license or under age 18.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

DL/mew