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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/11

SPONSOR Vigil LAST UPDATED _____ HB 419

SHORT TITLE Motor Transpo Division to Transportation Dept SB _____

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI	NA	General Fund
	NFI	NA	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI	NFI	NA	General Fund
	NFI	NFI	NA	State Road Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$7,400.0*	\$7,400.0*	\$14,800.0*	Recurring	SHTD operating (all funds)
		(\$7,400.0)*	(\$7,400.0)*	(\$14,800.0)*	Recurring	DPS operating (All Funds)

(Parenthesis () Indicate Expenditure Decreases)

* See Fiscal Implications for discussion whether this impact is a correct interpretation of the bill or not.

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Bill 419 transfers the Motor Transportation Division of the Department of Public Safety to the Department of Transportation as the Motor Transportation Division of the Department of Transportation, effective July 1, 2011. On the effective date of the act, all functions, appropriations, personnel, money, records, furniture, equipment and other property of MTD/DPA will transfer to MTD/DOT.

FISCAL IMPLICATIONS

The MTD/DPS would become the MTD/DOT -- although the bill does not make that explicit. The appropriations (shown below in “Other Significant Issues”) that come from the General Fund and the State Road Fund, as well as federal funds, would remain intact. While the bill directs the entire MTD to move from DPS to DOT, the bill is silent on administrative support. FTE for the division totals 218.5 (2010) permanent and 55 term positions supported with federal grants. IT, HR, purchasing, accounting and other support personnel would be required.

Over the years, the Legislative Counsel Service has developed the boiler plate transition language used in this bill. According to LCS staff, if a DPS administrative position is attached to the Motor Transportation Division, the transition language is sufficient to require the administrative position to be transferred along with all of the appropriation and staff of the Division itself. However, this might be a somewhat adverse transfer. It is not clear that DOT could demand the transfer of administrative positions – particularly not 61 positions – and associated appropriation from DPS. With the lack of comment from either DOT or DPS on this bill, the op bud table implies that no administrative positions would transfer.

A simple proration of 2010’s GAA implies that 33 permanent and 28 term FTE, \$3,876.0 personal services, \$451.0 contract services and \$2,576.0 in other costs would be rendered redundant at DPS’s program support. It is interesting to note that program support personal services and benefits at DPS average about \$57,000, while program support personal services and benefits at DOT averages \$98,000. For DPS, Law Enforcement and MTD personal services and benefits average about \$72,000, while operating program personal services and benefits at DOT average \$64,000.

Under the terms of the bill, the program support services would not transfer (see caveat regarding LCS above). This would leave DPS with 61 redundant FTEs and over \$7 million in appropriations. Similarly, DOT would have a budget hole in support services of the same order of magnitude.

Program Support	
personal services and benefits	3,876
contract services (pro rata)	976
other (pro rata)	2,576
Total	7,428

FTE: 33 permanent; 28 term

SIGNIFICANT ISSUES

The Department of Transportation is organized in 67-3 NMSA 1978, not in Chapter 9. Chapter 67 does not have a statutory list of divisions, as do other cabinet agencies. The Secretary of Transportation has the power in 67-3-8 NMSA 1978 to organize the Department for efficiency and effective action. The Secretary would probably use this authority to accept the MTD/DPS into DOT as a largely autonomous division, with a separately defined mission and scope, but reaching out to the larger Department for administrative services.

From 1978 until 1987, the Motor Transportation Division, the Motor Vehicles Division and the Aviation Division constituted the old Department of Transportation. Under Governor Carruthers, the Department of Transportation was broken up: MTD, MVD and the bulk of ASD was transferred and merged with the Taxation and Revenue Department, while the Aviation Division (and associated federal aviation funding) was transferred to the State Highway Department. The Traffic Safety Bureau was created at SHD as a conduit to administer a number of federally mandated vehicle safety programs. In 1998, the Motor Transportation Division of TRD was moved to DPS. The argument at the time was that “cops should be with cops.” MTD officers are certified law enforcement officers. In addition to being graduates of the law enforcement academy, MTD officers also have extensive technical training in conducting heavy vehicle safety inspections and in enforcing tax laws affecting motor carriers.

The bill does not advance any argument for moving MTD one more time – this time to DOT. The “cops should be with cops” argument is the same now as in 1998. An argument used in 1987 for assigning MTD to TRD and not DOT was that, at the time, MTD solicited and accepted only very modest federal funding. TRD was not accustomed to auditing to federal standards and SHD, which was used to auditing to federal standards testified that federal standard audits were required of the new division, even if the new division was not heavily federally funded. Today, State Police, MTD and the technical units of DPS receive substantial federal funding. The audit requirement will probably not vary whether DPS or DOT is the home for MTD. There do not seem to be any financial or administrative efficiencies involved with this move. If anything, DOT pays support staff considerably more than does DPS, so there may be an increase in costs with the transfer.

Rumor has always indicated that MTD officers, despite their training and certification, feel they are treated with less respect than state police officers. This morale rumor was true when MTD was at TRD and persists to this day.

While the State Highway Commission is granted rulemaking authority in 67-3-11 NMSA 1978 over Chapter 67, Section 67-3-7 takes back that authority and grants it to the Secretary. MTD primarily enforces Chapter 66, but also enforces laws in Chapter 7 (trip and weight distance taxes) and Chapter 65 (motor vehicle equipment and logbook requirements). Some of these laws may need regulation or instruction.

PERFORMANCE IMPLICATIONS

MTD is largely autonomous within DPS. The FY 2011 MTD performance measures would not change if the division were moved to DPS.

ADMINISTRATIVE IMPLICATIONS

As many as 61 program support personnel and around \$7 million in appropriations could be rendered redundant at DPS. The bill does not explicitly provide for transfer of administrative support personnel from DPS to DOT.

TECHNICAL ISSUES

That the bill is silent on the transfer of administrative support positions and budget may be a serious defect that should be addressed by amendment.

OTHER SUBSTANTIVE ISSUES

From 2011 General Appropriations Act (2010 2nd SS, HB 2)

(2) Motor transportation:

The purpose of the motor transportation program is to provide the highest quality of commercial motor vehicle enforcement services to the public and ensure a safer state.

Appropriations:

(a) Personal services and employee benefits	7,012.1	25.0	5,783.1	3,136.6	15,956.8
(b) Contractual services	410.2		384.4	1,328.0	2,122.6
(c) Other	2,465.6		1,927.0	896.1	5,288.7

Authorized FTE: 218.50 Permanent; 55.00 Term

The internal service funds/interagency transfers appropriations to the motor transportation program of the department of public safety include six million nine hundred forty thousand dollars (\$6,940,000) from the state road fund.

Any unexpended balances in the department of public safety remaining at the end of fiscal year 2011 made from appropriations from the state road fund shall revert to the state road fund.

Performance measures:

(a) Output: Number of narcotic seizures by the motor transportation police division	52
(b) Output: Number of commercial motor vehicle safety inspections by the MTD	91,680
(c) Output: Number of citations issued by motor transportation police division officers to commercial motor carrier vehicles subject to, and not in compliance with, the requirements of the Weight Distance Tax Act	384
(d) Output: Number of motor carrier safety audits completed	200

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Cops will stay with cops.

LG/mew