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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/11

SPONSOR Chavez, D. LAST UPDATED \_\_\_\_\_ HB 447

SHORT TITLE Driver's License Revocation For Some Offenses SB \_\_\_\_\_

ANALYST Lucero

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

|  | FY11 | FY12       | FY13       | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected                       |
|--|------|------------|------------|-------------------|----------------------|-------------------------------------|
|  |      | (Moderate) | (Moderate) | (Moderate)        | Recurring            | General Fund                        |
|  |      | Moderate   | Moderate   | Moderate          | Recurring            | Administrative Office of the Courts |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Department of Transportation (DOT)

Administrative of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 447 enacts a new section of the Motor Vehicle Code to require courts to suspend or revoke a driver's license if the driver is convicted or adjudicated of a misdemeanor or felony under the Motor Vehicle Code.

The bill proposes to transfer the administrative revocation hearings from the Motor Vehicle Division (MVD) to the magistrate, metropolitan and municipal courts, eliminates administrative hearing staff at MVD and transfers the vacancy savings money to the AOC to be placed in the court automation fund. The driver is required to pay all applicable court filing fees.

The bill repeals Sections 66-5-26, 66-5-29 and 66-5-30 of the Motor Vehicle Code, related to the suspension or revocation of driver licenses by the Motor Vehicle Division (MVD).

### FISCAL IMPLICATIONS

There will be a large fiscal impact on the courts. The number of administrative license revocation hearings is approximately 6,000 per year. These cases would be added to the lower level courts

without any extra funding for more judges and clerks. Though the vacancy savings money would be sent to the AOC, a deposit in the court automation fund does not fund the necessary personnel needed to schedule, administer and hold these hearings. Moreover, there is federal money attached to the administrative hearings in that the hearings must be held within a short time frame pursuant to federal guidelines. Currently, MVD holds these hearings within 90 days. This requirement will add more strain both fiscally and administratively to the lower courts.

The Department of Transportation (DOT) currently applies on a yearly basis for a Federal Section 410 Grant (Alcohol Incentive Grant) for the approximate amount of \$1.1 million. To qualify, New Mexico must meet five of seven criteria. Currently, New Mexico meets five of the seven. One of the relevant criteria that New Mexico does not meet provides: “The suspension or revocation (for DWI) shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test...”

## **SIGNIFICANT ISSUES**

Court ordered license suspension or revocation is currently only mandatory:

- manslaughter or negligent homicide involving a motor vehicle;
- an offense rendering a person a “first offender” or “subsequent offender” as defined in the Motor Vehicle Code;
- a felony in the commission of which a motor vehicle is used;
- failure to stop and render aid in the event of a motor vehicle accident resulting in the death or
- personal injury of another;
- perjury or the making of a false affidavit or statement under oath to MVD;
- conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or
- the offense of shooting at or from a motor vehicle in violation of Sec. 30-3-8(B) or conviction for conspiracy or attempt to commit the offense.

The Administrative Office of the Courts reports:

The bill does not make clear which court will hold the administrative hearing. It states that it would be either magistrate, municipal or metropolitan court; it should be the court that has jurisdiction over the location where the offense leading to the notice of revocation occurred. The problem with this is that there is overlapping jurisdiction between municipal and magistrate courts and there is no direction in the bill as to when each court would have jurisdiction. Additionally, if a felony DWI case is filed in district court, the administrative hearing would be held in a different court which is not efficient and creates a bifurcated system within the courts.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

TRD reports that because Section 66-5-30 is repealed, MVD will no longer suspend a driver’s license:

- (1) when MVD’s facial recognition system shows that the person obtained licenses with

- someone else's identifying information as authorized under Section 66-5-30(A)(6);
- (2) when the person is determined to be habitually reckless or is frequently convicted of traffic violation as authorized under Section 66-5-30(A)(3) and (4) -- these two statutes form the basis of the points suspension regulation; and,
  - (3) when the person fails to appear in court or fails to pay a penalty assessment as authorized under Section 66-5-30(A)(9) and (10).

The National Highway Traffic Safety Administration (NHTSA) recommends that administrative license suspension/revocation laws impose at least a 90-day suspension or a 30-day suspension followed by 60 days of restricted driving for DWI offenders.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

NHTSA currently supports administrative license revocation hearings. According to a 2003 NHTSA report on administrative license revocation hearings, the administrative sanction should be handled separately from the criminal proceeding. The outcome of administrative action should have no bearing on the criminal proceedings, including sanctions. Likewise, a determination in a criminal proceeding should not affect the outcome in an administrative licensing action.

### **ADMINISTRATIVE IMPLICATIONS**

This bill eliminates the Hearings Bureau's role in adjudicating implied consent (DWI) cases, and transfers the responsibility of adjudicating whether a driver's license should be revoked for DWI to the courts. Currently, the Hearings Bureau hears between 5,500-6,000 DWI cases a year. These cases must be heard within 90 days from the date of arrest, and these cases cannot be continued or postponed past the 90th day. The Hearings Bureau has become very efficient in scheduling, hearing and issuing decisions in DWI cases. The Hearings Bureau is seldom unable to hold a hearing because of a notice deficiency or some other resource problem within the 90 days. In 2010, the Hearings Bureau rescinded 12 cases out of 5,500 due to error. In addition, almost all of the 5,500-6,000 cases are held and a decision is issued within 30 days from the date of the hearing.

If the adjudication of these cases is transferred to the courts, the courts will have to set aside sufficient resources in each county to adjudicate the cases. In all of these DWI or implied consent hearings, notice of hearing must be mailed by certified mail and all decisions sustaining the revocation must also be mailed by certified mail. In addition, because these hearings are adjudicatory, the Department of Taxation and Revenue does not provide legal representation to the Motor Vehicle Division or the law enforcement officers who are witnesses in these matters. If these hearings are heard in district court, then more than likely, the Motor Vehicle Division will have to provide legal representation in those cases.

### **RELATIONSHIP**

Relates to HB 329 Consistent Felony DWI Convictions; HB 330 Penalty Increase for DWI Offenders; SB 127 Prohibit Certain DWI Plea Agreements;

This bill may conflict with HB-49 as both bills amend Sections 66-8-111.1 and 66-8-112

### **TECHNICAL ISSUES**

The Temporary Provision in Section 8 of the bill requires that MVD not fill any hearing officer positions. If the point of Section 8 is an attempt to get rid of the implied consent hearing officers, it fails. The hearing officers are not employee positions in MVD, but employees of the Office of the Secretary of the Taxation and Revenue Department.

### **OTHER SUBSTANTIVE ISSUES**

According to DOT:

When convicted of DWI, the offender's license must be revoked by the court for one year for a first offense, two years for a second offense, three years for a third offense and the remainder of the offender's life for a fourth or subsequent conviction. However, a third or subsequent offender who has a revocation pursuant to the law in effect prior to June 17, 2005, may request enforcement of the new time limits if the offender has had an ignition interlock license for three years or more and has proof of no violations in the previous six months.

When a person is adjudicated a delinquent under the Children's Code or the hearing is continued under supervision without judgment, the court must suspend the person's driver's license or driving privileges for 90 days. For a second or subsequent offense the court may suspend the license for up to one year or revoke the license or privileges.

In all other convictions under the Motor Vehicle Code, the court must order the suspension of the offender's driver's license for a period of not less than 30 days or more than one year unless the code specifies a definite period of suspension or required revocation.

If the court has adjudicated or found that a person is incompetent to drive a motor vehicle, the court must revoke the person's license with the condition that it cannot be reapplied for until a subsequent adjudication is made by the court that the person is competent to drive a motor vehicle.

A court that suspends or revokes a person's license or driving privileges must require the surrender of the license or permit and forward it to MVD with documentation reflecting the suspension or revocation.

When MVD is notified of a conviction or adjudication pursuant to a law of another jurisdiction in the United States, including a tribal court, such a conviction must be treated as a conviction under state law if the other jurisdiction's law is substantially similar to a New Mexico violation. If the period of time for suspension is discretionary, MVD must suspend the driver's license for 90 days. If it receives notice of a failure to appear or pay a penalty assessment imposed by a tribe or another jurisdiction that is a signatory of the Nonresident Violator Compact, MVD must suspend the license for 30 days. Other foreign violations must

be referred to a New Mexico court for suspension or revocation proceedings. MVD must update its records within 10 days from receiving notice of a suspension or revocation of a commercial driver's license.

On or after July 1, 2011, a full-time equivalent employment position may not be filled if and when it becomes vacant if its primary function is the administration or conduct of license suspension or revocation hearings. As of July 1, 2012, such positions are eliminated from the table of organizational listing of MVD. During FY2012, any money from such projected vacancy savings must be transferred to the Administrative Office of the Courts and deposited in the Court Automation Fund.

Repeals three sections of the Motor Vehicle Code: Sec 66-5-26 (suspending licenses; failure to appear or pay fine in another state), Sec. 66-5-29 (mandatory revocation of license) and Sec. 66-5-30 (authority of MVD to suspend or revoke licenses).

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