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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR Taylor LAST UPDATED _____ HB 553

SHORT TITLE Electronic Highway Signs and National Standards SB _____

ANALYST Soderquist

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Rule-making		\$50.0	\$0.0	\$50.0	Nonrecurring	State Road Fund
Equipment		\$10.0	\$0.0	\$10.0	Nonrecurring	State Road Fund
Salaries		\$142.3	\$142.3	\$284.6	Recurring	State Road Fund
Total		\$202.3	\$142.3	\$344.6		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 553 proposes amendments to NMSA 1978, Section 67-12-5 of the New Mexico Highway Beautification Act. The proposed amendments include adding a new Subsection B, which would require the State Transportation Commission to apply to the Federal Highway Administration (FHWA) to obtain approval of rules to allow off-premises changeable electronic variable message signs in accordance with federal law and the Federal/State Agreement executed in 1971. The new rules, if approved by FHWA, must provide the following: (1) that the duration of each display message must be between 6 and 10 seconds; (2) the transition between each display message must be less than 2 seconds; (3) the sign's brightness must adjust in response to changes in ambient light; (4) the spacing between signs must not be less than the minimum spacing requirements of the Federal/State Agreement; and (5) the sign's location must be allowed under the Federal/State Agreement, and must be appropriate to ensure the safety of the motoring public. HB 553 further amends Section 67-12-5 by adding Subsection F, which defines the Federal/State Agreement as the "existing" agreement between the state and federal government, pursuant to 23 USC § 131 for effective control of outdoor advertising.

FISCAL IMPLICATIONS

According to the Department of Transportation (NMDOT), there would be additional costs related to the time and number of staff, or outside consultants, employed in processing new rules through rulemaking process. Other costs would include the need for additional personnel to administer and enforce the use of changeable electronic variable message technology in compliance with applicable standards, additional travel expenses related to the monitoring and control of statewide use of changeable electronic variable message technology, and the need for specialized technical equipment to monitor compliance with applicable standards, including monitoring duration and transition times and brightness levels. Some of the costs are recurring and some non-recurring, as reflected above.

SIGNIFICANT ISSUES

HB 553 is intended to allow for the use of changeable electronic variable message signs for off-premises advertising. Under the federal Highway Beautification Act and the federal regulations promulgated pursuant to the Act, the State Transportation Commission and New Mexico Department of Transportation (“NMDOT”) are required to “effectively control” outdoor advertising (23 CFR § 750.705), subject to the loss of up to 10% of the State’s federal highway funds for failing to do so. 23 USC § 131(b). Furthermore, under 23 CFR § 750.705(j), a state Department of Transportation is required to obtain the FHWA’s approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program.

The current version of the New Mexico Highway Beautification Act, NMSA 1978 §§ 67-12-1, *et seq.*, does not provide for the use of changeable electronic variable message technology on off-premises outdoor advertising devices. However, in a policy memorandum dated September 25, 2007, the FHWA laid the groundwork for states to request approval of changes to state laws or regulations that would allow the use of changeable electronic variable message technology on off-premises signs. First, if NMDOT determines that the existing Federal/State Agreement permits electronic variable message technology, it would have to request concurrence of the same from FHWA. Second, NMDOT would be required to adopt standards related to the duration of message, transition time, brightness, spacing and location, all to be approved by FHWA. HB 553 acknowledges the need for FHWA approval of rules to allow off-premises changeable electronic variable message signs and the requirement for standards as identified in FHWA’s policy memorandum. However, the FHWA policy memorandum suggests the standards to be applied to the use of changeable electronic variable message technology would be adopted through the state’s rulemaking process, and not necessarily through legislation.

The FHWA policy memorandum provides that states may adopt more restrictive requirements than those mentioned in the memorandum, as long as the requirements are not inconsistent with the Highway Beautification Act, federal regulations, or the existing Federal/State Agreement. Additionally, the policy memorandum provides the states may include other categories of standards than those mentioned in HB 553, including a default designed to freeze a display in one position if a malfunction occurs, a process for modifying displays and lighting levels where directed by the state Department of Transportation to assure safety of the motoring public, and requirements that a display contain static messages without movement such as animation, flashing, scrolling, and intermittent or full-motion video. Therefore, adoption of standards more restrictive than those included in HB 553 could require legislative amendments, instead of rule changes adopted through the State Transportation Commission and NMDOT’s rulemaking process.

PERFORMANCE IMPLICATIONS

According to NMDOT, the following performance implications could result from adoption of HB 553:

- Additional administrative duties to NMDOT related to performance and monitoring of rulemaking to implement the proposed changeable electronic variable message technology;
- Increased duties to NMDOT to monitor and control the statewide use of changeable electronic variable message technology; and
- An increase in statewide travel by NMDOT personnel to monitor and control the use of changeable electronic variable message technology.

ADMINISTRATIVE IMPLICATIONS

According to NMDOT, the following administrative implications have been identified:

- HB 553 would require NMDOT to perform and/or monitor rulemaking to implement the proposed changeable electronic variable message technology.
- HB 553 would result in an increased administrative burden to NMDOT. More specifically, it would create a high number of new administrative and performance duties required of NMDOT to perform in relation to current limited staffing and funding levels.
- HB 553, if passed, would require an increase in NMDOT staffing levels to perform rulemaking and to monitor and regulate proposed changeable electronic variable message technology statewide.

ALTERNATIVES

HB 553 includes the standards that would govern the use of changeable electronic variable message technology on off-premises signs. As contemplated by the FHWA Policy Memorandum dated September 25, 2007, however, standards should be adopted in accordance with the State's rulemaking process.

According to NMDOT, the adoption of standards through rulemaking, instead of legislation, would give NMDOT more flexibility in implementing and regulating the use of changeable electronic variable message technology on off-premises signs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The use of changeable electronic variable message technology on off-premises advertising signs would not be authorized.