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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SJC</u>	<b>LAST UPDATED</b>	<u>2/10/24</u>
	<b>ORIGINAL DATE</b>	<u>2/10/24</u>
<b>SHORT TITLE</b> <u>DWI Act</u>	<b>BILL</b>	<u>CS/Senate Bill</u>
	<b>NUMBER</b>	<u>190/SJCS</u>
	<b>ANALYST</b>	<u>Torres, J.</u>

### REVENUE\* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	(\$1,265.0)	(\$1,265.0)	(\$1,265.0)	(\$1,265.0)	Recurring	MVD Suspense Fund
	No Fiscal Impact	(\$1,042.0)	(\$1,042.0)	(\$1,042.0)	(\$1,042.0)	Recurring	State Road Fund
	No Fiscal Impact	(\$780.0)	(\$780.0)	(\$780.0)	(\$780.0)	Recurring	DOT Local Govt. Road Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
MVD Suspense Fund – Contractual Resources	No fiscal impact	\$660.0	No fiscal impact	\$660.0	Nonrecurring	Other state funds
MVD Suspense Fund – Staff Workload Cost	No fiscal impact	\$167.0	No fiscal impact	\$167.0	Nonrecurring	Other state funds
MVD Operating Costs	No fiscal impact	\$3.5	No fiscal impact	\$3.5	Nonrecurring	Other state funds

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From (for original bill)

Taxation and Revenue Department (TRD)

Administrative Office of the Courts (AOC)

New Mexico Sentencing Commission (NMSC)

Department of Transportation (NMDOT)

## SUMMARY

### Synopsis of SJC Substitute for Senate Bill 190

The Senate Judiciary Committee substitute for Senate Bill 190 (SB190) amends, recompiles, and repeals several sections of the existing Motor Vehicle Code and adds new DWI sections. The new sections address driving under the influence of intoxicating liquor, aggravated driving under the influence of intoxicating liquor, and unlawful alcohol concentrations. The act also addresses penalties for first through eighth and subsequent convictions for driving while intoxicated with liquor or drugs. The act addresses driving while intoxicated with a teenage minor in the vehicle and in those cases whether the teen's parent requires a penalty assessment and parenting classes. Other requirements include substance abuse counseling and treatment through the Corrections Department. It will also be unlawful to operate a propelled motorboat or watercraft while under the influence of intoxicating liquors or drugs. Penalties for impaired motorboat operation are also provided. The DWI Act also repeals Sections 66-8-102, 66-8-103, 66-8-104 and 66-13-1 through 66-13-13 NMSA 1978.

The bill also covers DWI fines and jail sentences. It adds provisions pertaining to driving while intoxicated with children in the vehicle. An intoxicated parent will be required to take a parenting class if the minor is the motorist's child. Fines are also added. A child is defined as being under 18 years old. Injury to a pregnant person is also included in this bill.

The bill defines "commercial motor vehicle" as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property..." The transport of hazardous waste references the USC 49 Section 5103 definition and 49 C.F.R. Subtitle B, Chapter 1, Subchapter C regulations. Motorboat is defined as including a boat, motorboat, or sailboat propelled by machinery. Sailboats not propelled by machinery and houseboats are excluded. The definition of "tribe" includes reference to "tribal." The \$75 license reinstatement fee and its appropriation to the "local government road fund" are deleted. "Commercial motor vehicle" includes a Group A "combination vehicle;" a Group B "heavy straight vehicle" or a Group C "small vehicle" that transports 16 or more passengers or that transports hazardous materials or agents. "Hazardous material" is defined as "any material that has been designated as hazardous under 49 U.S.C. 5130 and is required to be placarded under Subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73." Uninsured motorist reporting requirements are included under Subsections 13(C) through (E). Section 50(B) addresses breath and blood testing requirements. Section 59(E) requires that interlock funds not revert to the general fund and that the specified amount be used by the traffic safety bureau.

## FISCAL IMPLICATIONS

DOT states:

At section 8, paragraph B(1), SB 190/aSHPAC proposes repealing an additional fee of seventy-five dollars (\$75.00) which would be appropriated to the Local Governments Road Fund. This will result in a reduction of seven hundred eighty thousand dollars (\$780.0) annually. SB 190/aSHPAC deletes the definition of commercial motor vehicle (CMV) found in the New Mexico Commercial Driver's License Act. As addressed below under Technical Issues, CMV is defined by federal regulation both under 49 CFR 390 and under 49 CFR 383. The Federal Motor Carriers Safety Administration (FMCSA)

may object to the definition of CMV being removed from the Commercial Driver's License Act for this reason, which could place federal highway funding in jeopardy. Losing federal highway funds would have a significant fiscal impact on the NMDOT.

At section 60, paragraph E, SB 190/aSHPAC would expand the traffic safety bureau's ability to expend non-reverting fund balances in the interlock device fund on other statutory duties of the bureau. Currently, expenditures from the interlock device fund are limited to covering part of the costs of installing (up to \$50), removing (up to \$50) and leasing (up to \$30 monthly for verified service usage of an ignition interlock device) ignition interlock devices for one vehicle per indigent offender.

SB190 eliminates reinstatement fees for driver's license suspensions and revocations associated with driving while under the influence of intoxicating liquor or drugs (DWI) and the Taxation and Revenue Department expresses concerns SB190 will jeopardize the long-term solvency of the motor vehicle suspense fund. Money from the fund are expended for Motor Vehicle Division (MVD) operations and infrastructure improvements. Revenue losses are demonstrated in the table on page 1.

TRD explained the bill's estimated impact as follows:

The current \$102 driver's license reinstatement fee following a DWI is distributed as follows: \$2 for administrative fee; \$25 reinstatement fee; to the Motor Vehicle Division (MVD) suspense fund; and \$75 to the state road fund. To estimate revenue loss associated with this bill, MVD calculated the average total fees collected from the last five years.

TRD also notes several administrative and compliance related issues SB190 will create for the department and the associated additional operating budget impacts. Changes will be required for their database system (Tapestry) to allow MVD to separate out violations associated with alcohol and intoxicating drugs. MVD will also need the ability to separate out violations involving minors by age group. TRD also notes, "This bill completely removes all reinstatement fees for license suspensions and revocations. This will require significant changes to Tapestry."

TRD summarizes associated costs as follows:

Implementation of this bill will have a high impact on ITD. The estimated time to develop, test and implement the changes is approximately 3,000 hours or 18 months and approximately \$826.5 thousand (\$660 thousand contractual resources including gross receipts tax, and staff workload costs of \$166 thousand).

AOC notes there will be administrative costs for statewide update, distribution, and documentation of statutory changes and any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. AOC explains the largest fiscal impact would come from shifting the jurisdiction for misdemeanor DWI cases from the magistrate courts to the district courts. AOC further explains there would also be a significant fiscal impact related to updating the courts' case management system and to educating judges and court staff on where to find new statutory sections, however, "AOC is not able to quantify these costs at this time."

TRD also notes, “MVD will be required to purchase new DWI citation booklets to adhere to the proposed changes at a cost of \$3,500.” This cost and other associated costs are demonstrated in the table on page 1.

## SIGNIFICANT ISSUES

TRD has expressed concerns SB190 could soften DWI penalties, “By eliminating all reinstatement fees for driver’s license suspensions and revocations related to DWI, this bill diminishes the consequences of drinking and driving. These fees are part of the overall DWI deterrent.”

The New Mexico Sentencing Commission notes SB190 does not include refusal to test for intoxicating drugs as grounds for an aggregating offense as is the case for driving under the influence of intoxicating liquor cases. The Sentencing Commission says:

SB190 separates “driving under the influence of intoxicating liquor” and “driving under the influence of intoxicating drugs”, along with their respective aggravated offenses, into two independent statutes. Unlike current law and the proposed law on driving under the influence of intoxicating liquor, the proposed Section 66-14-3 NMSA 1978, regarding driving under the influence of intoxicating drugs, does not include refusal to test as grounds for an aggravated offense.

TRD also notes alignment issues with the bill:

The bill’s grouping of several different items that were previously chaptered in different code sections does not seem appropriately aligned. For example, sentencing requirements related to the use of interlock devices are not procedurally related to the purchase of an ignition interlock license. These sections still require interlock installation where the driver is convicted of drugged driving. Interlocks address drunken driving, rather than driving while drug impaired.

Another TRD concern pertains to the provisions on impaired driving of a motorboat. The bill does not categorize intoxicated boating as a “traffic violation.” As a result, there are no MVD reporting requirements, as with traffic violations. TRD notes that Section 52 allows for Scientific Laboratory Division staff to participate in Implied Consent Act Hearings. This may improve blood test result turnaround times. The bill also increased the presumed level of alcohol concentration from four one-hundredths to five one-hundredths. This change allows for greater tolerance of low-level drinking and driving.

AOC notes concerns with shifting the jurisdiction of misdemeanor DWI cases, and cases related to driving under the influence of drugs (drugged driving), from the magistrate courts to districts courts and provides statistics on the number of cases heard around the state: “In calendar years 2021, 2022, and 2023 there were 527, 399, and 369 drugged driving cases filed in counties outside of Bernalillo and Dona Ana, respectively.” AOC explains shifting from the magistrate courts to the district courts is a significant burden and expresses concern district courts are not equipped to handle the additional caseload and that misdemeanor DWI cases may be a lower priority to more serious criminal cases in the district courts. According to AOC, there is no six-month trial rule in district courts to ensure cases are adjudicated in a timely manner as there is in magistrate courts. AOC further notes, there may be confusion in the legal community as to where to file DWI and drugged driving cases and there is no procedure for transferring a case from one court to another which may lead to case dismissals.

## PERFORMANCE IMPLICATIONS

AOC states, “The jurisdiction shifting, discussed above, would have negative performance implications for the district courts, as their caseloads would increase, which would also increase time to disposition in these misdemeanor DWI cases.”

## ADMINISTRATIVE IMPLICATIONS

DOT states:

Section 61 of this proposed legislation requires the Traffic Safety Bureau of the Department of Transportation to coordinate, with the motor vehicle division of the Taxation and Revenue Department and other appropriate stakeholders, to investigate and recommend: 1) procedures that ensure drivers subject to the Ignition Interlock Licensing Act are insured at the levels required by the Mandatory Financial Responsibility Act at all times; 2) the steps to be taken if the division is made aware that a driver fails to maintain adequate financial responsibility; and 3) if the insurance obtained by this class of high-risk driver should be required to be associated with the driver rather than with the vehicle as is currently the practice in New Mexico. Furthermore, Section 62 of this proposed legislation requires the Traffic Safety Bureau of the Department of Transportation to coordinate a study, with the Motor Vehicle Division of the Taxation and Revenue Department and other appropriate stakeholders, to identify duplicative forms used in the detection, apprehension, arrest and prosecution of persons alleged to have driven under the influence of drugs or alcohol in this state and recommend appropriate administrative and legislative changes, if any. The expanded ability of the traffic safety bureau to expend non-reverting fund balances in the ignition interlock device fund on “other statutory duties of the bureau” will create opportunities for the bureau to fund traffic safety activities that target programming gaps and otherwise unfunded priorities.

## TECHNICAL ISSUES

TRD lists several technical issues:

[Allowing for video testimony] may be argued to be a confrontation violation under the Sixth Amendment. Specifically, the language pertaining to judicial determination that the use of video testimony “does not abrogate the defendant’s rights” is vague and conclusory. It does not set forth the “adequate showing of necessity” standard set forth in *State v. Smith*, 2013-NMCA-081, 12. This may result in DWI offenders challenging criminal DWI convictions as a violation of their Sixth Amendment right to confront witnesses. Clarification is required as to the date of the last attempted delivery to avoid ambiguity.

“Good cause” may include an alcohol screening and no prior interlock devices. These provisions may limit the “good cause” screening requirements of *DeMichele v. MVD*, 2015-NMCA-095, ¶19 which include a showing that the person is not a habitual drinker and no longer threatens public safety if given an unrestricted license.

Section 27 applies to a DWI violation with a minor in the vehicle. It adds new sentencing requirements regarding the minor’s age and whether the minor is the motorist’s child.

MVD will have to categorize violations including minors into age groups, as well as parentage classifications. If the minor is the motorist's child, upon conviction the motorist must participate in a parenting class. The bill does not specify the type of parenting class, provider, or means of certification. TRD states that the January 1, 2025 effective date is not feasible for MVD implementation and recommends that the bill instead be implemented on January 1, 2026.

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