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FISCAL IMPACT REPORT

SPONSOR: Adair DATE TYPED: 03/07/01 HB _____
 SHORT TITLE: Possession of Controlled Substance SB 713
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Department of Health (DOH)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

SB 713 amends the Motor Carrier Act, Section 65-2-84 and Section 65-2-85, NMSA 1978 to provide for the issuance of certificates of convenience and necessity without economic considerations. SB713 would remove all existing language associated with “public convenience and necessity.” It would amend language governing the issuance of a certificate for common motor carriers of property. New language would direct the PRC to not consider potential economic harm or benefit to other motor carriers or potential carriers.

Significant Issues

DOH reports SB713 may be appropriate for household carriers or tow truck operators, but it may cause economic problems for New Mexico ambulance services who have been issued certificates of “public convenience and necessity.” It might also lead to uncertainty and instability in the overall EMS system.

These certificates describe the Ambulance Service’s geographic and economic areas of operation. In essence, they provide a quasi-monopoly or franchise right to a certain geographic and economic area to provide ambulance services. It also creates a clear and unqualified responsibility to respond to all 911 calls.

New Mexico is unique in that it is one of about ten states nationally that have the “public convenience and necessity” protections that ensure ambulance services are capable of providing safety-net

Senate Bill 713 -- Page 2

emergency and non-emergency ambulance service to the public. The new language would allow anyone to apply and be granted a certificate to provide ambulance services within an existing ambulance service's given area. This would fragment the established, but fragile, New Mexico ambulance system. Ultimately, the economic impact could force some ambulance services out of business. It may also cause confusion to the public regarding which ambulance to call in an emergency.

PRC reports it has plenary jurisdiction to regulate common motor carriers of persons and household goods movers. Prior to 1995 the predecessor to the Public Regulation Commission, the State Corporation Commission, had similar jurisdiction to regulate property haulers. In 1995 the United States Congress passed the ICC Termination Act, which amended section 601 of the United States Code by adding subsection (h)(1). The general rule, therein, provides that:

Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713 (b)(4) of this title) or any motor private carrier with respect to the transportation of property.
(Emphasis added)

This provision has since been recodified as 14501 (c) (1) USC, but the law was basically unchanged.

The PRC is federally preempted from regulating the price, routes or service of property haulers, except for household goods and nonconsensual wrecker tows, leaving only financial responsibility and safety within the Commission's jurisdiction. The PRC retains its plenary jurisdiction over entry, price, service, safety, and financial responsibility of intrastate motor carriers of persons.

PERFORMANCE IMPLICATIONS

PRC reports the effect of SB 713 would be to eliminate the current requirement that the PRC consider present or future public convenience and necessity; and consider the service provided by existing transportation facilities in the proposed service area, before granting a certificate. It also eliminates as grounds for denial of a certificate evidence presented by protesters that issuance of the certificate would be inconsistent with the public convenience; eliminates consideration of the effect issuance of a certificate would have on existing carriers; eliminates the conditions for the issuance of a certificate to haul property; adds language that expressly precludes the PRC from considering economic harm to motor carriers or potential competitors, before granting a certificate. The elimination of these considerations would streamline hearings and the processing of applications for certificates.

ADMINISTRATIVE IMPLICATIONS

SB 713 could incur significant impact on the DOH if some ambulance services are forced out of business and high quality services cannot be maintained statewide. DOH is responsible for ensuring the timely availability of EMS, including ambulance response and transportation.

OTHER SUBSTANTIVE ISSUES

According to DOH, assurance of access to emergency medical services is in the DOH Strategic Plan Program Area II, "Health Systems Improvement and Public Health Support Systems", Goal A, "Assure access to and quality of basic health systems such as primary care and rural health , and

Senate Bill 713 -- Page 3

emergency medical services”, Objective 2, “Provide timely and comprehensive emergency medical services”.

Ambulance services provide safety-net emergency and non-emergency transportation for ill or injured people in New Mexico. The PRC regulates and certifies ambulance services to operate within a given area. New Mexico (through the Motor Carrier Act) is one of about ten states nationally that has adopted the “public convenience and necessity” language to ensure that ambulance services are available to provide emergency response in communities statewide. The current New Mexico model ensures that no new ambulance services can begin operating without first going through an application process where a justification of the need to establish a service is presented and approved/disapproved. The PRC oversees this function and works to ensure a fragile balance of ambulance service versus population and geography. There are about 150,000 ambulance transports by approximately 110 Ambulance Services each year.

Senate Bill 713 would amend the current motor carrier act to provide for certificates of convenience and necessity without economic considerations. The major focus of this legislation is to remove any economic barriers that prevent other non-certified potential ambulance providers from being able to become certified and operate within an existing ambulance service’s approved geographic area. If enacted as it currently reads, SB713 may be detrimental to the current ambulance services in New Mexico that operate under the protections of the existing Motor Carrier Act and PRC regulations.

Essentially, SB713 would deregulate ambulance services. Deregulation may be needed for carriers of property, but this legislation potentially would have a negative impact on ambulance companies and their critical services to the public. By using a “public convenience and necessity” model, the State ensures that ambulance services operations are coordinated with the people, community, and local government that it serves. Coordination between fire and EMS services, 911 dispatch services, hospitals and other care givers is essential to ensure adequate and rapid response and patient care. Deregulation would make this complicated in many medium and large communities. Another complication may be the arrival of several ambulance providers at one scene, where one is needed. This will cause confusion and may prevent timely and accurate patient care. There may also be additional confusion if the public does not know which ambulance to call or prefers one over another.

Ambulance services are typically provided by one service provider within a given geographic area of the state. There are a few exceptions where additional need has been justified for two or more ambulance providers, such as in Albuquerque, Santa Fe, and Carlsbad. Each of these ambulance services has acquired a certificate of public convenience and necessity to provide ambulance operations exclusively, except as discussed above. The current law limits the competition for a service or market area, which helps to insure that ambulance services remain economically viable. Under the existing law, other entities wishing to begin an ambulance service have to prove the need for the service, prior to being issued a certificate from the PRC.

PRC reports SJM 41 presents an opportunity to study the needs of the Commission and additional amendments to the Motor Carrier Act.

According to PRC, the consequence of not enacting this bill is that the law would require the Public Regulation Commission to continue consideration of outdated conditions before the issuance of a certificate of public convenience and necessity. However, other changes may be necessary. For example, the Motor Carrier Act declaration of Policy requires that regulation “...promote competitive, economical and efficient service by motor carrier, and reasonable charges therefore, without undue preference or advantage; enable efficient and well-managed motor carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; and provide for competitive

Senate Bill 713 -- Page 4

motor carrier service at affordable rates for all municipalities, towns, villages, and rural communities of New Mexico.” § 65-2-81 NMSA 1978. As indicated above the Commission’s authority to regulate property carriers has been severally limited by the federal government, and additional modifications to the Act should be considered. SJM 41 is a vehicle for studying the changes that may be necessary to update the Motor Carrier Act.

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