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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12

SPONSOR Martinez LAST UPDATED 02/08/12 HB _____

SHORT TITLE No Motor Vehicle Citations in Certain Cases SB 91/aSPAC

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI*	NFI*	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- Taxation & Revenue Department (TRD)
- New Mexico Corrections Department (NMCD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 91 changes the time period for transmitting to TRD a report of conviction of any person of a felony in which a motor vehicle was used in its commission from the proposed twenty days back to ten days (as required under existing law).

Synopsis of Original Bill

Senate Bill 91, endorsed by the Courts, Corrections and Justice Committee, amends relevant sections of the Motor Vehicle Code to provide that a person cited for no vehicle registration, insurance or driver's license shall not be convicted if the person can produce evidence in court of compliance at the time the citation was written. It also makes failure to register a vehicle a misdemeanor.

The bill separates the statutes referring to suspended and revoked licenses: Section 66-5-39 addresses driving with a suspended license, and new section 66-5-39.1 addresses driving with a revoked license. SB 91 amends existing law by providing, as to driving with a suspended license, the motor vehicle being driven may rather than shall be immobilized.

SB 91 amends Section 66-8-116 to change certain offenses from traffic misdemeanors to penalty assessment misdemeanors. It also changes the amounts of penalty assessments for certain penalty assessment misdemeanors.

SB also amends Section 66-8-135 to require the court to notify the Department if a defendant fails to appear on a charge of violating a law relating to motor vehicles; revises and clarifies the contents of the abstract of record that a court is to submit to the Department upon final disposition; and requires that a court's failure or refusal to comply with this section be willful to constitute judicial misconduct.

The effective date of this bill is July 1, 2012.

FISCAL IMPLICATIONS

The AOC notes that the changes promote efficiency and hence may contribute to cost reduction, while maintaining fairness and the protection of the public, but it is impossible to quantify any potential effect. The NMCD reports that offenders convicted of Motor Vehicle Code misdemeanors would be incarcerated, if at all, in county jails. Finally, although Section 8 of the bill changes seven violations that are currently traffic misdemeanors (with the possibility of jail time) into penalty assessment misdemeanors and imposes monetary penalties ranging from \$20 to \$300 for those violations, as well as increasing two other assessments, the TRD anticipates no fiscal impact.

SIGNIFICANT ISSUES

As to an amendment relating to reporting of certain convictions, the TRD calls attention to an amendment in Section 9 regarding records of traffic cases, which it advises violates federal mandates enacted by the Federal Motor Carrier Safety Administration (FMCSA), and could result in a loss of federal highway funds. Although the AOC comments that extending the time period, on page 21, line 6, for filing reports of any conviction of any person of any felony if a motor vehicle was used in the commission of that felony from ten to twenty days allows time for the defendant to appeal, the TRD advises that this change in reporting is contrary to the FMCSA mandates, which require a report within 10 days of conviction. The TRD warns:

FMCSA oversees how New Mexico issues commercial driver's licenses. It requires MVD in enact certain laws in order to meet its compliance guidelines. Federal highway funding is given to New Mexico contingent upon New Mexico meeting the FMCSA mandates.

Similarly, the TRD questions whether the phrase "final disposition" on page 19, line 13 is sufficient to include failures to appear, as the same FMCSA mandates apply to these circumstances as well.

The AOC comments that making violation of the statutory registration requirement a traffic misdemeanor will reduce confusion between law enforcement, which currently issues citations

for the violations of this statute, the Sentencing Commission, whose charge table does not include this statute, and the courts, who would like to cooperate with the Sentencing Commission in the use of its charging table in their new case management system. Additionally, the AOC believes that making the offenses specified in the amendments to Section 66-8-116 penalty assessments instead of traffic misdemeanors removes the possibility that a defendant cited for such an offense shall be subject to potential incarceration. Such a change still protects the public safety and welfare while simplifying the enforcement of these provisions of the Motor Vehicle Code.

TECHNICAL ISSUES

The TRD calls attention to conflicting language in Section 66-5-39, otherwise being amended in Section 5, that is not addressed in SB 92. This section applies when a person's driving privilege is suspended, but then requires knowledge that the person's driver's license is suspended. In order to avoid confusion, the TRD recommends that after the word "license" on page 7 line 15, the phrase "or privilege to drive" be added. The same change might be considered in the new section for driving on a revoked license on page 9, line 21. There have been magistrate and municipal courts that use the conflicting language to dismiss tickets because the person's license was already suspended or revoked.

Additionally, the TRD points out that the existing language in Section 66-5-39 regarding extensions of periods of suspension "for a like period" on page 9, lines 5 through 9, may be confusing, since some suspension are for indefinite periods. For example, if a person does not pay a ticket, that person's driving privileges are suspended until the ticket is paid, perhaps three years later. Under this directive, does MVD suspend for three years since that would be the "like" period? The TRD suggests the law would be clearer if it just stated the specific length of the suspension period – one year would be consistent with Section 66-5-32.

MD/amm:svb