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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
 SPONSOR Griego LAST UPDATED 02/21/13 HB _____
 SHORT TITLE Commercial Driver's License Disqualification SB 191/aSJC
 ANALYST Boerner

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	(\$18,000.0) * Federal Funds	(\$36,000.0) * Federal Funds	Recurring	Road Fund

(Parenthesis () Indicate Revenue Decreases)

*Failure to enact this or a similar bill could result in the loss of federal revenue. See Fiscal Implications.

SOURCES OF INFORMATION

LFC Files

Responses Received From (regarding the original bill only)

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

Department of Transportation (DOT) -Traffic Safety Division

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee (SJC) amendments to Senate Bill 191 clarifies the conditions under which a person can be disqualified for life from obtaining a CDL to more clearly comply with federal Motor Carrier Safety Administration regulations. Specifically, the Department shall disqualify a person from driving a commercial motor vehicle for life if the person *is convicted of using* any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance. Language including "the possession with intent to manufacture, distribute or dispense a controlled substance" is stricken.

The SJC amendments also restore previously-stricken language to indicate that a person can be disqualified from driving a commercial motor vehicle for certain periods of time if convicted of more than one serious traffic violation while driving a commercial motor vehicle.

Synopsis of Original Bill

Senate Bill 191 amends Section 66-5-68 NMSA 1978 of the Motor Vehicle code to indicate that disqualification for a commercial driver's license can occur when certain violations are committed while driving any motor vehicle as opposed to a commercial motor vehicle as in current statute. More specifically:

1. The Department shall disqualify a person from driving a commercial motor vehicle for life if the person uses any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.
2. The bill also provides for disqualification if an offender is convicted of serious traffic violations under certain conditions while driving any motor vehicle.

FISCAL IMPLICATIONS

This bill brings New Mexico into compliance with Federal Motor Carrier Safety Administration (FMCSA) regulations by addressing an outstanding audit finding from the 2008 FMCSA audit. If New Mexico is found to be non-compliant, the FMCSA can withhold highway funds.

The regulations enacted by the FMCSA require that New Mexico take a lifetime disqualification action against anyone who uses a motor vehicle to commit a felony involving controlled substances. The regulation is Title 49, § 383.51.

By failing to be in compliance with federal law, the federal government would withhold from the DOT federal funding of approximately \$18 million the first year and \$36 million in each subsequent year of non-compliance.

The 2008 FMCSA audit finding for New Mexico:

49 CFR 384.217 – Drug Offenses

Item 307 – Impose Lifetime Disqualification For Drug Offense. New Mexico does not have the express authority to impose a lifetime disqualification on a CDL holder convicted of using any type of motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance as required by 49 CFR § 384.217. NMSA § 66-6-68(E) applies only to violations committed in a CMV. (Per 2008 Legal Review)

New Mexico does not receive felony convictions from New Mexico federal courts for the offense of using a vehicle in commission of a felony involving manufacturing, distributing, or dispensing a controlled substance (ACD code A50). New Mexico is unable to identify such convictions to apply the lifetime disqualification for these offenses occurring in New Mexico. (Per 2008 Operational Review)

Federal Title 49, Section 384.401 reads:

§ 384.401 Withholding of funds based on noncompliance.

(a) Following the first year of noncompliance. An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) Following second and subsequent year(s) of noncompliance. An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

[72 FR 36788, July 5, 2007]

Any reduction in federal highway funds would reduce, impair, and delay current and future construction projects.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The DOT will be at risk of losing Federal Motor Carrier Safety Administration highway funds if New Mexico is found non-compliant with FMCSA regulations.

CEB/bm:svb