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FISCAL IMPACT REPORT

SPONSOR Maestas **ORIGINAL DATE** 1/30/2018
LAST UPDATED _____ **HB** 271

SHORT TITLE Revise Certain Criminal Penalties **SB** _____

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown, may generate savings and impact revenues	Recurring	General Fund and Multiple Other State Funds			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Office of the Public Defender (LOPD)

Responses Not Received From

Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Administrative Office of the District Attorneys (AODA)
 Office of the Attorney General (NMAG)
 Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 271 amends statutes governing the following offenses:

- Littering, Section 30-8-4 NMSA 1978
- Vehicle Registration, Section 66-3-1 NMSA 1978
- Prohibited acts and penalties, special registration plates and parking placards, Section 66-3-16.1 NMSA 1978:

- A. False information to acquire
- B. Person unlawfully using plate or placard
- C. Failure to surrender parking placard
- Improper display of registration plate, Section 66-3-18 NMSA 1978
- Horseless carriage registration, Section 66-3-27 NMSA 1978
- New owner to secure transfer of registration and new certificate of title, Section 66-3-103 NMSA 1978
- Expiration of dealer plates, Section 66-3-403 NMSA 1978
- Special registration plates, Section 66-3-409, 66-3-411 through 66-3-417 and 66-3-419 through 66-3-424.28 NMSA 1978
- Bicycles, required acts (Sections 66-3-701 through 66-3-707). Section 66-3-701
- Improper equipment, Sections 66-3-801 through 66-3-806, 66-3-846 and 66-3-846.1 NMSA 1978
- Vehicles without required equipment or in unsafe condition, Section 66-3-901 NMSA 1978
- License carried and exhibited on demand, Section 66-5-16 NMSA 1978
- Pedestrian control signals, Sections 66-7-106 66-7-108 NMSA 1978
- Pedestrian violations, Sections 66-7- 334, 66-7-335, 66-7-338 and 66-7-339 NMSA 1978
- Riding improperly on motorcycles
- Restriction on use of video screens in motor vehicles, Section 66-7-358 NMSA 1978
- Driving on mountain highways, Section 66-7-359 NMSA 1978
- Coasting prohibited, Section 66-7-360 NMSA 1978
- Animals on highway in darkness, Section 66-7-363 NMSA 1978
- Failure to appear, Section 66-8-126 NMSA 1978
- Boat numbering violation, Sections 66-12-4, 66-12-5 and 66-12-6.5 NMSA 1978
- Boat equipment violation, Sections 66-12-7 and 66-12-10 NMSA 1978

The bill increases the penalty assessments on many existing penalties, and increases the amount of assessments and adds newly imposed assessments.

HB 271 repeals Sections 30-8-12 (conduct offensive to public well-being, petty misdemeanor), 30-8-13 (unlawfully permitting livestock upon public highways, petty misdemeanor), and 66-3-424.2 (standardized plate, retired NM State Police officers) NMSA 1978.

FISCAL IMPLICATIONS

The bill proposes to add some penalty assessments which could impact the amount of revenues received by the courts and TRD. The LFC does not have access to and did not receive data that could be used to generate a revenue or operating budget fiscal impact projection. Savings realized from fewer court proceedings and additional revenue could potentially reduce strain on the general fund and impact other state funds that revenues from penalty assessments are currently credited to other state funds, as outlined in 66-8-119 NMSA 1978.

LOPD explains “the proposed reduction in penalty for many of these offenses could only have a positive effect on the workload of the LOPD, rendering the agency better able to address its constitutionally mandated duty of defending New Mexicans accused of more serious crimes. To the extent this results in fewer trials, fewer additional resources would have to be allocated to our

stretched-to-the-limit criminal justice system. Such benefits should inure to the LOPD, police, DAs, NMAG, courts, counties and possibly NMCD”

LOPD also states “further, upon enactment of HB 271 offenders would be likely to simply pay the penalty assessments, whereas the in-court battles under the present statutory scheme guarantees wasted resources and “time served” punishments in lieu of revenue. Enactment of HB 271 would result both in an increase in revenue and a decrease in pointless waste of LOPD, police, court, county and DA resources

The analysis below is based on last year’s House Bill 428. The only difference in HB 271 compared with last years bill is the removal of 30-9-14.1 and 30-9-14.2 NMSA 1978, governing indecent dancing and indecent waiting.

AOC explained via email that in order to estimate how many people take the offer to accept the penalty assessment and pay the Motor Vehicles Department (MVD) directly (Section 66-8-117), AOC would need to contact MVD and compare the number of cases where people chose to appear in court and then extrapolate that percentage to the new charges that would become penalty assessments under the bill.

In order to properly estimate the cost savings of the bill on the courts, the AOC would have to analyze a number of factors:

1. the average number of cases containing the charges impacted by this bill processed by the courts each year;
2. the number of cases that carry other charges which would still require court hearings (such as DWI cases that have other traffic charges attached), because the court would still have to spend the same amount of time and resources adjudicating those cases; and
3. after estimating the number of cases that are purely penalty assessments under the new bill, AOC would then have to determine which of those cases are already covered by local rules which already allow the court to assess a penalty on some of these charges. For example, the Dona Ana Magistrate Court has Local Rule Three, which makes some Motor Vehicle Code violations "local penalty assessments." Several courts have similar local rules, so those charges that are already covered by local rule would not lead to cost savings in those courts by making them penalty assessments in this bill.

The AOC stated once all of those factors are considered, and possibly others that will become more clear as the study progresses, the AOC may be able to develop a reasonable estimate of the cases that would be affected by this bill and the fiscal impact that it would have on the courts. This project would take several months to complete.

The Taxation and Revenue Department stated via email that the bill does not directly affect MVD programs as the bill mainly makes changes to criminal infractions.

The report of the Legislative Finance Committee to the Fifty-Third Legislation Volume 1 states on page 52 “the criminal justice system has been faced with the paradigm of ‘tough on crime’ sentencing enhancements and reform initiatives juxtaposed with reduced budgets and limited staffing. Courts struggle to keep the doors open with reduced staff, district attorneys are barely able to screen cases for trial due to extreme vacancies, and the public defender is refusing cases because caseloads are unmanageable to the point of unconstitutionality. When core functions of

the justice system are delayed or hindered, justice is effectively denied.” By relaxing penalties, this bill could relieve the caseloads faced by the courts, allowing the judiciary to better address large issues.

The AOC states “the bill’s penalty revisions in many instances reduce penalties and may obviate the need for some court proceedings. Additional fees defined by Section 66-8-116.3 will still be assessed. In decreasing the incentive to resolve tickets (see “Significant Issues” #2, below), fewer penalty assessments may be paid, as well as the accompanying fees that are credited to court-related funds. This reduction in funding could impact court resources and the provision of services and programs within the courts. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.”

SIGNIFICANT ISSUES

The AOC submitted the following detailed analysis in response last year’s HB 428:

1) Throughout the Motor Vehicle Code (MVC), penalties vary and are at times pursuant to Section 31-19-1 or pursuant to Section 66-8-7 NMSA 1978, or not specified. Section 31-19-1 provides for a term of imprisonment of less than one year or a fine of \$1,000 or less or both imprisonment and fine in the discretion of the judge for a misdemeanor. A petty misdemeanor carries a term of imprisonment of six months or less or a fine of \$500 or less or both imprisonment and fine in the discretion of the judge. Section 66-8-7 NMSA provides that a violation of the MVC is a misdemeanor unless declared a felony, and provides a misdemeanor penalty of a fine of \$300 or less or a term of imprisonment of 90 days or less or both. In revising current penalties as penalty assessment misdemeanors, the bill is removing the discretion of the judge to adjust a sentence for the benefit of the public or an offender, given the offender’s needs and circumstances and record, the circumstances surrounding an offense and the need to protect the public and rehabilitate the offender.

2) The bill amends Section 66-8-126 NMSA to provide that a failure to appear in court after the issuance of a traffic citation is a penalty assessment misdemeanor carrying a \$50 fine. The bill amends Section 66-5-30 NMSA 1978 to remove as cause for license suspension that the licensee has failed to fulfill a signed promise to appear or notice to appear in court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code (MVC) or pursuant to the laws of the tribe, or that the licensee has failed to pay a penalty assessment within 30 days of the date of issuance by the state or a tribe. The bill amends Section 66-5-39 NMSA 1978 to provide that driving while a license is suspended is a penalty assessment misdemeanor, carrying a \$100 fine. Under the bill’s amendments, a licensee could fail to appear without risking a license suspension, calling into question the incentive for a licensee to appear in court upon a promise or notice to appear. Additionally, if driving with a suspended license leads to a fine of \$100, rather than the current Section 66-5-39 misdemeanor penalty requiring not less than 4 days or not more than 364 days of imprisonment or participation in a certified alternative sentencing program and the imposition of a fine of \$1,000 or less and potential 30-day vehicle immobilization and mandatory extension of the period of suspension for an additional like period, where is the incentive to comply with licensing requirements or the payment of the \$100 fine? The bill’s amendments remove the court’s discretion in crafting a sentence for the offense of driving while a license is suspended that will adequately protect the public, as

well as punish the offender.

3) A license can be suspended for a number of reasons, including traffic violations, DUI offenses, and failure to pay child support. Section 40-5A-8 NMSA 1978 permits a district court, as part of a judgment and order for support, to require a person who has failed to pay child support to surrender a license. Section 40-5A-6 NMSA 1978 provides that the failure of a licensee to comply with a judgment and or for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. Section 40-5A-3(G) NMSA 1978 defines license to include a driver's license. If, under the bill, driving with a suspended license is a penalty assessment misdemeanor carrying a \$100 fine pursuant to Section 66-8-116 NMSA 1978, will a court still be able to enforce child support obligations through license suspension? If the \$100 penalty is paid, is the license still suspended due to a failure to pay child support? How does the bill's amendment affect the court's ability to address policy reasons for the license suspension?

4) There is a question as to the effect of the bill's amendments on reciprocal agreements to suspend licenses. (e.g. license suspended in Arizona, suspension recognized in New Mexico).

LOPD explained in response to HB 271:

The *de minimis* offenses addressed by the bill's reforms already are usually punished by nothing more than fines, but their present classification as crimes punishable by imprisonment require the involvement of LOPD at court. Regular case files are opened upon application of the offenders, and staff time required is the same as for any other case. Admittedly, attorney time tends to be less implicated and requires less experienced practitioners, but the drain on LOPD resources adds up. The bill provides a nobody-loses, commonsense solution to this drain - that is actually likely to enhance revenue collection.

Under present statute, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. The bill would have the effect of somewhat reducing indigent defense workload, which is likely to reduce need for increases in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the effect on required resources would be necessary after enactment.

PERFORMANCE IMPLICATIONS

LOPD states last year "enactment of the bill would likely allow LOPD administration to allocate resources to more pressing needs involving cases concerning actual danger to public safety."

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