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FISCAL IMPACT REPORT

SPONSOR: Sanchez DATE TYPED: 03/01/01 HB 920
 SHORT TITLE: Implied Consent Tax Hearings SB _____
 ANALYST: Valdes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Fiscal Implications Section.		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General
 Taxation and Revenue Department
 Administrative Office of the Courts

SUMMARY

Synopsis of Bill

House Bill 920 amends NMSA Section 36-1-22 which presently grants the Attorney General and district attorneys implied authority to act on behalf of other agencies to settle or compromise civil actions in which the Attorney General or district attorneys are involved. The amendment limits the ability of the Attorney General and district attorneys to bind the Taxation and Revenue Department without the consent of the secretary of Taxation and Revenue Department or the secretary's designee.

Significant Issues

According to the Attorney General's Office, the bill would strip the Attorney General and district attorneys of authority to approve and oversee litigation involving actions initiated under the implied consent act. The Attorney General is the state's chief legal officer in charge of all litigation involving the state and its officials. This bill would give the Taxation and Revenue Department Secretary power that has clearly been designated to the Attorney General by our state Constitution.

The apparent intent of the bill according to the Administrative Office of the Courts is to require that the District Attorney or the Attorney General obtain the express consent of the of Taxation and Revenue Department in plea bargains primarily in driving while intoxicated (DWI) cases. Historically, the District Attorney has entered plea bargains in DWI cases that have been held by the courts

to bind, and bar, the Taxation and Revenue Department in other later revocation actions. This amendment will mean that there will be no bar to later revocation action by Taxation and Revenue Department if express consent of that department was not obtained.

According to the Taxation and Revenue Department, the issue being addressed is whether the Department should continue to be bound by plea bargain agreements reached by the District Attorneys on DWI charges. Frequently a person who has had multiple prior convictions and is once again arrested and charged with DWI will agree to plead guilty to a first offense. By law, the Department must conduct a separate hearing on whether the person's driver's license should be revoked. From its own records the Department will know of the person's prior convictions and would revoke the license accordingly--were it not for the plea bargain. The more fundamental question is: how much time and resources do we as a society really want the District Attorneys to spend on prosecuting second and subsequent offenders?

The Taxation and Revenue Department's findings in Implied Consent hearings may be subjected to review by the district court (Section 66-8-112, Subsection G NMSA 1978), although the review is limited to "*whether reasonable grounds exist for revocation or denial of the person's license to drive based on the record of the administrative proceeding.*"

FISCAL IMPLICATIONS

There is no fiscal impact on the Taxation and Revenue Department or the Attorney General's Office. The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or alternatively, avoided, by the bill. If the Taxation and Revenue Department does not agree to a proposed settlement, this may increase the number of trials.

ADMINISTRATIVE IMPLICATIONS

The bill would have no substantial administrative impact on the Taxation and Revenue Department, however, the clarification proposed in the bill would have a positive impact on administration and could result in some decreased challenges to department actions.

The bill would add administrative cost to train judges and staff about the its impact to the courts according to the Administrative Office of the Courts. Judges will need to ensure that a defendant understands the implications of a plea bargain without the consent of the Taxation and Revenue Department.

TECHNICAL ISSUES

The Administrative Office of the Courts states that the amendment does not address what will happen if the Taxation and Revenue Department does not agree to a settlement proposed by the Attorney General or District Attorney. Does the Taxation and Revenue Department come in as a party in the case? More likely, the defendant in the case at hand will either have to accept the plea, knowing that it will not bar later action by the Taxation and Revenue Department, or go to trial. This might be clarified.