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FISCAL IMPACT REPORT

SPONSOR: HTC DATE TYPED: 03/15/01 HB 953/HTRCS/aHFL
 SHORT TITLE: Special Permit Fees SB _____
 ANALYST: Trujillo

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		NFI		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Department of Public Safety (DPS)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Floor Amendments

House Floor Amendments to HB953/HTRCS are as follows:

- Strikes out the provision to increase fees;
- Strikes out subsections O and P which provided one-half of the fees collected from special permits issued would be used by the Motor Transportation Division of DPS for the operation and maintenance of the New Mexico commercial vehicle information systems and network and unused portions of fees collected shall be deposited in the state road fund.

Synopsis of Original Bill

HB953/HTC (1) statutorily recognizes the 1998 reassignment of the Oversize/Overweight Permit Bureau of the Motor Transportation Division from Taxation and Revenue Department to Department of Public Safety; (2) doubles all prevailing oversize/overweight permit fees; (3) earmarks the increase in OS/OW fees for the use of the Motor Transportation Division of DPS for operating and maintaining the New Mexico commercial vehicle information systems and network. The bill has an unusual feature, “unused portions of fees collected by MTD shall be ‘deposited’ in the state road fund.”

The effective date: not stated – 90 days after adjournment (June 17).

Significant Issues

This bill would allow the Motor Transportation Division of DPS to restrict the times of oversize movements.

Jurisdiction of this program was transferred in 1998 when the Motor Transportation Director left TRD to DPS. Fees would remain the same under House Floor Amendment.

FISCAL IMPLICATIONS

DPS reports no fiscal implications.

ADMINISTRATIVE IMPLICATIONS

TRD reports there are no administrative implications on the department. Oversize/Overweight permit fees are collected roughly 50-50 at the ports of entry and centrally. Doubling fee will have a minimal impact on the workload at the ports-of-entry or for the Oversize/Overweight Permitting Bureau.

DPS reports the administrative implications will allow MTD to restrict the times of Oversize/Overweight vehicles to operate.

TECHNICAL ISSUES

TRD reports:

- Making the effective date July 1, 2002 would make taxpayer notification and administrative procedures easier.
- Article IV, Section 15 of the New Mexico Constitution provides, “No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.” There is little case law on this point. In particular there has been no litigation on the use on the propriety of using dummy bills to enact substantive legislation, particularly tax legislation. This bill was originally filed as a “dummy bill”, with no substantive content, and a title that reads, “for the public peace, health, safety and welfare”. The substitute bill is substantive and necessarily goes far beyond “broadening the act and making it more comprehensive as to details” because *the original bill had no content*. This standard was determined in *Black Hawk Consolidated Mines Co. V. Gallegos*, 52 NM 74, 191 P.2d 996 (1948). The constitutionality of the entire act is thus suspect, no matter how well intentioned.
- This proposal comes on the heels of the *C.R. England v. MTD* lawsuit, in which the American Trucking Association successfully asserted that the Hazardous Waste Fee permitting structure unconstitutionally discriminates against interstate commerce. The existing OS/OW fee structure is similar to that of the hazardous waste fee. It creates a substantial benefit for those vehicle owners that can take advantage of an annual permit fee because it is only four times the cost of a single trip fee. Hence doubling the advantage raises the likelihood that the new OS/OW fee structure will run afoul of the ATA on similar grounds.
- The fee increase is implicitly appropriated to DPS. The phrase “MAKING AN APPROPRIATION” is included in the title of the bill. However, the funds will be available through the “BAR” process for spending, even during FY 2002. However, the phrase “unused portions of fees collected by the motor transportation division ... shall be deposited in the state road fund”, should be changed to the usual reversionary language, “unexpended and unappropriated balances at the end of each fiscal year in the DPS administrative fund attributable to the funds collected pursuant to subsection O of this section shall be reverted to the state road fund.” This puts a clear time frame on the reversion.

OTHER SUBSTANTIVE ISSUES

TRD reports:

3. The industry is quite sensitive to the use of funds imposed over and above the fees imposed for registration, special fuels tax and weight-distance tax.

DPS reports this bill will allow MTD to impose the time restrictions for certain motor vehicles.

LAT/njw:ar