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FISCAL IMPACT REPORT

SPONSOR Grubestic DATE TYPED 2/21/05 HB _____
 SHORT TITLE Commercial Driver's Changes SB 243/aSJC
 ANALYST Rosen

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$14,100.0 (See Fiscal Implications)	\$28,200.0 (See Fiscal Implications)	Recurring	Federal Aid Highway Funds to New Mexico

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Public Safety (DPS)
 Taxation and Revenue Department (TRD)

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee amendment to Senate Bill 243 changes definitions and provisions to comply with federal requirements:

- amends Section 3 of the motor vehicle code replacing "shall not" with "It is unlawful to" for an employer to knowingly allow, require, permit or authorize a driver to drive a commercial vehicle under certain circumstances;
- eliminates TRD's responsibility to develop a medical fitness test for applicants;
- requires the applicant, rather than TRD, to certify that the commercial vehicle used to take the test is the same class and representative of the same endorsement for which the applicant has applied;
- provides that the period of disqualification of holders of commercial driver's licenses shall run concurrently with any revocation or suspension for the same offense; and
- adds another reason for disqualification if the person submits to a chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of

four one hundredths or more if the person is driving a commercial vehicle.

Synopsis of Original Bill

Senate Bill 243 makes changes to the Motor Vehicle Code relating to commercial drivers licenses, some of which are needed to bring the state into compliance with federal law governing commercial driver's licenses (CDLs):

Section 1: The definition of "conviction" is amended to comply with the mandated federal definition and expands the definition of "conviction" in the current Motor Vehicle Code to include an administrative determination of a violation of the Implied Consent Law (with regard to commercial driver's licenses); forfeiture of bail; payment of a fine or court cost; and a violation of a condition of release without bail. Current law defines "conviction" to include a plea of guilty or *nolo contendere* or a finding of guilt by a court. The expanded definition allows the consideration of events such as bail forfeiture or release violations when determining whether enhanced sentencing for motor vehicle offenses (DWI for example) is appropriate. It also allows the Motor Vehicle Division (MVD) to impose penalties based upon those events, as opposed to being limited to imposition based upon a plea of guilty or adjudication of guilt by a court.

Section 2: Provides two new definitions under the CDL Act. Both were developed based on federal recommendations. One definition provides the meaning of "commercial driver's license information system" since the terms are used later in the Act. The terms "director" and "division" refer to the director of MVD.

Section 3: Stipulates that a commercial license will not be issued unless that applicant has passed a medical test developed by MVD. Also, an applicant will not be licensed if they take the test more than three times in a year. Also, if an applicant commits an offense during testing, MVD shall not issue them a license for at least one year.

Section 4: The vehicle used for the skills test portion of an application would have to be in the same class as that of the license being applied for, preventing applicants from applying for licenses allowing them to operate one class of motor vehicle yet taking the driving test using another class of vehicle. (Federal mandate)

Section 5: Requires MVD to use and provide information to the Commercial Driver's License Information System (CDLIS) when issuing or revoking a commercial driver's license, or when a licensee has been convicted, disqualified, or had his/her status changed (within ten days of the MVD's receipt of that information). CDLIS is a central database mandated by the federal Commercial Motor Vehicle Safety Act of 1986 that contains information on all commercial vehicle operators in the United States. CDLIS enables states to exchange information about the driving records and driver's licenses of commercial motor vehicle drivers, helping to assure that only one license is issued to a driver and that drivers currently disqualified are prevented from obtaining a commercial drivers license. (Federal mandates)

Section 6: Sets blood alcohol levels above which a licensee would lose their license, corresponding with federally-mandated levels. Adds new criteria for disqualifying operators from operating commercial vehicles upon a blood alcohol content test result of .08 for those 21 and over, and .02 for those under 21. Current law allows disqualification for violations of the Implied Consent Law, DWI convictions, and other conduct. This bill would expand the disqualification based upon blood alcohol test results alone. (Federal mandate)

Section 7: Allows the Director of MVD to collect penalties immediately upon “conviction” (under the new definition) for violating an “out-of-service” order (a declaration by a law enforcement officer in the U.S., Canada, or Mexico that a driver, vehicle, or motor carrier operation may not operate. (Federal mandate)

Section 8: The director would collect penalties for railroad crossing violations. (Federal mandate)

Section 9: The Department would have to keep motor vehicle records for 55 years, instead of 25 years as under present law.

Significant Issues

According to AGO, expanding the definition of “conviction” to include release condition violations and bail forfeiture, without an actual adjudication of guilt, may be challenged as a violation of due process if that conduct is used to enhance sentences or impose penalties under the Motor Vehicle Act.

PERFORMANCE IMPLICATIONS

MVD will have to provide for medical fitness tests; furnish information to CDLIS within ten days of its receipt; collect penalties based upon the newly expanded definition of “conviction”, and certify the conformity of vehicle use during tests and those vehicles covered by the license applied for.

FISCAL IMPLICATIONS

DOT reports it has received notification from the Federal Highway Administration that the fiscal impact of this bill is quantifiable and probable. According to FHWA, and New Mexico FHWA Division, DOT is facing the withholding of from 5% to 10% of the state’s ordinary level of federal funds. DOT currently is eligible for about \$300 million of FHWA “authorization”, of which about \$282 million is projected to be actually funded in the federal budget. If this bill does not pass, New Mexico appears to almost certainly be faced with the withholding of federal funds amounting to between \$14 million and \$30 million per year.

MVD might be able to collect additional penalties based upon the expanded definition of “conviction” contained in this bill.

ADMINISTRATIVE IMPLICATIONS

TRD indicates moderate impact on MVD. MVD will have to provide for medical fitness tests; furnish information to CDLIS within ten days of its receipt; collect penalties based upon the newly expanded definition of “conviction”, and certify the conformity of vehicle use during tests and those vehicles covered by the license applied for.

TECHNICAL ISSUES

TRD indicates resolution of two substantive issues, not addressed in the current version of the bill, is needed to reach full federal compliance:

1. When there is a revocation and disqualification action for the same violation period, the actions need to run concurrently, except for the 120-day disqualification. MVD already does this by policy, but the federal government requires that it be in statute.
2. The statute needs to state that the state can use “serious offenses” received in a personally-owned vehicle to take a disqualification action against a commercial driver.

DPS indicates this bill conflicts with current statutes related to blood alcohol levels: Section 66-8-102, Section 66-8-110 (b)(3), and 66-8-112.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

A federal audit of MVD related to CDL statutes and processes may result in a qualified audit opinion and jeopardize New Mexico’s share of federal highway funds.

MVD will not be required to submit new information on commercial drivers to the national database, the blood alcohol content level would not be a basis in and of itself or disqualifying a driver, applicants for commercial drivers licenses will not be required to undergo medical fitness tests.

JR/yr