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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/07
 SPONSOR A Lujan LAST UPDATED 2/1/07 HB 241
 SHORT TITLE Prohibit Communication Devices While Driving SB _____
 ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$990.0	\$1.1	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Office of the Attorney General (OAG)
 Public Defender Department (PDD)
 Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 241 prohibits operating a motor vehicle while using a mobile communication device. A mobile communication device is defined as a cellular phone or other device that enables a person to transmit and receive signals from a person or device.

The bill creates several exceptions when a person may use a mobile communication device while operating a motor vehicle. These are:

- To contact a public safety entity,
- For legitimate use by operators of commercial motor vehicles to maintain communication in the performance of job duties,
- While the vehicle is parked, and
- During an emergency.

The bill defines emergency as:

A situation in which a person has reason to fear for their life or safety or believes that a criminal act may be perpetrated against the vehicle operator or another person in the car and must use the mobile communication device while the car is moving or a situation when a driver reports a fire, traffic accident with apparent injuries, serious road hazard, medical or hazardous materials emergency, or a person who is driving recklessly, carelessly or an unsafe manner.

Violation of this law will result in a \$30 penalty assessment misdemeanor.

FISCAL IMPLICATIONS

TRD has provided the revenue estimates as follows:

Revenues resulting from the proposed measure will depend, among other things, on the degree of enforcement, whether the proposed law changes driver behavior and the fraction of the New Mexico population that owns cell phones. The City of Santa Fe reports issuing 1,648 citations in 2004, 2,115 in 2005, and 1,385 citations in 2006. They indicate that a shortage of manpower may be responsible for the recent drop in citations. In any case, convictions for illegal cell phone use have averaged approximately 1,500 annually in recent years. The state's 1.95 million population currently totals roughly 25 times the City of Santa Fe's 80,000. This suggests a total of about 37,500 convictions annually in the State of New Mexico. At \$30 per citation, revenues will total roughly \$1,100,000 annually.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The OAG notes that given the extremely broad definition of mobile communications device, the bill could prohibit the use of cellular telephones, two-way radios, ham radios, GMRS, FRS, citizens band radios, business radios, GPS systems and laptop computers while operating a motor vehicle on New Mexico roads and highways since all of the above listed devices transmit and receive "signals" from another person or device.

It is uncertain that the state can prohibit the operation of federally licensed radio stations while the operator is mobile.

The bill does not define use with respect to the operation of a mobile communications device while driving. It is unclear whether it is intended to prohibit the operation of such devices in receive mode (i.e. merely having the device on while driving), or whether it is intended to prohibit transmitting while driving, or both.

The OAG further notes that NMSA Section 66-8-114 currently requires that any person operating a motor vehicle on the highway give his full time and entire attention to the operation of the vehicle. Operating a vehicle in an inattentive manner is considered to be careless driving under that section.

ADMINISTRATIVE IMPLICATIONS

Administrative impacts on TRD as a result of the provisions in this bill will be relatively modest. However, signs indicating that New Mexico prohibits cell phone use while driving will probably need to be posted by the New Mexico Transportation Department, and considerable driver education costs will probably be borne by New Mexico agencies.

TECHNICAL ISSUES:

TRD raised the following issues:

- The proposal does not mention whether use of hands-free (ear piece or voice activated) devices will be allowed while driving. As written, the bill does not allow use of hands-free devices while driving, as is the case with the Santa Fe ordinance.
- On page 1- line 23, legitimate is not defined, hence enforcement will be based on subjective interpretation, especially when “legitimate” is referring to the performance of job duties.
- On page 1 – line 24, commercial motor vehicles should be clarified. Several combinations of vehicles and what they tow and how they are used that determines if it is a commercial vehicle under New Mexico law.

OTHER SUBSTANTIVE ISSUES

TRD provided the following information from the Insurance Information Institute web site:

- The number of state legislatures debating measures that address the problem of cell-phone use while driving and other driver distractions continues to rise. According to the National Conference of State Legislatures, as of November 2006 14 states had passed laws banning or restricting young drivers from using cell phones.
- In December 2005 the National Highway Traffic Safety Administration (NHTSA) and the National Center for Statistics and Analysis released the results of their National Occupant Protection Use Survey (NOPUS), which found that in 2005, 6 percent of drivers used hand-held cell phones, up from 5 percent in 2004. The survey also found that the jump was most noticeable

among women (up to 8 percent from 6 percent in 2004) and young drivers ages 16 to 24 (up to 10 percent from 8 percent in 2004). The percentage of men using cell phones rose from 4 to 5 percent over the same period. Finally, the survey found that the number of drivers using headsets rose from 0.4 percent in 2004 to 0.8 percent in 2005. The NOPUS is a probability-based observational survey. Data on driver cell-phone use were collected at random stop signs or stoplights only while vehicles were stopped and only during daylight hours.

- A study released in April 2006 found that almost 80 percent of crashes and 65 percent of near-crashes involved some form of driver inattention within three seconds of the event. The study conducted by the Virginia Tech Transportation Institute and the NHTSA breaks new ground. Earlier research found that driver inattention was responsible for 25 to 30 percent of crashes. The new study found that the most common distraction is the use of cell phones, followed by drowsiness. However, cell-phone use is far less likely to be the cause of a crash or near-miss than other distractions, according to the study. For example, while reaching for a moving object such as a falling cup increased the risk of a crash or near-crash by 9 times, talking or listening on a hand-held cell phone only increased the risk by 1.3 times. The study tracked the behavior of the 241 drivers of 100 vehicles for more than one year. The drivers were involved in 82 crashes, 761 near crashes and 8,295 critical incidents.

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