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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/09  
 SPONSOR Rehem LAST UPDATED 03-10-09 HB 304/aHTRC  
 SHORT TITLE Increase DWI Chemical Test Fees SB \_\_\_\_\_  
 ANALYST Lucero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$199.5	\$199.5	Recurring	Crime Laboratory Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Taxation and Revenue Department (TRD)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of HTRC Amendment

House Taxation and Revenue Committee (HTRC) amendment to House Bill 304 proposes a fee increase that is less than that in the original bill. HTRC proposes a fee of \$80.

#### Synopsis of Original Bill

House Bill 304 increases the additional fee imposed under Section 31-12-7 NMSA 1978 by the court on persons convicted of a violation of Section 66-8-102 NMSA 1978 or a violation of a municipal ordinance that prohibits driving while under the influence (DWI) of intoxicating liquor or drugs. The fee would be increased from \$65 to \$100.

## **FISCAL IMPLICATIONS**

The HTRC amendment reduces the expected revenue.

19,000 arrests per year x 70% conviction rate x \$15 fee increase = \$199.5 thousand additional fees.

The Taxation and Revenue Department (TRD) revenue impact assumes:

19,000 arrests per year x 70% conviction rate x \$35 fee increase = \$465.5 thousand additional fees.

Section 31-12-9 NMSA 1978 provides that “all fees collected pursuant to the provisions of 31-12-7 and 31-12-8 NMSA 1978 shall be transmitted monthly to the Administrative Office of the Courts (AOC) for credit to the crime laboratory fund.” This fund is appropriated to the AOC to pay for laboratory and testing costs related to DWI and chemical drug testing. AOC distributes funds to the Department of Health Scientific Laboratory Division (SLD) and Albuquerque Police Department (APD) Crime Laboratory.

HB304 would increase the annual revenues and help the Scientific Laboratory Division and the APD Crime Laboratory support their DWI testing programs.

## **SIGNIFICANT ISSUES**

The fees are used to defray the costs of chemical and other tests used to determine the level of liquor or drugs in persons suspected of driving while intoxicated.

Expected revenue is based on an average of 19,000 arrests per year with a 70% conviction rate. This assessment is collected to offset lab fees. All defendants convicted of a DWI are assessed this fee, whether or not the testing actually involved any lab fees or analysis. The vast majority of those arrested for a DWI either submit to the breath analysis test or refuse testing altogether; however, this would not affect the collection of this additional revenue.

The fee increase will benefit the State lab and/or labs doing analysis for the state. If the defendant requested an additional blood test, other than the one ordered by law enforcement at the time of arrest, the defendant is obligated to pay that cost; thus, the lab would not be impacted.

The DOH Scientific Laboratory Division and the Albuquerque Police Department Crime Laboratory perform all of the blood testing for alcohol in DWI cases for New Mexico- APD Crime Laboratory does this for Albuquerque cases and the Scientific Laboratory Division for the rest of the state. In addition, the Scientific Laboratory Division alone performs all drugs testing for DWI throughout the state of New Mexico.

## **PERFORMANCE IMPLICATIONS**

HB 304 would support the Strategic Plan FY'10, System Objective 5: Improve the State Laboratory's ability to provide laboratory analytical services to State programs. Increasing the DWI fee collected would allow the laboratories to recoup unfunded mandates and properly serve the DWI programs, by funding vacant staff positions, purchasing and repairing sophisticated analytical equipment required to support the state DWI program.

**ADMINISTRATIVE IMPLICATIONS**

HB 304 would enable the Scientific Laboratory and the APD Laboratory to recoup the increased costs of their DWI testing programs, which have grown significantly since the fee was last increased in 1997.

**OTHER SUBSTANTIVE ISSUES**

The DWI Crime lab fee, assessed from individuals convicted of DWI, is a primary funding source for the DWI testing programs at these two laboratories. The fee has not been increased for the past 12 years, despite the increasing cost of technology and testing. In addition, the Scientific Laboratory recently expanded its DWI drug test panel from 15 drugs to 90 drugs, at an unreimbursed cost of almost \$200,000 per year and APD Crime lab had to assume the \$200-\$250 cost per case of having blood drawn from individuals arrested for DWI.

Neither SLD nor APD have received funding to support the expansions required by law enforcement and both are struggling to keep up with the demand from law enforcement and courts. Without the increase proposed by HB 304, the Scientific Laboratory Division of DOH and the APD Crime Laboratory will not have the funds required to maintain staff and analytical instrumentation that are needed to keep up with the demands of the state DWI program. Testing will fall behind, causing DWI cases to be dismissed for lack of timely prosecution. The fee increase will enable both laboratories to support the demands of the DWI program.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If House Bill 304 is not passed, the DWI crime lab fee, charged to individuals convicted of DWI to defray the cost of laboratory testing on their case, will not increase from \$65 to \$100.

DL/mc