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FISCAL IMPACT REPORT

SPONSOR Parks **ORIGINAL DATE** 2/16/09
LAST UPDATED 2/19/09 **HB** 417/aHCPAC
SHORT TITLE DWI License Revocation Hearings by Phone **SB** _____
ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Taxation and Revenue Department (TRD)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Department of Transportation (DOT)

SUMMARY

Synopsis of HCPAC

House Consumer and Public Affairs Amendments House bill 417, on page 4, line 3, the sentence reading “The hearing may be conducted with all parties, witnesses and the hearing officer participating in person, by telephone or by other appropriate electronic means.” is amended to read “All witnesses shall be sworn in by the hearing officer. The hearing officer may grant a person’s request to participate by telephone or web-cast upon a showing of good cause.”

Synopsis of Original Bill

House Bill 417 amends section 66-8-112 NMSA 1978 to allow license or privilege to drive revocation hearings to be held by phone or by other appropriate electronic means, as well as in person. House Bill 417 strikes the current requirement that the hearing be held in the county in which the offense for which the person was arrested took place. It also indicates that a revocation hearing shall be conducted by a hearing officer designated by the secretary of taxation and revenue, striking the current statutory language that they be conducted by “the department or its agent.” House Bill 417 also expands upon the powers of the hearing officer to include administering oaths or affirmations to witnesses, taking testimony, examining witnesses, admitting or excluding evidence and reopening any hearing to receive additional evidence.

House Bill 417 also strikes the current requirement that the “district court, upon thirty day’s written notice to the department [of taxation and revenue], shall hear the case.”

FISCAL IMPLICATIONS

The TRD expects no direct revenue impact, however, an additional number of driver’s license revocations would be expected to be upheld, which would have some affect on the Ignition Interlock Fund and eventual driver license reinstatement fees.

SIGNIFICANT ISSUES

The TRD reports that they currently conduct driver license revocation hearings by phone. The bill (on page 4, lines 5 and 6) provides TRD with the explicit authority to conduct the hearings “by telephone or other appropriate electronic means.” TRD gave itself this authority by regulation; however, because of a Court of Appeals decision the current regulation is insufficient to overcome challenge on appeal. TRD requires this additional specific statutory authority to conduct hearings by telephone or other electronic means to insure hearing results are not thrown out on appeal due to this “technicality”.

The DOT cites Motor Vehicle Division data showing that 2,200 DWI related license revocation cases were dismissed in 2007 because law enforcement officers were unable to attend the hearing. House Bill 417 would allow law enforcement officers to participate in the administrative license revocation hearings via telephone or other appropriate electronic means which may serve to reduce the number of license revocation cases that are dismissed each year. Allowing officers to attend telephonically may help resolve issues related to travel dilemmas, scheduling conflicts, staffing shortages and other demands which would otherwise preclude the officer’s attendance. This update to the law will help improve the efficiency of New Mexico’s license revocation process after a DWI arrest and compliments other license revocation reforms proposed in FY 08.

The AOC states that it is a problem when a license revocation hearing and the related court hearing are scheduled in conflict, law enforcement will usually attend the court hearing in lieu of the license revocation hearing. This can lead to a defendant continuing to drive with a valid driver’s license, possibly for a significant period of time if the court hearing is delayed or postponed. By removing the requirement that license revocation hearings be held only in person and in the county where the offense was committed, HB 417 will make it easier for such revocation hearings to be conducted, which could lead to a reduction in the number of people

who currently drive on valid licenses that may well have been revoked if a revocation hearing had been held.

PERFORMANCE IMPLICATIONS

The TRD notes that allowing DWI revocation hearings to be conducted by telephone or other electronic means facilitates the Department's ability to schedule and conduct hearings in a timely fashion as required by law.

The DOH reports that House Bill 417 is a Governor's bill, part of New Mexico's ongoing effort to reduce DWI and related outcomes. DWI is a serious public health and public safety problem in New Mexico. Each year, DWI is responsible for thousands of motor vehicle crashes and hundreds of motor vehicle crash injuries and deaths here in New Mexico. In 2006, the cost of DWI in New Mexico was estimated at \$1.27 billion.

DWI law enforcement has been shown to be one of the most effective strategies for reducing DWI and related outcomes. Studies have shown that the swiftness and surety of punishment following DWI arrest are critical to the effectiveness of law enforcement in reducing DWI. Administrative license revocation is one of the penalties that have been shown to be effective in reducing DWI and related outcomes. There are roughly 20,000 DWI arrests annually in New Mexico. Unfortunately, each year thousands of these DWI arrests (2,200 in 2007) are dismissed without a hearing because law enforcement officers are unable to attend license revocation hearings. Time conflicts and travel burdens are cited as important reasons that law enforcement officers miss these hearings.

House Bill 417 will update the law to give law enforcement officers a time-saving alternative to in-person participation in administrative license revocation hearings. The likely benefits of this change would include improved efficiency of the administrative license revocation process; decreased administrative burden on police officers (and potentially more time spent on DWI law enforcement); increased hearing attendance by police officers; increased license revocation following DWI arrest; and reduction in DWI and related outcomes as a result of more complete license revocation among offenders and increased perceived risk of revocation among the general driving public.

OTHER SUBSTANTIVE ISSUES

The TRD maintains that this bill will allow the hearing officer to hold an implied consent hearing with participation by telephone or other electronic means. As a result, a driver who has had his/her license revoked may benefit from this alternative method of attendance especially if the DWI arrest took place in another county, which is where the hearing would have to take place. Because these revocation hearings can be scheduled more frequently, affected drivers may benefit from a quicker resolution to the hearing process.

In addition, this bill will allow law enforcement officers to participate in implied consent hearings more often, and rescinded revocations due to officer "no-shows" will be much less common. There are approximately 18,000 DWI arrests per year. Approximately 6,000 of those arrested request hearings. Of those hearings that are held, approximately 37% result in a rescinded revocation due to law enforcement officer "no shows" at the hearing.

The DOT states that law enforcement officers throughout the state are often paid overtime to attend administrative license revocation hearings when they are not on regularly scheduled duty. House Bill 417 may reduce overtime costs significantly for law enforcement departments statewide.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the DPS, officers spend a large amount of time attending to revocation hearings in person. This bill would allow officers to use electronic means to participate in the hearings. This would free up more of their obligated time for actual patrol duties.

CH/mt