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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/09

SPONSOR Arnold-Jones LAST UPDATED _____ HB 758

SHORT TITLE Motor Vehicle Citations and Auto Issuance SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$3.0		\$3.0	Nonrecurring	General fund
		\$75.4	\$150.8	\$150.0	Recurring	General Fund/MVD Operating Funds
		\$271.1	\$226.1	\$497.2	Recurring	General Fund/TRD Revenue Processing

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Taxation and Revenue Department (TRD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 758 proposes to amend Section 3-18-17 NMSA 1978 of the Municipal Code by rescinding the authority of a municipality with a population of 200,000 or greater, including home rule municipalities, to define as a nuisance and address in a nuisance ordinance certain traffic laws, crimes, penalties and procedures that are provided for or similar to provisions of the Motor Vehicle Code.

Under House Bill 758, a municipality will no longer have the authority, pursuant to a nuisance ordinance adopted by the municipality, to assess penalties, fines, fees and costs for failure to obey a traffic sign or signal, including a red light violation, or for a speeding offense or violation. Municipalities will no longer be authorized to retain from the penalties, fines, fees and costs collected an amount equal to the administrative costs associated imposing the penalties, fines, fees and costs, and distribute the balance of the penalties, fines, fees and costs collected to the Administrative Office of the Courts. Local authorities, however, still will be authorized, in accordance with provisions of the Motor Vehicle Code, to regulate traffic and issue citations by means of an automated enforcement system at intersections and in school zones.

House Bill 758 adds the definition of “automated enforcement system” to the definitions provision of the Motor Vehicle Code and adds a new section to the Code, authorizing state and local law enforcement agencies to issue automated enforcement systems to issue citations for alleged violations of state or municipal laws relating to motor vehicles that are punishable as a misdemeanor. According to HB 758, an “automated enforcement system” means “an electronic system that consisting of cameras and a vehicle sensor that automatically records images of each vehicle whose driver violates a traffic law at an intersection or in a school zone by not obeying a stand traffic control device.”

Under House Bill 758, violators of penalty assessment misdemeanors issued by an automated enforcement system, like violators of penalty assessments issued by an arresting officer, shall have the option of accepting the penalty assessment or appearing in court. The Taxation and Revenue Department (TRD) shall have the authority to prescribe the form and content of a uniform automated enforcement system and the procedures by which the citation may be issued and processed.

FISCAL IMPLICATIONS

According to TRD, this bill has no revenue impact; however, there is an additional impact to the administrative operating budget as described below.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. 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.

The bill has the potential to increase caseloads, which may require greater resources in the courts and in the Motor Vehicle Division.

To the extent the numbers of citations increase, the bill has the potential of increasing collections in the general fund and in those fees which are currently designated by statute to be collected in metropolitan and municipal court on convictions, including those for citations under the Motor Vehicle Code: the general fund, the court facilities fee, the court automation fee, the corrections fee, the judicial education fee, the brain injury fee, and the traffic safety fee. Section 35-6-1 NMSA 1978. The AOC is unable to estimate how collections might increase.

SIGNIFICANT ISSUES

The bill puts automated camera citations under the Motor Vehicle Code which means the tickets issued by the camera would be the amounts listed for penalty assessments. Cities could not enact and collect the fines under the current nuisance ordinance. Since the ticket would be issued pursuant to the Motor Vehicle Code, the Motor Vehicle Division (MVD) can use the ticket and post it to the person’s driving record and take any appropriate suspension action.

The Attorney General’s Office notes that HB 758 preempts the field of automated enforcement systems by not allowing municipalities to enact ordinances or regulations that duplicate certain traffic law provisions of the Motor Vehicle Code. A number of statutory and constitutional questions have been raised in various jurisdictions related to Automated Traffic Enforcement

(ATE) ordinances. ATE ordinances have been attacked as amounting to an unlawful revenue raising measure or as improperly delegating government authority to a private vendor. Andrew W.J. Tarr, *Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L.Rev. (2002) (issue of unlawful revenue raising); see also *Leonte v. ACS State & Local Solutions, Inc.*, 123 Cal. App.4th 521 (2004) (delegation of power). Academic commentators have debated whether ATE ordinances violate rights of privacy. See, e.g., Quentin Burrows, *Scowl Because You're on Candid Camera: Privacy and Video Surveillance*, 31 U.L.Rev. 1079 (1997); Mary Lehman, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U.Tol. L.Rev. 815 (2002); Steven Tafoya Naumchik, *Stop! Photographic Enforcement of Red Lights*, 30 McGeorge L. Rev. 833 (1999). ATE ordinances also have been attacked unsuccessfully on due process, Fourth Amendment, and equal protection grounds. See, e.g., *McNeill v. Town of Paradise Valley*, 44 Fed. App'x 871 (9th Cir.2002) (Fourth Amendment); *Shavitz v. City of High Point*, 270 F.Supp.2d 702 (M.D.N.C.2003), *vacated on other grounds sub nom. Shavitz v. Guilford County Board of Education*, 100 Fed. App'x 146 (4th Cir. 2004)(equal protection); *Agomo v. Fenty*, 916 A.2d 181 (D.C. 2007)(due process).

ADMINISTRATIVE IMPLICATIONS

According to TRD-MVD would be required to prescribe the form and content of a “uniform automated enforcement system citation” (as distinct from the existing uniform traffic citation), and procedures for issuance and processing of the new citation. This requirement would have very little administrative impact for MVD.

By moving the automated camera citation from nuisance ordinances to the Motor Vehicle Code, the bill would require MVD and the Revenue Processing Division (RPD) to voucher and process citation payments; post automated enforcement citations to the individual's driving records; and post and microfilm the citations and accompanying documentation. The change would have the following additional manpower requirements and budget impact for MVD and TRD

- MVD:
 - 1 Clerk/Vouchering: 1 x (\$13.61 x 1.33% EB x 2080) = \$37.7 (R)
 - 1 Clerk/Suspensions: 1 x (\$13.61 x 1.33% EB x 2080) = \$37.7 (R)Total MVD Operating Budget Impact: \$75.4
- RPD:
 - 3 Clerks/Processing: 3 x (\$13.61 x 1.33% EB x 2080) = \$113.0 (R)
 - 1 Clerk/Microfilming: 1 x (\$13.61 x 1.33% EB x 2080) = \$37.7 (R)
 - 2 Clerks/Data Entry: 2 x (\$13.61 x 1.33% EB x 2080) = \$75.4 (R)
 - 1 New Microfilm Camera @ \$45.0 (NR)Total RPD Operating Budget Impact: \$271.1 FY10
\$226.1 FY11

Implementation of this bill will a low impact on the Information Technology Division (ITD) if the business flow and rules are the same that are currently in practice with the City of Albuquerque regarding their “Red Light Camera” program. Programs that will be affected:

- Red Light Address Program - 40 hrs (NR)
 - User Acceptance Testing – 20 hrs (NR)
- Total Hours: 60 x \$50 = \$3,000 (NR)

TECHNICAL ISSUES

The definition of an automated enforcement system is very limited and does not include any provision for speeding tickets issued by an automated system.

DL/svb