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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/09

SPONSOR SPAC LAST UPDATED _____ HB _____

SHORT TITLE Railroad Crossing Whistle-Blowing Distance SB 653/SPACS

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Public Affairs Committee Substitute for Senate Bill 653 amends Section 63-3-34 NMSA 1978 (being laws 1878, Chapter 1, Section 8-1, as amended). Subsection A of Section 63-3-34 provides that, except as provided in Subsection B, every railroad corporation shall cause a bell to be attached to each of its locomotives and shall cause the bell to be rung at a distance of not less than eighty rods (1320 feet) from a crossing of any public street, road or highway, also deleting a provision in the statute that the bell shall be of at least twenty pounds weight.

Subsection B stipulates that for a railroad owned by the state or one of its political subdivisions, if the crossing is within a designated quiet zone pursuant to Federal Railroad Administration rules and the maximum allowed speed for a train using the crossing is equal to or less than forty miles per hour, the bell shall be rung not less than three hundred feet from the crossing.

Subsection C stipulates that a railroad corporation violating a provision of Subsection A or B of this section shall be subject to a penalty of one hundred dollars (\$100), one half of which shall go to the informer and the other half of which shall go to the State. The corporation shall also be liable for all damages that may be sustained by any person by reason of noncompliance with the provisions of this section.

In summary Senate Public Affairs Committee Substitute for Senate Bill 653 removes the weight requirement that a locomotive bell be at least 20 pounds; and adds the requirement that a railroad owned by the State or one of its political subdivisions, when in a designated quiet zone and the maximum speed for the train is no more than 40 miles an hour, be required to ring the bell attached to its locomotive at not less than 300 feet from the crossing.

SIGNIFICANT ISSUES

Because it is not a railroad corporation, NMDOT railroad equipment would not be subject to the weight requirement for the use of bells on locomotives at public crossings. NMDOT indicates that it currently owns the railroad line, which includes all grade crossings, between Belen and Lamy and from Lamy to Santa Fe. Additionally, in June 2009, NMDOT is scheduled to acquire from BNSF the existing rail line between Lamy and the Colorado border.

NMDOT indicates that federal law and regulation generally preempts state actions to control railroad company operations and safety and NMDOT recommends a legal review of this bill be undertaken with the federal government to assure that the New Mexico legislature has the authority to impose the additional requirements as set out in SB 653. NMDOT states that “The Federal Railroad Safety Act (FRSA) and accompanying regulations have been held to preempt State tort law with respect to liability arising out of railroad crossings, since the federal law specifically addresses the adequacy of use of warning bells at crossings.”

Should a local government seek to have a quiet crossing installed, it should be aware that pursuant to federal law, all liability arising from such crossings passes to the local government in question.

Section 20106 of title 49 of the United States Code provides in relevant part as follows:

Sec. 20106. Preemption

(a) National Uniformity of Regulation-

1. Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.
2. A State may adopt or continue to enforce a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue to enforce an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order –
 - a. Is necessary to eliminate or reduce an essentially local safety or security hazard;
 - b. Is not incompatible with a law, regulation, or order of the United States Government; and
 - c. Does not unreasonably burden interstate commerce.