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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/13

SPONSOR Rehm LAST UPDATED _____ HB 150

SHORT TITLE Driver's License Revocation Hearing Times SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Attorney General Office (AGO)

New Mexico Sentencing Commission (NMSC)

State Parole Board (PB)

SUMMARY

Synopsis of Bill

House Bill 150 amends Section 66-8-112, NMSA 1978, Revocation of a Driver's License, by allowing a hearing to be conducted by electronic means or in person and by allowing a continuance of 120 days instead of the 90 days allowed in the current statute.

Section D clarifies that the revocation hearing is to be conducted by a hearing officer who is appointed by the secretary. The powers of the hearing officer are delineated in greater detail than the current statute. They include the power to issue subpoenas, administer oaths, take testimony, examine witnesses, admit or exclude evidence and reopen a hearing to receive additional evidence. A party or witness may appear in person or by landline phone or other appropriate electronic means; provided that the person can send and receive documents at the time of the hearing.

Section H clarifies how a person may seek review of the hearing's outcome by filing an appeal pursuant to Rule 1-074, NMRA, Rules of Civil Procedure for the District Courts. This rule governs appeals from administrative agencies to the district courts when there is a statutory right

of review to the district court, whether by appeal, right to petition for a writ of certiorari or other statutory right of review. This rule does not create a right to appeal. The rule sets out the type of paperwork needed and the topics to be covered in the appeal.

FISCAL IMPLICATIONS

None of the respondents indicated there is any fiscal impact related to the bill.

SIGNIFICANT ISSUES

The AGO provides the following information related to electronic hearings:

The New Mexico courts have provided mixed guidance with respect to the permissibility of allowing telephonic hearings under Section 66-8-112. In Evans v. New Mexico Taxation & Rev. Dept., the Court of Appeals addressed the place and manner of conducting Section 66-8-112 hearings. 1996-NMCA-80, 122 N.M. 216. Although the question of the permissibility of telephonic hearings was not before the court, the court offered its view, without deciding the issue, that the court “assume[s]” that the “Department can conduct [Section 66-8-112] license revocation hearings over the telephone without violating constitutional requirements.” 1996-NMCA-80, ¶ 3, N.M. 122 N.M. at 217.

However, the Evans court also expressed concern with respect to the due process implications of conducting Section 66-8-112 hearings telephonically. Namely, the court observed that such hearings may involve critical witness “credibility determinations,” and that “existing case law confirms the importance of in-person hearings when critical credibility determinations are at stake.” 1996-NMCA-80 at ¶¶ 8-10; 122 N.M. at 218-219. Conducting a hearing in person enables the hearing officer to “observe the demeanor of the witness as a means of assessing [witness] credibility.” Id. Despite its misgivings, the court made clear that the legislature may act to permit telephonic hearings, 1996-NMCA-80, ¶ 14, 122 N.M. at 220 (“[t]his is not to say that the legislature could not authorize telephonic hearings”), but that the court “assume[s] the legislature would proceed cautiously in any effort to change requirements in those proceedings where credibility is at issue.” Id.

The AODA offers the concern that the bill may cause delay of prosecution if defense attorneys decide to continue criminal proceedings until after administrative hearings are complete. Delay in time adversely affects prosecution.

MW/bm