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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/13
LAST UPDATED 03/04/13 **HB** 194/HBICS

SPONSOR HBIC

SHORT TITLE Amend Motor Carrier Law Act **SB** _____

ANALYST Soderquist

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
Small, Positive, Indeterminate Increase	Small, Positive, Indeterminate Increase	Small, Positive, Indeterminate Increase	Recurring	State Road Fund, General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates Senate Bill 328 (Motor Carrier Quality of Service Standards)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Public Regulation Commission (PRC)
 Department of Health (DOH)
 Attorney General's Office (AGO)

No Response Received From

Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee (HBIC) Substitute to House Bill 194 amends the Motor Carrier Act, § 65-2A-1 NMSA 1978, which regulates services such as taxis, shuttles, towing, buses, moving, shipping, and ambulances. Changes proposed by the bill include extensive alterations of definitions, the open entry of many types of services, and the restructure of protest processes. This bill does not change the nominal fee amounts charged by the Public Regulation Commission (PRC) but it does redefine what activities are subject to specific fees.

The response from the PRC provides a detailed summary of the proposed changes as follows:

In its “purpose section,” the HBIC substitute removes the economic regulation of passenger, household goods, and nonconsensual towing services, and requires that financial responsibility and safety standards be met “through state licensing and regulation of motor carriers.” The proposed legislation removes the current “public need” requirement to obtain a certificate for motor carriers of persons except ambulances. Instead of the current standard of proving “public need”, the committee substitute requires those intervening/protesting a municipal taxi and scheduled shuttle application to prove that the grant of the application will, or presents the a reasonable potential to, impair, diminish or otherwise adversely affect its existing provision of full-service.

The HBIC substitute implements a new concept of “full service” passenger service whereby municipal taxicab and scheduled shuttle services, in return for providing 24-hour, 7 days a week, 365 days a year centrally dispatched service to all endorsed territory (applicable to municipal taxicab service), and 24-hour, 365 days a year service regardless of the number of actual passengers (applicable to scheduled shuttle service), must provide service to all individuals requesting service. Ambulances, which the HBIC substitute also defines as “full service” carriers, have fully regulated monopoly protection under the proposed legislation. The PRC must deny the application for a new ambulance authority if “the existing ambulance service is provided on a reasonably continuous and adequate basis... or... the [existing ambulance service] is willing and able to provide, and does subsequently provide, reasonably continuous and adequate service within such territory.”

The HBIC substitute requires those protesting an application for a certificate or permit, or for amendment, lease or transfer of a certificate or permit, during the notice period to file a written protest and to prove at hearing potential impairment or adverse impact on its existing full-service operation by the applicant, including an economic analysis related to expenses and revenues of the full-service operation and the anticipated economic, business or functional effect of the proposed service on the existing provision of, or rates for, full-service transportation within the full-service territory. The proposed legislation changes the requirement that motor carriers of persons, except ambulances, and household goods movers prove “fit, willing, and able” to instead prove “fit and able”. “Fitness” would no longer have a financial component but would only require compliance with law and “able” is limited to the provision of continuous and adequate service.

The HBIC substitute allows household goods services to obtain operating authorities without protest. These services will be subject to “file and use” tariffs (discussed in the paragraph below) but the PRC must set a statewide maximum tariff applicable to all household goods services.

The HBIC substitute changes the PRC’s rate regulation from “just and reasonable” rates as determined by the PRC to “file and use” except for nonconsensual towing and full-service carriers. The proposed legislation would not allow higher rates for a full-service carrier or a towing service providing nonconsensual tows until approved by the PRC as reasonable after a streamlined hearing if such a hearing is requested by either the applicant, PRC’s Transportation Division, or if ordered in the discretion of the PRC. If no such hearing is requested during the 20 day notice period, the PRC shall grant the tariff if the tariff application complies with the provisions of the Motor Carrier Act and the rules of the PRC.

The HBIC substitute continues current law that allows for the formation of motor carrier organizations and exemption from state anti-trust laws for tariffed service carriers, which is defined as ambulance, household goods, shuttle, specialized passenger, taxicab or a towing service performing nonconsensual tows. However, the proposed legislation removes the Motor Carrier Acts provisions related to common tariffs for motor carrier organizations.

The HBIC substitute imposes a new requirement for the lease or transfer of a certificate or permit for ambulance service, or full-service passenger service that requires the PRC to deny such an application if the PRC finds, after hearing, that the grant of the application presents a reasonable potential to impair, diminish or otherwise adversely affect the provision of the relevant type of full-service passenger service to the public in the full-service territory or if the application is otherwise contrary to the public interest in the full-service territory.

The HBIC substitute allows for changes in control of a holder of the certificate or permit without hearing through transfer of stock or other legal interest in a holder that is a corporation, partnership, trust or other legal business entity.

The HBIC substitute requires carriers to obtain criminal background reports for all drivers employed by certificated service carriers other than ambulance services carriers and for all other persons employed by certificated household goods service carriers who enter private dwellings in the course of the household goods services.

The HBIC substitute prohibits a claim of trade secret or business confidentiality immunity or privilege to be asserted by the motor carrier in response to such an order or request by the PRC.

The HBIC substitute establishes an unfair and deceptive trade practice under the Unfair Practices Act for a transportation service carrier or its licensee, employee or agent to charge or collect a predatory rate or to undertake a predatory practice in the provision of transportation services. The proposed legislation provides a cause of action to the person who has been damaged or who is likely to be damaged, or the Attorney General as a result of a predatory rate or practice. This remedy is in addition to any administrative, civil, or criminal penalty available to the Attorney General, a District Attorney, or to the PRC.

The HBIC substitute establishes protest or permissive intervention fees in regard to an application for an application for a certificate or permit or amendment of a certificate or permit equal to the application fee of \$250. The proposed legislation establishes a protest or permissive intervention fee in regard to an application for a motion for modification or reconsideration of a grant of temporary authority equal to the application fee for a temporary of \$100, and a protest or permissive intervention fee in regards to an application for lease or transfer of a certificate or permit equal to the application fee of \$200.

The HBIC substitute eliminates the \$15 filing fee applicable to proof of financial responsibility and changes the copying fee from \$1 per page to the charge per page provided by law for governmental agencies. The proposed legislation changes the fee for certifying copies of a record, order or operating authority from \$15 to the charge per page provided by law for governmental agencies.

The HBIC substitute adds permissive language that the PRC may adopt rules permitting the submission and service of documents by facsimile, electronic mail or other electronic transmission.

The HBIC substitute provides that certificates for limousine and tour and sightseeing services issued prior to July 1, 2013 “become certificates for specialized passenger service” and certificates for terminal shuttle, shared-ride, and bingo bus services issued prior to July 1, 2013 become certificates for shuttle service. Certificates for taxi and shuttle services “issued prior to July 1, 2013 shall become void on and after that date” and must be replaced with certificates specifying the nature of service actually provided – municipal or general service for taxis and scheduled or general service for shuttles. The New Mexico Movers and Warehousemen’s Association’s common tariff will “become the individual tariff of each of the individual member carriers of [the Association]” on July 1, 2013. Ambulance certificates will continue unchanged after July 1, 2013.

FISCAL IMPLICATIONS

The Transportation Division Staff at the Public Regulation Commission (PRC) estimates in the last fiscal year the PRC received no more than 20 certificate and permit applications from motor carriers representing limousine, tour and sightseeing, taxicab, shuttle, terminal shuttle, shared ride and bingo bus service, representing a total of \$5,000 in revenue. The staff also estimates that the PRC received no more than 1,500 Form E filings in the past fiscal year representing a total of \$22,500 in revenue.

However, the staff believes the HBIC substitute, if passed in its present form, would generate revenue increases from additional applications – and associated collected fees – for warrants and for certificates and permits for those motor carriers that would, as of July 1, 2013, be under significantly less stringent entry requirements. Further, the proposed legislation would generate revenue from additional tariff filings as a result of the “file and use” system. Finally, the newly created permissive intervention fees would be an additional source of revenue.

Overall, the PRC response states that the passage of the HBIC substitute in its present form will have an indeterminate but small positive fiscal impact.

According to the Department of Transportation (NMDOT), the State Road Fund receives most fees imposed under the Motor Carrier Act. Those state fees comprise less than half a percent all Road Fund revenue.

SIGNIFICANT ISSUES

The AGO response to the original legislation noted a number of critical issues, but these were not noted in the AGO response to the HBIC substitute. The text of the response is unclear if the issues have been resolved through the committee substitute or if the issues remain a concern for the AGO. However, as a general observation, the AGO response does state that, much like the original legislation, the HBIC substitute is “unwieldy” and the practice of defining terms for purposes of the Motor Carrier Act that already carry legal significance could result in confusion in the application of the Act.

The PRC still questions – much as it did in its analysis of the original legislation – whether the economic regulation of motor carriers of persons and household goods is good public policy. It accepts that there are benefits to the regulation of ambulance, scheduled shuttle and municipal taxicab services. The PRC notes that the HBIC substitute, like the original legislation, does not change existing safety and financial responsibility standards that currently apply to all intrastate motor carriers.

The response from the Department of Health (DOH) expresses concerns that because tariffs will be voluntary and optional for motor carriers the proposed legislation could lead to overcharging of ambulance patients to increase profits, or undercharging of patients to increase competitive market share. This has led to less than desirable outcomes in the past.

ADMINISTRATIVE IMPLICATIONS

The PRC response states there will be a number administrative implications for the agency should the HBIC substitute be enacted into law, including the reissuance of certificates for limousine, tour and sightseeing, taxicab, shuttle, terminal shuttle, shared ride, and bingo bus services. This would, according to the PRC, require a significant amount of staff time. In addition, it is anticipated that the proposed legislation, if enacted, would result in an additional, temporary set of new applicants from July 1, 2013 through December 31, 2013 although most likely lessening after the December 31, 2013 date.

TECHNICAL ISSUES

In contrast with the original legislation, no technical issues are identified in the department/agency responses.

RS/blm