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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/15
 LAST UPDATED 03/13/15 HB 272/HRPACS

SPONSOR HRPAC

SHORT TITLE Transportation Network Company Services Act SB _____

ANALYST Clark/Cerny

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	\$50.0	\$50.0	Recurring	Transportation Division Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	Transportation Division Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)

Office of the Attorney General (AGO)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

The House Regulatory and Public Affairs Committee substitute for House Bill 272 creates the Transportation Network Company Services Act in an effort to ensure the safety, reliability, and cost-effectiveness of non-taxicab transportation network company (TNC) services within New Mexico. A TNC is defined as an entity licensed pursuant to this act that uses a digital network or software application to connect passengers to the services provided by TNC drivers. The bill indicates that the goal is to preserve and enhance access to these transportation options for residents and visitors to the state.

The House Regulatory and Public Affairs Committee substitute for HB 272 amends the House Transportation and Public Works Committee Substitute for HB 272 in the following ways:

1. In Section 5, raises the annual transportation company network permit fee from \$5,000 to \$10,000;
2. In Section 10, moves forward from June 30, 2016 to January 15, 2016, the date by which transportation network company drivers (or the transportation network company on the driver's behalf) must have personal auto insurance that covers their transportation network driving;
3. Adds two subsections to Section 13: that require the transportation network company to ascertain that drivers are 19 years of age or older and maintain records verifying the fulfillment of all driver requirements for at least three years; and that prohibit drivers from driving more than 12 hours during a 24-hour period;
4. In Section 18, prohibits TNCs from imposing additional charges for providing services to persons with physical disabilities because of those disabilities (previous language applied to service animals specifically).
5. In Section 20, allows for the imposition of applicable business licenses and business-related taxes by municipalities and other local authorities;
6. In Section 24, adds the additional reason of “operating in a manner that poses an immediate or imminent threat to public safety” to the list of reasons for the PRC to immediately suspend the license of a transportation network company; and
7. Adds a new Section 25, which amends the Motor Vehicles Code to allow motor vehicle insurance policies to exclude coverage while a vehicle is being used to provide transportation network company services.

The bill creates the transportation division fund consisting of fees and administrative fines collected pursuant to this act, appropriations, gifts, grants, donations, and earnings on investment. A TNC shall pay an annual permit fee of \$10,000 to the Public Regulation Commission (PRC) to be deposited in the transportation division fund, and administrative fines are permitted up to \$1,000 per violation per day. PRC is given authority to issue permits to TNCs and to promulgate rules and regulations consistent with this act.

The bill creates requirements for TNC drivers with regard to safety records, criminal history, possession of a driver's license and insurance, and a minimum age of 19. TNC drivers are prohibited from accepting cash payments or tips – all payments must be made electronically through the TNC application. TNCs must maintain certain records and institute a zero tolerance policy for drug or alcohol use by drivers, requiring a TNC to immediately suspend a driver upon receipt of a passenger complaint alleging a violation. The suspension shall last until the conclusion of an investigation by the TNC.

The Office of Superintendent of Insurance (OSI) outlines the bill's insurance requirements:

1. From July 1, 2015 until January 15, 2016, and during the period of time when the driver is logged into the transportation network company's digital network but is not carrying a passenger, the driver or the transportation network company shall maintain contingent liability insurance that meets minimum financial responsibility limits and that provides coverage if the driver's personal auto coverage does not.

2. After January 15, 2016, and during the period of time when the driver is logged into the transportation network company's digital network but is not carrying a passenger, the driver (or the transportation network company on the driver's behalf) shall maintain a primary auto insurance policy that meets minimum financial responsibility limits and that is either:
 - a. Equivalent to the full-time coverage required by PRC for motor carriers;
 - b. An endorsement or rider to the driver's personal auto coverage; or
 - c. A corporate liability insurance policy purchased by the TNC that covers the period of time when the driver is logged in to the digital network.
3. During the period of time that the driver is carrying a passenger, the driver (and/or the transportation network company on the driver's behalf) shall maintain a primary auto insurance policy that provides at least \$1 million of liability coverage for death, personal injury and property damage and similar limits covering accidents involving uninsured and underinsured motorists.
4. The transportation network company must maintain insurance coverage that provides coverage in all situations where the driver's insurance has lapsed or otherwise fails to provide coverage.
5. In instances where more than one insurance policy provides coverage, the claim must be divided on a pro rata basis among the policies.
6. Insurance may be provided by either an authorized insurer or a surplus lines insurer.
7. Insurers are not required to offer coverage for transportation network services.
8. The transportation network company and the insurers shall cooperate during claims coverage investigations to facilitate the exchange of information regarding the precise times that drivers have been logged into the digital network.
9. Drivers that have liens against their vehicles are required to notify the lien holder in advance that they plan to use the vehicle for transportation services that may violate the terms of the contract with the lien holder.

FISCAL IMPLICATIONS

PRC's Transportation Division staff estimate that approximately five TNCs will submit applications in the first year and every year thereafter for a total of \$50 thousand of additional, recurring revenue. Money in the transportation division fund is appropriated to PRC to carry out its duties pursuant to this act, and up to 5 percent of fees collected may be used for administrative purposes. Balances in the fund shall not revert to the general fund or any other fund at the end of a fiscal year.

The bill states "administrative fines collected" will be deposited in the created Transportation Division Fund. Article 12, Section 4 of the New Mexico Constitution provides "all fines collected under general laws...shall constitute the current school fund of the state." That is, fines shall be deposited in the current school fund.

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

Entities that would fall under the act as TNCs notably include Uber, Inc. and Lyft. The act explicitly excludes TNCs from the definition of “motor carriers” as defined by the Motor Carrier Act, solving the issue currently facing PRC of determining whether the two companies fall under the Motor Carrier Act and if they can legally operate in the state.

OSI notes that most personal auto insurance policies exclude coverage for commercial use of the vehicle. The new Section 25 allows such policies to explicitly state that they exclude coverage for transportation network company driving.

OSI notes there is no guarantee that insurers will offer the coverages required by this bill or will offer them at a reasonable rate. Furthermore, some personal auto insurers may refuse to offer, or may cancel or decline to renew, a driver’s policy upon learning of the driver's participation as a transportation network company driver. The insurance coverages, if offered, would more likely be offered by insurers to transportation network companies than to individual drivers. For this reason, as well as for minimizing coverage disputes, situations where drivers do not have appropriate coverage, and situations where drivers are denied personal auto coverage due to their transportation network services, it may be more prudent to require that the transportation network companies, rather than the drivers, maintain the insurance coverages required by this bill.

The zero tolerance policy may be difficult to regulate and enforce because the entire process is left to the TNC. Requiring a TNC to immediately suspend a driver based on the accusation of a passenger without substantive or objective evidence may raise questions for both TNCs and TNC drivers. The investigative procedures proscribed in the bill may be difficult for the agency to enforce and for a TNC to implement.

The AGO notes Section 23 of the bill only contemplates the completion of an investigation, a resulting order, and issuance of fines for violations. There is no inclusion of a hearing, either before or after the issuance of the final order, and there is no contemplated opportunity for a TNC to appeal any fine or other disciplinary order issued by PRC.

Section 23 of the bill permits the PRC to find violations and issue administrative orders specifying “actual or proposed acts or omissions” by a TNC that PRC requires to be “discontinued, rectified or prevented.” AGO notes this language states that violations may include proposed acts or omissions by a TNC, which suggests that a TNC can be found to violate the act even without doing anything. Preemptive action by an administrative body may be justified as an approach to warn or otherwise avert potential violations before they occur. However, serious caution should be used when indicating the difference between an administrative action constituting a “warning” and an administrative decision finding a “violation.” As currently read, the bill could be interpreted as defining violations simply as “proposed acts.”

ADMINISTRATIVE IMPLICATIONS

The processing of TNC applications and the adoption of rules and regulations under the act, although requiring additional work, can be handled with existing PRC staff, and the cost to carry out the duties of the act likely would be covered by the bill’s appropriation from the

transportation division fund.

TECHNICAL ISSUES

The title of the bill “Involuntary Suspension and Revocation,” should be changed because the term “revocation” is not used in the text of the section. It would be more appropriate to change the title to “Involuntary Suspension and Reinstatement”, as “reinstatement” is discussed in the text.

OTHER SUBSTANTIVE ISSUES

For a December 2014 summary of issues related to TNCs and legislation passed or being considered in other states, including the legislation passed in Colorado, see the National Conference on State Legislature (NCSL) website here:

<http://www.ncsl.org/research/transportation/riding-by-the-rules.aspx>

AMENDMENTS

AGO suggests that Sections 23 and 24 should be amended to clarify the authority of PRC with regard to fines:

In reading Section 23 alongside Section 24, it appears PRC can only suspend a license if a TNC fails to pay a fee (see Section 24A(2)). As currently written, PRC’s only apparent recourse for unpaid fines assessed under Section 23 would be filing a suit. If Section 24 were amended to include the ability to suspend a license if a TNC fails to pay a fine, this would clarify what additional administrative, disciplinary recourse PRC has for unpaid fines.

Further, Subsection 23(B) provides that a TNC found to commit a “continuing violation” may be charged separately for each day the violation occurred. This approach may raise problems with interpretation and enforcement.

First, a “continuing violation” is not a defined term and additional description or specific parameters may be helpful to understand whether there is a difference between violations that occurred over a period of time or what constitutes “continuing.”

Conceivably, this provision could be used as a means to charge a TNC for each day any violation occurred. Alternatively, if there is intent to permit increased fines for repeat offenses, other language could be incorporated to permit the PRC to assess different fines for certain egregious violations and by the amount of time the violation was known and not rectified.

Finally, AGO analysis suggests clarifying Section 24 in several ways.

- It is conceivable that PRC can suspend a license before conducting an administrative hearing, but that should require PRC to demonstrate sufficient evidence of a violation.
- Clause (2) contemplates PRC action against a TNC for its failure to pay fees or for its drivers to pay fees. This seems to be the only location in the bill that contemplates

fees levied on TNC drivers, which would very much change the scope of PRC's authority. The reference should be removed.

- Subsection 24(B) provides TNCs with an opportunity to request a hearing before PRC if its license was suspended prior to a hearing. There are no guidelines or requirements regarding this hearing, which would be beneficial. At minimum, the bill should provide guidance to PRC for conducting appeals and set forth a time requirement for allowing a hearing. Without such direction, PRC would have no obligation to hold a hearing within any set amount of time.

OSI analysis states: "This bill could be amended to require that the transportation network companies, rather than the drivers, maintain the insurance coverages required by this bill."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Since PRC has not yet made a determination whether TNCs are subject to the Motor Carrier Act, it is unclear what the consequences of not enacting the bill will be. If the bill is not enacted, eventually PRC will make a decision as to whether TNCs are subject to the Motor Carrier Act, and the matter might ultimately be decided in the courts.

CAC/JC/je/bb