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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/17
LAST UPDATED 3/4/17 **HB** 133/aHJC

SPONSOR Maestas Barnes

SHORT TITLE Driver’s License Revocation Hearings **SB** _____

ANALYST Romero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------|--------|--------|-------------------|---------------------------|---------------|
| | \$55.0 | \$55.0 | \$55.0 | \$165.0 | Recurring | AHO Operating |
| | \$104.8 | \$0.0 | \$0.0 | \$104.8 | Nonrecurring | AHO Operating |
| Total | \$159.8 | \$55.0 | \$55.0 | \$269.8 | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Hearings Office (AHO)
- Taxation and Revenue Department (TRD)
- Department of Transportation (DOT)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Amendment

The House Judiciary Committee amendment to House Bill 133 amends the title to describe the authorization for participation by videoconference. The amendment also gives authority to the hearing officer to determine if all or part of the hearing may be conducted by video conference. Additionally, a new section is added allowing “any party to the hearing, a witness, a law enforcement officer and the hearing officer” to participate by videoconference if the hearing officer determines that all or part of the hearing may be conducted by videoconference. Lastly, the amendment provides other grammatical improvements.

Synopsis of Bill

House Bill 133 makes two notable changes to Implied Consent Act and DWI License revocation

hearings.

First, the bill adds additional, expressed powers, to the hearing officer conducting the hearing. Many of these powers are implicit in the current statute, and are provided by regulation: the power to take testimony, examine witnesses, and to admit or exclude evidence. The bill adds an additional power that was previously neither implicit in the Implied Consent Act nor provided for by regulation, the power to “reopen any hearing to receive additional evidence.”

The second change in this bill allows law enforcement officers, who serve as witnesses on behalf of the Motor Vehicle Division, to testify via videoconference at the Implied Consent Act or DWI license revocation hearing.

The bill also makes minor structural and language changes that do not fundamentally change the substance of the Implied Consent Act.

FISCAL IMPLICATIONS

| Description of Expense | Units | Cost per unit | Nonrecurring | Recurring | Total cost |
|--|-------|---------------|---------------------|---------------------|---------------------|
| •Computers & accessories in remote hearing locations. | 29 | \$ 1,600.00 | \$ 46,400.00 | | \$ 46,400.00 |
| •IT services (hours) initial setup | 60 | \$ 47.00 | \$ 2,820.00 | \$ - | \$ 2,820.00 |
| •Internet Access (for non MVD-Offices, per month) | 7 | \$ 428.00 | | \$ 35,952.00 | \$ 35,952.00 |
| •BROADBAND ACCESS FEE (for hotspot cards as backups in case network our for hearing) | 2 | \$ 42.00 | | \$ 1,008.00 | \$ 1,008.00 |
| •Videoconference fee (annual) | 12 | \$ 89.00 | | \$ 10,680.00 | \$ 10,680.00 |
| •Desktop Support (hrs.) | 14 | \$ 47.00 | | \$ 7,896.00 | \$ 7,896.00 |
| | | | <u>\$ 49,220.00</u> | <u>\$ 55,536.00</u> | <u>\$104,756.00</u> |

The chart assumes that Motor Vehicle Division will allow AHO to use existing IT infrastructure and resources to facilitate videoconference hearings in each of the 33 counties where hearings may occur, which has been agreed to. However, since some of MVD’s offices are not state offices and are instead operated by municipalities, there still might be some instances where MVD or AHO would have to pay the Department of Information Technology for install and monthly fees for circuits (used for internet connections). The hearings office estimates seven locations where infrastructure would need to be added or sufficient infrastructure may not exist. It is possible though unlikely that there could be some additional unanticipated installation costs and other facilities that will need infrastructure.

SIGNIFICANT ISSUES

Although the Administrative Hearings Office supports conducting telephonic and/or videoconference hearings under the Implied Consent Act, the current bill does present a few substantive challenges in implementing such appearances.

- 1) Current Court of Appeals case law addressing the Implied Consent Act, *Evans v. TRD, MVD*, 1996-NMCA-080, 122 N.M. 216, requires that the hearing officer be located in the county of incident and take live testimony from the police officer witness in order to

make a credibility determination (absent consent of the driver to conduct a telephonic hearing). The Court of Appeals' ruling appears to be premised on two concepts: first, the court relied on the statutory language "the hearing shall be held in the county in which the offense for which the person was arrested took place" to find that the Legislature intended the hearing to occur in one place in the county of incident with everyone present. The second concept the court relied on was that because a credibility determination is required in Implied Consent Act cases, the witness and hearing officer should be present in one location for live testimony. The court did allow that the Legislature could change the statute to allow for telephonic hearings so long as it considered the credibility issues carefully. This bill aims to do just that by allowing for video conferencing by the police witness. However, because this bill leaves intact the "in the county in which the offense" took place language found under 66-8-112 (B) NMSA 1978 that the court relied on in reaching its *Evans*' holding, there is a chance that the bill is insufficient to overrule the court's decision if that "in county" language remains in the statute in light of the importance of that language and the credibility analysis in the court's decision.

While the *Evans* decision does indicate that the Legislature could, upon careful consideration, allow telephonic (and presumably videoconference hearings) by changing the statutory language, allowing only one subset of hearing participants--MVD's police officer witnesses--to appear via video conference raises other potential appellate due process and fairness issues that could jeopardize those video conference appearance upon review by New Mexico Appellate Courts.

ADMINISTRATIVE IMPLICATIONS

There are numerous administrative implications of the bill. First, since the Administrative Hearings Office only has four offices across the state (Santa Fe, Albuquerque, Clovis, and Las Cruces), Implied Consent Act hearings occur in the county of incident at the TRD-MVD field offices across the state, as well as some municipal courts/police stations, and municipal-run MVD offices. That means that each field office would need to have sufficient network connections, dedicated videoconferencing equipment, and uniform videoconferencing service in the designated hearing room to allow the police office to appear via videoconferencing equipment. This could lead to significant additional costs, primarily to MVD and to a lesser extent AHO, in the initial set-up of the videoconferencing equipment, technical support of the equipment, and costs of the actual videoconference time. Additionally, in some instances, the MVD office is not a state office, but a municipal facility, making uniformity and cost issues more acute.

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