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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/21

SPONSOR Hochman-Vigil LAST UPDATED _____ HB 71

SHORT TITLE Muni Airport Car & Peer-to-Peer Rentals SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | NFI | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 71 (HB71), in Section 1, repeals and replaces definitions found in Section 3-39-3 NMSA 1978. Specifically, HB71 adds definitions for: peer-to-peer vehicle, peer-to-peer vehicle owner, peer-to-peer vehicle sharing, peer-to-peer vehicle sharing provider, rental car, and rental car company. Section 2 of HB71 adds a new section to the Municipal Airport Law that outlines the requirement of car rental companies and peer-to-peer vehicle rental parties to enter into agreements with the municipal authorities, prior to their operating at municipal airports. Under the provisions of HB71, failure to enter into a prior agreement with the municipal authorities may mean that peer-to-peer vehicle owner/providers and rental car companies may face injunctions prohibiting their operation at municipal airports. Additionally, municipalities could also seek damages and attorneys' fees from these businesses for their failure to enter into an operating agreement.

FISCAL IMPLICATIONS

DOT did not report any fiscal impact to the state as a result of enactment of HB71.

SIGNIFICANT ISSUES

DOT reported potential taxation issues. Peer-to-peer car sharing is a business model that replaces a typical fleet of short-term rentals with a ‘virtual’ fleet made up of vehicles from participating owners. Under the model, a vehicle owner uses an Internet app to make their vehicle available for use by others for a fee. Section 2E of HB71 references the leased vehicle surcharge and the Internet provisions of the Gross Receipts and Compensating Tax Act. However, DOT notes that:

The Leased Vehicle Surcharge is imposed only on transactions that are subject to the Leased Vehicle Gross Receipts Tax (LVGRT), and LVGRT is only imposed on fleets of five or more vehicles owned by the same person. In the case of peer-to-peer rentals, there is generally not any fleet of five or more vehicles, and since the LVGRT is not imposed, the Leased Vehicle Surcharge should not be imposed. Further, LVGRT is imposed in lieu of Motor Vehicle Excise Tax, and since the Motor Vehicle Excise Tax would have been paid on vehicles used for peer-to-peer rentals, neither the LVGRT nor Leased Vehicle Surcharge would be applicable.

The compliance with the Internet provisions of the Gross Receipts and Compensating Tax Act may be difficult to evaluate since there are no provisions for information sharing with the Tax Department (Section 7-1-8 CONFIDENTIALITY would prohibit release of information).

The bill includes no provisions to enforce tax compliance nor for withdrawing from an agreement. The only enforcement provisions in the bill apply strictly to engaging in operation activities without first entering into an agreement, and the enforcement provision is limited to seeking “... an injunction prohibiting operations ... and may seek damages and attorney fees ...”.

CJ/al