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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/22

SPONSOR Neville/Wirth LAST UPDATED 2/16/22 HB _____

SHORT TITLE Transfer Transportation Regulation from PRC SB 198/aSTBTC

ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$1,000.0	\$1,000.0	\$2,000.0	Recurring	DOT Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (NMAG)
Public Regulation Commission (PRC)
Department of Transportation (DOT)

SUMMARY

Synopsis of STBTC Amendment

The Senate Tax, Business and Transportation Committee amended Senate Bill 198 to strike the word “commission” and insert the word “department.” The amendment also provides for the department to set “reasonable fees” for applications and warrants, and strikes existing established fees contained in Section 65-2A-36 NMSA 1978. The amendment also includes a provision dictating that the fees established by the department shall not exceed the actual cost of processing the application or providing the administrative services.

Synopsis of Bill

Senate Bill 198 transfers all functions, personnel, appropriations, equipment, records, supplies, other property, and contractual obligations of the Public Regulation Commission (PRC) related to motor carrier regulation and enforcement, railroad safety enforcement, and ambulance standards from PRC to the New Mexico Department of Transportation (DOT), effective January 1, 2023. SB198 amends several provisions of the Public Regulation Commission Act (Sections 62-19-1 to 62-19-24 NMSA 1978) and other laws including:

Section 1 authorizes DOT to regulate common carriers, including railway and other transportation companies operating in New Mexico. This authority includes fixing and regulating charges and rates of railway and other transportation companies and common carriers and enforcing its rules through administrative sanctions and in the courts. DOT would also be authorized to inspect the records of all common carriers doing business in the state relating to any matter being investigated by DOT.

Section 3 authorizes DOT to collect an annual carrier inspection fee not to exceed two hundred fifty-six thousandths percent of its gross receipts from business transacted in the state the previous calendar year, excluding receipts derived from interstate business. Carrier inspection fees would not apply to common or contract motor carriers or aircraft carriers transporting passengers or property for hire. The fees would be deposited with the state treasurer and credited to the general fund.

Section 6 amends Section 5-1-1 NMSA 1978 allowing municipalities and counties to provide ambulance service in the absence of an established ambulance service only as authorized by DOT instead of PRC.

Section 7 amends Section 7-24A-4(B) of the County and Municipal Gasoline Tax Act (Sections 7-24A-1 to 7-24A-21 NMSA 1978) providing that transit service may not be extended beyond the county in which a city is located or outside the boundaries of the county unless prior approval is obtained from DOT and other regulatory bodies having jurisdiction.

Sections 9, 10, and 11 pertain to the Emergency Transportation Act (Sections 22-17-1 to 22-17-4 NMSA 1978) and would transfer the PRC's current authority regarding the Act to DOT.

Section 13 amends Section 24-15-4 of the Ski Safety Act (Sections 24-15-1 to 24-15-14 NMSA 1978) by providing that ski area operators must file proof of financial responsibility with DOT to operate a ski lift or tramway. Notice of cancellation of any such policy prior to its expiration date would have to be served on DOT as well as the insured.

Section 15 amends the Indigent Hospital and County Health Care Act (Sections 27-5-1 to 27-5-18 NMSA 1978) by providing at Section 27-5-4(A) that DOT would be authorized to issue individual carrier certificates to transport persons by means of ambulance service. DOT would also establish rates and charges for such service.

Section 28 amends Section 65-1-6 of the Motor Transportation Act (Sections 65-1-1 to 65-1-45 NMSA 1978), to provide that the Department of Public Safety (DPS) would enforce the Motor Transportation Act and Motor Carrier Act and the rules promulgated by DOT. Furthermore, DOT would be required to conduct hearings concerning motor transportation. DOT would be required to notify DPS of the hearings and would also be required to send copies of all orders entered in motor transportation matters to DPS.

Starting at Section 31, SB198 would amend the Motor Carrier Act (Sections 65-2A-1 to 65-2A-41 NMSA 1978) transferring PRC's responsibilities under that act to DOT and substituting "department" for "commission" throughout. Specifically, DOT would issue operating authorities (certificates, permits, warrants, etc.) for a motor carrier operating in New Mexico, establish minimum requirements for financial responsibility for motor carriers, establish safety requirements for intrastate motor carrier motor vehicles and drivers, regulate the rates of tariffed

service carriers as provided in the Motor Carrier Act, have jurisdiction to determine any matter under the Motor Carrier Act, subpoena witnesses and records, hold public hearings, adopt rules, issue orders and conduct activities necessary to implement and enforce the act. DOT would be authorized to assess administrative fines of not more than \$10 thousand for each violation of the act or of a lawful rule or order of the DOT. DOT could also designate inspectors who may inspect the records of a motor carrier and who would have the powers of peace officers with respect to a law or rule that DOT is empowered to enforce, not including enforcement authority granted to the New Mexico State Police. DOT would also be authorized to institute civil actions in district court in Santa Fe to enforce the act and its rules and orders. All fees collected by DOT at the time an application is filed, or service provided would be remitted to the state treasurer for deposit into the motor transportation fee fund, the unencumbered balance of which would be transferred to the state road fund.

Section 65 would amend the Ambulance Standards Act (Sections 65-6-1 to 65-6-6 NMSA 1978) by transferring PRC's responsibilities under that act to DOT, including that DOT would hold public hearings and adopt rules for the establishment of standards for ambulances and the licensure of drivers and attendants.

Section 69 proposes to amend the Transportation Network Company Services Act by transferring to DOT the authority to issue permits for the operation of transportation network companies in New Mexico and to adopt rules related to issuance of such permits. The transportation network company would pay an annual permit fee of \$10 thousand and DOT would administer the transportation network fund, which would be appropriated to DOT for the purpose of carrying out its duties under the Act. DOT would also be required to promulgate rules establishing the requirements for annual inspections of vehicles used by transportation network companies while logged on to a digital network. DOT would also be authorized to inspect records held by a transportation network company, to investigate complaints, and to issue orders specifying the actual or proposed acts or omissions to act that constitute a violation and to require the violation be rectified or prevented. Administrative fines of not more than \$1,000 for each violation of the act or of a rule or DOT order could be assessed. DOT would also be authorized to suspend the permit of a transportation network company, which could then request a public hearing before DOT on an application for reinstatement.

SB198 also proposes amendments to the Motor Vehicle Code that would consist of substituting DOT for PRC where appropriate.

If enacted, all contractual obligations of the PRC related to motor carrier regulation and enforcement, railroad safety enforcement and ambulance standards would be binding on DOT. Furthermore, the rules, orders, and decisions of the PRC related to those matters would remain in effect until repealed or amended.

FISCAL IMPLICATIONS

Senate Bill 198 does not contain an appropriation, either to DOT or from the PRC to support the proposed changes. The House Appropriations and Finance Committee substitute for House Bill 2 does not contain an appropriation for responsibilities that would be transferred under SB198. The bill's effective date is in the middle of fiscal year 2023, making it unclear how the Legislature or agencies would support funding the transfer of authority. DOT notes that the state road fund would likely be used to pay for FTEs, contractual agreements, and other costs associated with the transfer of PRC responsibilities, personnel, and obligations. DOT estimates the cost to transfer

and compensate the 15 employees to be about \$1 million, reflected in the estimated additional operating budget table.

SIGNIFICANT ISSUES

Both PRC and DOT noted in agency analysis that the administrative hearing process varies between agencies, which could lead to significant inconsistencies should the division transfer.

PRC explains:

DOT Traffic Safety Bureau reports that it currently offers hearings subject to the Uniform Licensing Act (“ULA”) (Chap. 61, Art. 1 NMSA 1978) to DOT-licensed providers including driving schools. The ULA applies to construction industries, manufactured housing, agencies that administer professional or occupation licenses and ‘other state agencies to which the ULA is applied by law’. *See* § 61-1-2A. The PRC/Transportation Division hearings are conducted pursuant to PRC rules (1.2.2 NMAC) and are not subject to the ULA. Staff is concerned for the smooth transition of any active hearings from PRC to DOT on January 1, 2023, as statutory deadlines will still apply. A final decision is rendered by the PRC after consideration of the Hearing Examiner’s recommended decision, whereas at DOT the Hearing Officer issues the final determination. The State Transportation Commission may need time to promulgate appropriate hearing procedures.

Motor Carrier appeals from final decisions of the PRC are subject to review by the NM Supreme Court. *See* § 65-2A-35. Appeals from final decisions of the DOT under the ULA are subject to review by the District Court “pursuant to the provisions of Section 39-3-1.1 NMSA 1978”. *See* § 61-1-17.

TECHNICAL ISSUES

PRC included the following technical issues with the proposed legislation:

Sections 1-5

The distinction between “contract motor carriers” and “common motor carriers” was eliminated from the statutory framework in 2003. The use of outdated terms in the ‘new material’ of SB198 does not appear to be necessary. Consider replacement with the current construct and unified concept of “motor carriers” or just “carriers” (in the case of railway companies). Alternatively, consider adding definitions of the terms at issue in Section 62-2A-3.

Inspection Fees, Interest and Penalties

Section 5 excludes “common or contract motor carriers ... transporting passengers or property for hire”, and the fees cannot be applied to railroad companies, so there does not appear to be any remaining carriers currently under the jurisdiction of the PRC that would be subject to Section 3.

Section 42

Consider repealing the statutory provisions allowing for the protest of motor carrier applications. Protests are typically filed by large motor carrier companies to protect their territory by attempting to limit the service and authorized territory of smaller competitors.

Preserve the option for objections to be filed for consideration in response to new applications.

ADP/rl/al