

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

HB 81 would classify a conviction for driving while intoxicated (“DWI”) coupled with a conviction for driving on a suspended or revoked license for DWI as a fourth degree felony. HB 81 also imposes accessory liability for driving while a license is suspended or revoked to anyone who knowingly or should have known that the person who they are lending their vehicle to has a suspended or revoked license for DWI and is arrested for DWI.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB 81 states that if a person is convicted of DWI and driving on a suspended or revoked license because of a DWI, that person is guilty of a fourth degree felony. In short, HB 81 uses two separate offenses to make a new offense. HB 81 could result in two misdemeanors combining into a fourth degree felony. For example, a DWI second offense conviction (misdemeanor) coupled with a conviction for driving on a suspended or revoked license because of a DWI (misdemeanor) would result in a felony. The New Mexico Courts have expressed concerns with two misdemeanors combining for a felony in other context, like burglary. See, *State v. Archuleta*, 2015-NMCA-037. However, unlike *Archuleta* the legislative intent would be clear under HB 81 and DWI has been viewed as serious problem. Also, HB 81 may create merger issues with the underlying DWI and the suspended or revoked license. Merger could affect how convictions under HB 81 are treated in subsequent DWI prosecutions.

Possible amendments to this legislation could be drafted to answer the question of whether convictions under HB 81 could be considered a prior DWI conviction thus negating the need for a court to decide the issue of whether merger would apply. Section 66-8-102 (R) allows for enhancement for equivalent crimes, but unclear if it would allow for enhancement within statute

under another DWI statute.

HB 81 also imposes accessory liability for driving while license is suspended or revoked to anyone who knowingly or should have known that the person who they are lending their vehicle to has a suspended or revoked license for DWI and is arrested for DWI. Establishing that the accessory knew or should have known is going to be difficult in actual practice, without any type of legal presumptions.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A