

<b>LFC Requester:</b>	<b>Eric Chenier</b>
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**AGENCY BILL ANALYSIS  
2013 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date** Jan. 22, 2013  
**Bill No:** HB 150--305

**Sponsor:** Rep. William "Bill" R. Rehm      **Reviewing**    Attorney General's Office  
**Short**      Driver's License Revocation      **Person Writing**    Sean Cunniff, AAG  
**Title:**      Hearing Times      **Phone:** 827-6469      **Email** scunniff@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

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

**BILL SUMMARY**

Summary Synopsis: HB 150 proposes revisions to the hearing procedures by which driver’s licenses are revoked pursuant to certain traffic offenses related to driving while under the influence of intoxicating liquor or drugs. The legislation offers four primary modifications: (1) extending the deadline for holding the revocation hearing from ninety (90) to one-hundred twenty (120) days; (2) expressly providing for revocation hearings to be conducted via electronic means; (3) clarifying that hearings will be conducted by a hearing officer and delineating the powers and duties the hearing officer; and (4), specifying that Rule 1-074 NMRA of the Rules of Civil Procedure for the District Courts will govern any appeal arising from a revocation hearing.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

**SIGNIFICANT LEGAL ISSUES**

**Conduct of Telephonic Hearings:** The New Mexico courts have provided mixed guidance with respect to the permissibility of allowing telephonic hearings under Section 66-8-112. In Evans v. New Mexico Taxation & Rev. Dept., the Court of Appeals addressed the place and manner of conducting Section 66-8-112 hearings. 1996-NMCA-80, 122 N.M. 216. Although the question of the permissibility of telephonic hearings was not before the court, the court offered its view, without deciding the issue, that the court “assume[s]” that the “Department can conduct [Section 66-8-112] license revocation hearings over the telephone without violating constitutional requirements.” 1996-NMCA-80, ¶ 3, N.M. 122 N.M. at 217.

However, the Evans court also expressed concern with respect to the due process implications of conducting Section 66-8-112 hearings telephonically. Namely, the court observed that such hearings may involve critical witness “credibility determinations,” and that “existing case law confirms the importance of in-person hearings when critical credibility determinations are at stake.” 1996-NMCA-80 at ¶¶ 8-10; 122 N.M. at 218-219. Conducting a hearing in person enables the hearing officer to “observe the demeanor of the witness as a means of assessing [witness] credibility.” Id. Despite its mixgivings, the court made clear that the legislature may act to permit telephonic hearings, 1996-NMCA-80, ¶ 14, 122 N.M. at 220 (“[t]his is not to say that the legislature could not authorize telephonic hearings”), but that the court “assume[s] the legislature would proceed cautiously in any effort to change requirements in those proceedings where credibility is at issue.” Id.

**PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

**ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS  
INTRODUCED THIS SESSION**

**TECHNICAL ISSUES OR DRAFTING ERROR**

The term “electronic means” is not defined in the proposed legislation. Providing a definition may aid in clarifying legislative intent, and potentially eliminate confusion for New Mexico motorists.

**OTHER SUBSTANTIVE LEGAL ISSUES**

**ALTERNATIVES TO ENACTING THIS BILL**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS NEEDED TO IMPROVE THIS BILL**