

LFC Requester:	Randall Soderquist
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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 1/24/13
Bill No: HB 194--305

Sponsor: Rep. Thomas C. Taylor **Reviewing** Attorney General's Office
Short AMEND MOTOR CARRIER **Person Writing** Matthew Jackson
Title: LAW ACT **Phone:** 827-6021 **Email** mjackson@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED 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)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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 194 substantially overhauls the Motor Carrier Act (NMSA 1978, § 65-2A-1 *et seq.*). The full title of the bill is “AN ACT RELATING TO MOTOR CARRIERS; ELIMINATING THE MOTOR CARRIER EXCEPTION FROM STATE ANTITRUST LAWS; ELIMINATING THE REQUIREMENT FOR A CERTIFICATE, PERMIT OR TARRIF FOR MOTOR CARRIERS OF HOUSEHOLD GOODS; LIMITING PROTESTS AND STREAMLINING THE FILING OF TARIFFS AND APPLICATIONS FOR CERTIFICATES AND PERMITS BY MOTOR CARRIERS OF PASSENGERS OTHER THAN AMBULANCES; PROVIDING FOR THE TRANSITION OF CERTAIN MOTOR CARRIER CERTIFICATES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.”

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES:

This is an 87 page bill, and a full evaluation of the legal issues potentially raised by the bill in the time allotted for bill analyses is not realistic. That said, there are a number of legal issues that should be mentioned.

The first is the manageability of the Motor Carrier Act if the bill is passed. The Motor Carrier Act is already somewhat unwieldy, and this bill makes it moreso.

For example, the current definition section runs from A through ZZ. The proposed language would have definitions running from A through QQQ. The proliferation of terms will impose difficulties for those not already steeped in the Motor Carrier Act. In addition, many of the definitions are for terms that already have meaning within the legal world; e.g., “notice period,” “terms of service,” “for hire,” “objection,” “process,” and “property.” This may engender confusion, to say nothing of the potential judicial gloss that may be applied to these terms in the construction of the proposed Act.

In addition, the effort to limit protests means that instead of a broad category of “protest,” there are “objections” and “protests” (to say nothing of “complaints,” which are contemplated by the bill but not defined). “Objections” would take the place of the current “protest,” and receive less process than “protests,” which would now be a very limited type of objection, with specific

pleading requirements, that could only be raised by a particular species of motor carrier. Additionally, the pleading standard for a “protest” appears to be elevated from the normal Rule 8 pleading standard required in New Mexico courts to something closer to Rule 9, or possibly federal pleading standards.

The second issue is that “records” would include “the electronic hardware or software necessary to access” electronically stored information regarding the operation of a motor carrier. It is possible that a court might construe this to mean not only all pdfs, documents, images, etc. on a computer, but the computer itself would be “records.” This interpretation could impose significant hardship on a carrier obligated to produce such “records,” leaving the office without a computer.

A third issue is that Section 23 of the bill, amending 65-2A-27, adds “for a period of four months or longer” to 65-2A-27(A). It is unclear whether this means that the immediate suspension and revocation for failure to maintain forms and amounts of financial responsibility is triggered only by a four month lacuna (in which case, customers and others adversely affected by the carrier’s action might suffer as a result of the lacuna) or whether the suspension/revocation is to last for four months.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

See above

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

See above

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

TECHNICAL ISSUES OR DRAFTING ERROR

See above

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

There are a number of admirable clarifications and simplifications of the Act in the bill, but these are more than offset by the additions to the Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

If the new material was amended in the same spirit as some of the simplifying amendments to the Act, the bill would be substantially improved.