

<b>LFC Requester:</b>	<b>Jon Clark</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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

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*{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**     **Amendment**      
**Correction**     **Substitute**   

**Date** Jan. 30, 2015  
**Bill No:** HB 272

**Sponsor:** Reps. Youngblood & Griego  
**Short**        Transportation Network  
**Title:**        Company Services Act

**Agency Code:** Attorney General's Office - 305  
**Person Writing**        Joseph Dworak, AAG  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

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.

**BILL SUMMARY**

Synopsis: House Bill 272 creates the Transportation Network Company Services Act (the “Act”) under the Public Regulation Commission (“Commission” or “PRC”).

The Act defines and regulates “transportation network companies” (“TNCs”), which are entities that use digital application services to connect passengers through an online marketplace in which a driver (a car owner registered with the company) may offer their own labor and car to people who request a ride. The marketplace is generally accessed through the TNC application downloaded on the rider’s smart-phone and utilizes the phone’s GPS.

The TNC offers support and maintenance of the marketplace software, vetting of drivers to ensure they meet certain standards, and serve as an intermediary for payment between the customer (rider) and the driver. TNCs will generally receive a portion of the proceeds made from each ride. TNCs are not taxicab associations or for-hire vehicle owners. Similar laws have been adopted in other states (first being California in 2013), creating the classification of TNC and regulating the growing industry.

Notably, entities that would fall under the Act as TNCs are Uber, Inc., and Lyft, which have both operated within New Mexico. The Act explicitly excludes TNCs from the definition of “motor carries” as defined by the Motor Carrier Act.

Specifically, the Act requires TNCs to comply with the following:

- Obtain a permit from the Commission and pay an annual permit fee of \$5,000;
- Maintain an agent for service of process in New Mexico.
- Disclose its fare calculation method on its website or its software application service.
- Provide passengers with the applicable fare charged and the option to receive an estimated fare prior to entering the vehicle.
- Display a picture of the driver and license plate on the TNC’s website or application before entering the vehicle.
- Provide an electronic receipt within a reasonable period of time after each trip that includes:
  - o trip origin and destination;
  - o total time and distance traveled;

- itemized total fare paid.
- Comply with the Mandatory Financial Responsibility Act (NMSA 1978, §§ 66-5-201 to 66-5-239) and ensure that its drivers are insured by:
  - Liability insurance maintained by either the TNC **or** the TNC driver;
  - Insurance that recognizes the driver's provision of TNC services; and
  - Liability coverage of at least \$1,000,000 for death, personal injury, and property.
- Disclose in writing to its drivers the coverage and limits of the TNC's insurance policy and coverage.
- Maintain a zero tolerance drug and alcohol policy. If the TNC receives a complaint from a passenger, it shall immediately suspend the driver and conduct an investigation.
- Submit TNC drivers to application requirements, such as:
  - Submittal of personal information, driving history, insurance, and other information requested by the TNC;
  - Conduct a criminal background check; and
  - Obtain a driving history research report.
- Require motor vehicles used by TNC drivers to comply with vehicle equipment standards.
- Prohibit solicitation or acceptance of street hails.
- Prohibit cash tips from passengers, and restrict payment only through TNC software application.
- Require TNC to adopt a nondiscrimination policy, which provides:
  - Compliance with all applicable laws and prohibition on such discrimination;
  - Accommodation of service animals;
  - Prohibit additional charges for providing services to persons with physical disabilities;
  - TNC will provide opportunity to indicate whether passenger requires a wheelchair-accessible vehicle and, if TNC cannot access such vehicle, it shall direct the passenger to an alternative provider, if available.
- Maintain individual trip records for at least one (1) year and prohibits disclosure of such information except under certain conditions.

The Act authorizes the Commission to promulgate rules and regulations over TNCs and prohibits any municipality or other local entity from imposing a tax, requiring a license, or subjecting TNCs or TNC drivers to any local rate, entry, or other operational requirements.

The Act would become effective July 1, 2015.

## **FISCAL IMPLICATIONS**

## **SIGNIFICANT ISSUES**

- 1) HB 272 does not provide a clear provision regarding violations and enforcement of the Act. In order for the Commission to be granted explicit authority from the legislature, the bill should include explicit authority for the Commission to take action against an individual or licensed under the Act. The authority does not need to be exhaustive, but it is not clear whether the commission may revoke or suspend licenses, or enact administrative fees or

penalties for non-compliance. Some parameters should be included or else the grant of authority to the Commission could potentially be seen as arbitrary to a reviewing court.

- 2) Some provisions of the requirements imposed on TNCs may be difficult to enforce, especially without defining violations in the Act or granting the Commission explicit authority to pursue administrative remedies. Provisions of the Act mandate different requirements for drivers and TNC's, but the burden to comply with the provisions is entirely that of the TNC (this is because TNCs, not drivers, are regulated by the Commission under the Act). Without regulatory authority over TNC drivers, the Act should be clear that the provisions of the Act, whether imposed on the TNC or the TNC drivers, are the responsibility of the TNC to comply with and that the TNC may be liable for its drivers that violate provisions of the Act. Otherwise, if this is not clear, it may be difficult to regulate TNCs and mandate that TNC enforce requirements for their drivers.
- 3) Requirements such as the zero tolerance policy may be difficult to regulate and enforce because the entire process is left to the TNC. Requiring a TNC to immediately suspend a driver based on the accusation of a passenger without substantive or objective evidence may raise questions for both TNCs and TNC drivers. Due process concerns are not implicated because the Commission does not regulate TNC drivers or have authority over their license, but the investigative procedures proscribed under the Act may be difficult for the Commission to enforce and for a TNC to implement.
- 4) There are other questions remain regarding whether TNCs are subject to other laws as a "common carrier." State laws and related federal regulations should be examined more closely to ensure that there are no conflicts.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

#### **TECHNICAL ISSUES**

See issues, above.

#### **OTHER SUBSTANTIVE ISSUES**

The effective date of HB 272 is July 1, 2015. Consideration should be made to whether there is sufficient time to allow for drafting, review, notice, and implementation of the new regulations that will be required from the Commission.

#### **ALTERNATIVES**

N/A

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

**Status quo**

#### **AMENDMENTS**

N/A