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FISCAL IMPACT REPORT

SPONSOR <u>Muñoz</u>	LAST UPDATED _____ ORIGINAL DATE <u>01/31/2024</u>
SHORT TITLE <u>Recycled Material Reporting</u>	BILL NUMBER <u>Senate Bill 141</u>
ANALYST <u>Sanchez</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to state (NMCD)	No fiscal impact	Up to \$6.11	Up to \$32.7	Up to \$38.81	Recurring	General Fund
Costs to counties	No fiscal impact	Up to \$19.2	Up to \$28.8	Up to \$48.0	Recurring	See Fiscal Implications
Total	No fiscal impact	Up to \$25.31	Up to \$61.5	Up to \$86.81	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Office of the Attorney General (NMAG)
 Regulation and Licensing Department (RLD)
 New Mexico Sentencing Commission (NMSC)

Agency Analysis was Solicited but Not Received From
 Department of Public Safety (DPS)
 Department of Transportation (NMDOT)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 141

Senate Bill 141 amends Section 57-30 NMSA 1978, the “Sale of Recycled Metals Act.” It broadens the definition of "regulated material" to include palladium, platinum, and rhodium and heightens record-keeping requirements for sales of catalytic converters and these metals. The bill

mandates a database by the Department of Public Safety for information collected under the act and initiates a program for catalytic theft deterrence. It introduces criminal penalties for non-compliance with recordkeeping rules and revises the Criminal Code to address property damage related to catalytic converter theft. The bill also allows certain officials to inspect records of metal dealers.

The effective date of this bill is January 1, 2025.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB141 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates SB141 will result in additional incarceration costs of up to \$86.81 thousand per year under the revised statute. Based on the costs to incarcerate a single inmate at both NMCD and county jails. This analysis estimates the changes proposed by SB141 based on the costs of incarcerating at least one additional person annually.

Based on estimates of actual time served for fourth degree felonies provided by the Sentencing Commission, an individual would spend an additional 236 days in prison each due to the increased penalty, at a cost of up to \$26.6 thousand per offender. These additional costs will begin to be realized in FY25, increasing over the following three years (as more individuals serve longer sentences for fourth degree felonies and leveling out at up to \$86.81 thousand per offender in FY27 (as offenders begin to be released from prison) and future years.

SIGNIFICANT ISSUES

The analysis provided by the New Mexico Sentencing Commission and the Regulation and Licensing Department express concerns regarding the ambiguity of the term "applicable law enforcement agency," which isn't defined in the bill or the existing Sale of Recycled Metals Act. This vagueness could lead to confusion in enforcement and implementation. Additionally, NMSC notes the creation of new fourth degree felony offenses in the bill could potentially increase the state's prison population, adding to the financial burden on the state's correctional system.

Furthermore, NMSC and RLD noted the bill's lack of exemption for jewelers and similar professions in handling platinum, palladium, or rhodium might inadvertently expose these professionals to legal risks which could have wider implications for businesses not typically

considered under the scope of the Sale of Recycled Materials Act. Both analyses note that SB141's provisions for a new database and the requirement for specific payment methods for catalytic converters lack clarity, especially concerning the timing for payment pickups. This could result in operational challenges and overlapping responsibilities between the Department of Public Safety and the Regulation and Licensing Department, raising concerns about efficiency and duplication of efforts in government processes.

TECHNICAL ISSUES

Analysis provided by the Office of the Attorney General (N MAG) stated:

The new provisions providing criminal penalties at p. 15 of the bill each contain the phrase: "Any person who violates or falsifies a statement required by Section 57-30-2.4 NMSA 1978 . . ." This appears to be grammatically incorrect as it refers to a "person who violates . . . a statement required." This could be corrected by inserting commas after "violates" and "by," to read: "Any person who violates, or falsifies a statement required by, Section 57-30-2.4 NMSA 1978 . . ."

OTHER SUBSTANTIVE ISSUES

Analysis from N MAG further stated:

- 1) SB 141 adds palladium, platinum, and rhodium to the definition of "regulated material" under the Sale of Recycled Metals Act at NMSA 57-30-2, but not to the definition of "regulated material" under the Criminal Code at NMSA 30-15-8. The definitions in both sections are otherwise similar, and both include "a catalytic converter that is not part of an entire motor vehicle."

The new material at Section 7, Subsection C of SB 141 provides that a violation of the recordkeeping requirements of the Sale of Recycled Metals Act involving a purchase of palladium, platinum, or rhodium is a fourth-degree felony. The revisions to the Criminal Code at NMSA 30-15-8 make criminal damage to property by theft or attempted theft of a catalytic converter a fourth-degree felony. (New Subsection B at p. 16). However, because palladium, platinum, and rhodium are not made "regulated material" under NMSA 30-15-8, criminal damage to property by theft or attempted theft of those elements, other than as contained in a catalytic converter, is not a crime under that section.

Because the amendments to the Sale of Recycled Metals Act regulate sales of palladium, platinum, and rhodium separately and apart from sales of catalytic converters, it would seem more consistent to criminalize damage related to theft or attempted theft of those elements even where not contained in a catalytic converter (by adding them to the definition of regulated material in NMSA 30-15-8).

- 2) NMSA 1978, § 57-30-7 presently authorizes a "peace officer" to inspect certain records (Subsection A), and to place a hold on the sale or removal of property upon certain findings (Subsection B). SB 141's amendments to § 57-30-7 would add the following to the persons authorized to inspect records under Subsection A: "the attorney general, a prosecuting attorney, the chief law enforcement officer of the investigating law enforcement agency or the superintendent or the designees of those individuals." However, the bill would not amend Subsection B to add these additional officials.

This creates a potential ambiguity as to whether the newly authorized individuals (the attorney general, etc.) have authority to place a hold on property under Subsection B if justified by the results of a record inspection they conduct under Subsection A. This ambiguity is potentially compounded by the fact that some of the enumerated individuals, such as a “chief law enforcement officer,” would also apparently meet the definition of “peace officer” under NMSA 1978, §57-30-2 (G), making some but not all of the additions to subsection (A) redundant.

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