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FISCAL IMPACT REPORT

SPONSOR Foley DATE TYPED 02/07/2005 HM 6

SHORT TITLE Protect Nm Workers From Union Violence SB _____

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General Office

SUMMARY

Synopsis of Bill

Senate Memorial 6 requests the New Mexico congressional delegation vote to reinstate the “Hobbs Act” to restrict “union violence”. The memorial contains several “whereas” clauses alleging that some unions have resorted to violence, bribery and extortion which has spilled over into political campaigns. The memorial alleges that the Hobbs Act was “thrown out by judicial activism”.

Significant Issues

The Hobbs Act, *18 U.S.C. § 1951(a)*, provides that "whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both."

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The attorney General's office responded that in 1973 the United States Supreme Court interpreted that provision with respect to union violence in order to exact changes to working conditions. *U.S. v. Emmons*, 410 US 396 (1973). The Supreme Court held "the literal language of the statute will not bear the Government's semantic argument that the Hobbs Act reaches the use of violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks. In that type of case, there has been no "wrongful" taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services. [410 U.S. 396, 401]" The Court also stated: "The legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve legitimate labor ends." The court recognized there are state remedies available to address "union violence".

The Attorney General further indicates that the Hobbs Act has not been "thrown out", and is still being used to prosecute federal crimes. It is unclear what the memorial is asking for when it refers to "reauthorizing" the Hobbs Act "to restrict union violence". Presumably the sponsor is asking the congressional delegation to amend that section to cover union violence. Even if that were accomplished, issues would still be raised in individual criminal cases in light of the Supreme Court's holding in *United States v. Lopez*, 115 S. Ct. 1624 (1995). That case held that Congress exceeded its authority under the Commerce Clause when it enacted the Gun-free School Zones Act. However, the Hobbs Act statute has survived attacks based on *Lopez* as long as the government shows some "concrete and explicit" impact on interstate commerce.

GM/njw