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FISCAL IMPACT REPORT

SPONSOR Griego DATE TYPED 2/18/05 HB _____

SHORT TITLE Crime of Failure to Pay for Fuel SB 329

ANALYST Rosen

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|-------|-----------------------------|-----------------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | \$0.0 | | (Indeterminate) | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Attorney General's Office (AGO)
 Corrections Department (CD)
 Department of Public Safety (DPS)

No Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 329 creates a new offense of failure to pay for fuel, makes the offense a misdemeanor, and mandates suspension of the offender's driver's license for up to six months for the first offense or up to one year for the second or subsequent offense.

Significant Issues

According to AGO, the bill may be constitutionally challenged based on vagueness and may also raise conflicts with existing criminal codes.

According to PDD, this bill punishes people twice who fail to pay for fuel (criminal penalties plus suspension of license) and punishes them more harshly than other offenders who take other

things of equal value.

PDD reports fuel thefts are generally less than \$100. Theft of anything worth less than \$100 is a petty misdemeanor. This bill treats persons who take fuel differently than people who take other items worth up to \$100 by making the failure to pay for fuel offense a full misdemeanor. In addition, it punishes them again by suspending their drivers' licenses. This additional penalty will have an adverse effect on PDD clients who are at high risk of losing their jobs if they have no transportation to work.

PDD believes this bill will result in merchants of other things wanting penalties increased for taking small amounts from them, too.

According to CD, the bill will increase prison population and probation caseloads as a result of the new category of crime (Intentional Failure to Pay for Fuel).

PERFORMANCE IMPLICATIONS

Indeterminate

FISCAL IMPLICATIONS

Indeterminate for PDD, TRD, DPS, and AGO.

CD indicates the bill could increase its costs but the number of convictions is likely to be minimal. The Probation and Parole Division is likely to feel the greatest impact in the form of larger caseloads, because an offender convicted of a misdemeanor will not serve time in prison unless the conviction is stacked with other charges.

However, CD reports the contract/private prison annual costs of incarcerating an inmate is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

CD also reports the cost per client in Probation and Parole for a standard supervision program is \$1,452 per year. The cost per client in Intensive Supervision programs is \$2,852 per year. The cost per client in department-operated Community Corrections programs is \$4,371 per year. The cost per client in privately-operated Community Corrections programs is \$9,151 per year. The cost per year for male and female residential Community Corrections programs is \$20,725.

ADMINISTRATIVE IMPLICATIONS

PDD indicates because of the double punishment and the increased punishment, persons accused of this offense will be discouraged from entering into any plea bargain and, thus, more of these cases will have to be tried.

CD indicates this bill will somewhat increase the administrative impact on prison staff and probation staff because of the increasing prison population and probation caseloads. However, CD believes it will be able to absorb the additional burden because the numbers of persons convicted

would be minimal.

TECHNICAL ISSUES

AGO reports this bill may conflict with the existing criminal code sections 30-16-1 Larceny and 30-16-6 Fraud.

OTHER SUBSTANTIVE ISSUES

AGO notes the same legislation was introduced in 2001 [SB 368] and again in 2003 [HB 423]; both times the legislation did not pass.

It is not clear what would happen to the drivers' licenses of residents of states other than New Mexico who are convicted of this offense.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

AGO indicates prosecutions of failure to pay for fuel will continue to be brought pursuant to the existing criminal statutes 30-16-1 or 30-16-6.

JR/yr