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FISCAL IMPACT REPORT

ORIGINAL DATE 1-28 -07
 LAST UPDATED 3/16/07 HB _____

SPONSOR Rodriguez

SHORT TITLE Roadside Memorial Desecration Penalties SB 478/aHJC

ANALYST Baca

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Economic Development Department (EDD)
 Office of the Attorney General (OAG)
 Department of Cultural Affairs (DCA)

SUMMARY

Synopsis of HJC Amendments

House Judiciary Amendments provide that the bill applies to descansos located on private property as well as on state-owned property and to memorials placed on state or private property irrespective of the cause of death.

Synopsis of Original Bill

Senate Bill 478 adds a new section to the Criminal Code penalizing those who knowingly or willfully deface or destroy a descanso, a memorial placed along a public road to memorialize a motor vehicle accident that resulted in death. The penalty for violation of this section is petty misdemeanor or misdemeanor.

FISCAL IMPLICATIONS

This bill has no direct impact on the general fund.

SIGNIFICANT ISSUES

The DCA notes that Descansos, crucitas, memorias or roadside crosses are important cultural and traditional artifacts that pay tribute to the death of an individual or persons killed in automobile accident. These roadside memorials are a unique aspect of New Mexico’s cultural landscape. As such they should be protected from vandalism and harm. While DCA’s Historic Preservation Division (HPD) does not consider contemporary *descansos* to be “historic” properties and, therefore protected under State preservation laws, HPD does consult with the New Mexico Department of Transportation (NMDOT) over their treatment during highway projects. HPD, therefore, would endorse a bill that makes their desecration a criminal offense.

The maintenance and inventory of artifacts pertaining to *descansos* will need to be addressed. Also at issue are the administration and enforcement of this legislation to prosecute.

The bill provides criminal penalties ranging from a petty misdemeanor for a first offense to a misdemeanor for subsequent offenses. According to the OAG, the bill does not apply to “law enforcement officials or other employees of the state or a political subdivision of the state who in the course of the lawful discharge of their duties move or remove a *descanso* that obstructs or damages any public road in this state.”

OTHER SUBSTANTIVE ISSUES

The EDD analysis states that “*Descansos* are an important part of New Mexico’s cultural heritage and it is crucial that they are protected, so long as their presence does not present a driving hazard.”

THE DCA suggests that maintenance and inventory of artifacts pertaining to *descansos* will need to be addressed along with issues related to the administration and enforcement of this legislation to prosecute.

TECHNICAL ISSUES

The OAG notes that:

Under current state law, the erection of a “*descanso*” may be considered to be “trespassing” and/or in violation of DOT regulations. They may also be prohibited by state law prohibiting the erection of any structure upon any highway. NMSA Section 67-7-2. Another DOT rule prohibits “encroachments” and “obstructions” on highway right-of-ways. NMAC 18.20.5. Therefore, this bill has the effect of attaching criminal penalties to the destruction or defacing of an unauthorized structure.

The OAG also questions the use of the term “*descanso*” and submits that the language in the bill unclear, that the bill does not describe the memorials it intends to protect and that it does not authorize their placement.

Further, notes the OAG, the bill implies that law enforcement officers or public employees may remove a *descanso* only if it obstructs or damages the public road. This is a question of fact, which may subject those officers and employees to criminal liability. Also, the holder of the right-of-way and/or owner of the land upon which the right-of-way lies usually has authority to manage that property. This bill might affect their management rights and obligations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Desecration of existing descansos may continue without any penalty assessed against the perpetrators of any damage to the memorials.

LRB/mt:nt