

<b>LFC Requester:</b>	<b>Austin Davidson</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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**      x      **Amendment**              

**Correction**               **Substitute**              

**Date Prepared:**   1/31/24  

**Bill No:**   HB12  

**Sponsor:**   Kristina Ortez    
  Derrick J. Lente  

**Short Title:**   HERMIT'S PEAK FIRE    
  LEGAL FUNDS  

**Agency Name and Code Number:**   305 – New Mexico    
  Department of Justice  

**Person Writing Analysis:**           A. Swenson,    
                                  AAG  

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</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 Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

House Bill (“HB”) 12 proposes to direct proceeds from a legal action due and payable to a prevailing party under the federal Hermit’s Peak/Calf Canyon Fire Assistance Act to be deposited into the prevailing party’s attorney trust account if represented by an attorney and pursuant to a contingency fee agreement. Further, the funds are not assignments as that term is defined in United States Code Section 3727.

**FISCAL IMPLICATIONS**

None for the New Mexico Department of Justice (“NMDOJ”)

**SIGNIFICANT ISSUES**

According to United State Code 3727, ‘assignment’ means— a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim; or the authorization to receive payment for any part of the claim.

If directing that the proceeds from a legal action be deposited into an attorney trust account under certain circumstances is not an assignment under this bill, it would be of great assistance to clarify what is the intended consequence of it not being an assignment to both the prevailing party and the government. The proposed law appears to recognize that an attorney working on a contingent fee basis may have a lien against the government payment, and that the best way to ensure satisfaction of the lien is to have the proceeds deposited into a trust account from which the lien can be satisfied. However, the mere existence of a contingent fee agreement would not constitute an assignment of the proceeds of a claim to which the attorney would have a superior interest that would not need to be held in trust.

**PERFORMANCE IMPLICATIONS**

None.

**ADMINISTRATIVE IMPLICATIONS**

None.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

**TECHNICAL ISSUES**

None.

**OTHER SUBSTANTIVE ISSUES**

Suggest defining what “certain legal actions” include as it currently is ambiguous.

**ALTERNATIVES**

None.

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

Status Quo.

**AMENDMENTS**

None.