

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** January 16, 2024

**Bill No:** HB 45-280

**Sponsor:** Reps. Rehm and Vincent  
Embezzlement for Another's  
Use

**Agency Name and Code**    280-LOPD  
**Number:** \_\_\_\_\_

**Person Writing**    Mark A. Peralta-Silva

**Short Title:** \_\_\_\_\_

**Phone:** (505) 369-3604    **Email** Mark.peralta-silva@lopdm.us

**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**

**BILL SUMMARY**

Synopsis: HB 45 aims to expand the definition of embezzlement to include the conversion of something entrusted to a person to include use by another. Embezzlement is currently defined as the conversion of anything of value by a person who was entrusted with the thing of value. This bill would expressly enlarge the definition to also include conversion's for someone else's use. Because conversion for another's use is already criminalized, it is not immediately apparent why this bill is needed.

**FISCAL IMPLICATIONS**

There are likely few prosecutions for these offenses, so little impact is envisioned. While the LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

Under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide constitutionally mandated effective assistance of counsel to their existing clients. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

**SIGNIFICANT ISSUES**

This bill presents significant issues. First, it is unclear how the addition of "another's use" would differentiate embezzlement from general larceny or fraud. It appears the intent of this bill is to expand embezzlement to include situations in which one person entrusts something of value to another person, who then gives the thing of value to someone else for the third person's use. Larceny, by comparison, is "the stealing of anything of value that belongs to another." NMSA 1978, § 30-16-1 (2006). If someone intends to give something there were entrusted with to someone else, then they have essentially taken something of value which belonged to another. Embezzlement generally differs from larceny because the embezzler was given permission to possess the thing of value.

If the embezzler gives it to someone else to use, then it would also seem to constitute fraud. Fraud is the “intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices, or presentations.” NMSA 1978, § 30-16-6 (2006). While an embezzler cannot commit fraud, *see State v. Yancey*, 2021-NMCA-009, ¶ 14, 484 P.3d 1008, for the embezzlement of a thing of value, this new addition would seem to capture fraud in that while the thing of value would be lawfully obtained, it would then be transferred fraudulently for someone else’s use, thereby potentially constituting an act of fraud. It is unclear what value there is in adding this new language when it seems such conduct is already covered by other criminal statutes. The potential for this new language to transform some acts of embezzlement could lead to litigation under the double jeopardy clause or the general-specific statute rule.

Second, it is unclear who this new variant of embezzlement is limited to. For example, is embezzlement only limited to the person who was entrusted with the thing of value, as the current statute now suggests? Or, is this new language expanding the crime to also include the other person, the one whose use is now contemplated by the bill but was not entrusted with the thing of value? And if it is the latter, then does this third person need to have a certain culpable mental state to be convicted of the crime? Generally, embezzlement requires that the person have a fraudulent intent to deprive the owner of the thing of value. This general criminal intent justifies a criminal penalty.

An example illustrates the complication. Say Adam gives Barry his cellphone, entrusting Barry to keep it safe. Barry then converts the cellphone for his use and sells it, without Adam’s permission, taking the money for his use. This would seem to constitute embezzlement under the current statute.

Now, say, Barry loops in Charlie. Barry convinces Adam to give him the cellphone. Barry then gives the phone to Charlie, and without telling Charlie it is Adam’s phone, Charlie sells the phone and keeps the money. It appears that in this second scenario, Barry has committed embezzlement because he was entrusted with the phone and converted it to another’s use, Charlie’s use. But is Charlie also implicated, even if Charlie did not know Barry did not have the authority to give him the phone or that Adam may have placed limits on Barry’s use of the phone? This is unclear and without further guidance could create a situation in which a third person with no criminal intent would be implicated in a crime just based on accepting something of value from another.

Further clarification on the scope and limits of this additional language would benefit the citizens of New Mexico to prevent what would otherwise be legal conduct merging into unintentional, yet illegal conduct.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

**Germaneness:** Analyst is unaware whether this legislation is germane under Art. IV, Section 5.

It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**