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FISCAL IMPACT REPORT

SPONSOR <u>Maestas</u>	LAST UPDATED <u>2/26/25</u>	ORIGINAL DATE <u>2/1/25</u>
SHORT TITLE <u>Determination of Embezzlement Penalty</u>	BILL NUMBER <u>Senate Bill 155/aSJC</u>	ANALYST <u>Chavez/Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$24.8	At least \$24.8	At least \$49.6	Recurring	General Fund
Cost to Counties	No fiscal impact	At least \$19.2	At least \$19.2	At least \$37.4	Recurring	General Fund
Total	No fiscal impact	At least \$44.0	At least \$44.0	At least \$87.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Corrections Department (NMCD)

Agency Analysis was Solicited but Not Received From
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SJC Amendment to Senate Bill 155

The Senate Judiciary Committee amendment to SB155 modifies the bill by specifying that the aggregation of embezzlement offenses over a 12-month period applies only when the crimes are committed “against any one victim.” This change ensures that separate instances of embezzlement involving different victims remain distinct offenses and can be prosecuted separately. Additionally, the amendment includes an effective date provision, setting July 1, 2025, as the date when the new provisions will take effect.

Synopsis of Senate Bill 155

Senate Bill 155 (SB155) proposes to amend a section of the Criminal Code (Section 30-16-8, NMSA 1978) pertaining to embezzlement. The bill allows for the aggregation of multiple incidents of embezzlement within a 12-month period to determine the applicable penalty. Under the proposed changes, embezzlement offenses would be classified based on the total value of the property embezzled over this period.

The penalties range from a petty misdemeanor for amounts of \$250 or less to a second-degree felony for amounts exceeding \$20 thousand. By consolidating multiple offenses into a single chargeable amount, the bill seeks to address repeat offenses and ensure appropriate sentencing based on cumulative financial harm.

- Petty misdemeanors: when the value of the thing embezzled or converted is \$250 or less in any consecutive 12-month period.
- Misdemeanor: when the value of the thing embezzled or converted is more than \$250 but not more than \$500 in any consecutive 12-month period.
- Fourth-degree felony: when the value of the thing embezzled or converted is more than \$500 but not more than \$2,500 or in any consecutive 12-month period.
- Third-degree felony: when the value of the thing embezzled or converted is more than \$2,500 but not more than \$20 thousand in any consecutive 12-month period.
- Second-degree felony: when the value of the thing embezzled or converted is more than \$20 thousand in any consecutive 12-month period.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB155 is anticipated to increase the number of incarcerated individuals.

Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could increase costs by approximately \$19.2 thousand to counties. The punishments proposed in this bill range from a misdemeanor, which would likely not result in any jail time, to a second-degree felony punishable by up to nine years in prison. The New Mexico Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY24 was \$56.7 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities.

It is difficult to estimate how many individuals will be charged, convicted, or sent to jail based on steeper sentencing penalties. Without additional information, this analysis assumes at least one person will be incarcerated each year for this crime. However, the statute does not currently

allow for aggregation of embezzlement charges over any period; LFC staff analysis suggests most individuals convicted of a misdemeanor are incarcerated for slightly more than one year, and most individuals convicted of a second-degree felony are incarcerated for slightly less than four years. This analysis estimates SB155 will increase annual incarceration costs by at least \$24.8 thousand to the state in FY26 and at least \$19.2 thousand to counties starting in FY26.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB155, are not included in this analysis but could be moderate.

SIGNIFICANT ISSUES

One concern raised by the Administrative Office of the Courts (AOC) is the potential for increased litigation and due process challenges. Since the bill aggregates embezzlement offenses over a 12-month period, defendants may be more likely to contest charges, leading to more trials and appeals. AOC also notes that increased penalties could disproportionately impact low-level offenders who may not have otherwise faced felony charges if their offenses were prosecuted separately.

Another legal issue raised in prior legislative analysis relates to potential double jeopardy concerns. If law enforcement discovers additional embezzled funds after a conviction has already been secured, prosecutors may be precluded from filing new charges for those funds under the same 12-month period, raising constitutional questions about whether the bill effectively limits the state's ability to prosecute separate offenses. The Public Defender Department has also raised concerns the bill caps penalties at a second-degree felony, which would prevent multiple second-degree felony charges in cases where large sums are embezzled over time. While this limitation aligns with the fact that embezzlement is a nonviolent offense already subject to restitution, it could impact prosecutorial discretion in handling complex cases.

From a law enforcement perspective, the Department of Public Safety (DPS) supports the bill, arguing that experienced criminals often structure their thefts just below statutory thresholds to avoid higher penalties. By aggregating offenses, SB155 would close this loophole and allow for more appropriate sentencing. However, this approach could also create challenges in tracking and proving financial crimes over extended periods, requiring coordination among multiple agencies and potentially leading to evidentiary complications in court.

Analysis from the New Mexico Sentencing Commission also notes:

“Embezzlement is not a crime for which many people are incarcerated in the state. As of June 30, 2024, there were seven people incarcerated for embezzlement. In FY24, there were three admissions for embezzlement on a new charge. One has to have embezzled over \$500 to receive a felony sentence for embezzlement. Aggregating amounts over a 12-month span might lead to more people with felony convictions for embezzlement.”

TECHNICAL ISSUES

The bill's language could benefit from minor technical clarifications. AOC points out, while the bill allows for aggregation, the statute's wording still refers to “the value of the thing embezzled or converted” in the singular, which could create ambiguity when applying the law to multiple offenses. Lawmakers may wish to consider revising this phrasing to ensure clarity in how courts interpret and apply the new aggregation rules.

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