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## FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 2/27/03 HB 796  
 SHORT TITLE: Revise Arson Statutes SB \_\_\_\_\_  
 ANALYST: Maloy

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |               | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------------|------|-----------------------------|---------------|-------------------------|------------------|
| FY03                    | FY04 | FY03                        | FY04          |                         |                  |
|                         |      |                             | See Narrative |                         |                  |
|                         |      |                             |               |                         |                  |

### SOURCES OF INFORMATION

Responses Received From  
 Administrative Offices of the Courts  
 Office of the Attorney General  
 Department of Corrections  
 Motor Transportation Division

### SUMMARY

#### Synopsis of Bill

House Bill 796 *rearranges* the definition of arson without any substantive change. It also modifies the penalties for arson.

Currently, arson is:

- a misdemeanor if the property destroyed or damaged is worth \$100 or less;
- a fourth-degree felony if the value is over \$100 but not more than \$1000;
- a third-degree felony if the value is over \$1,000.

With HB 796 these amounts change as follows:

- a petty misdemeanor if the property destroyed or damaged is worth \$100 or less;

- a misdemeanor if the value is over \$100 but not more than \$250;
- a fourth-degree felony if the value is over \$250 but not more than \$2,500;
- a third-degree felony if the value is over \$2,500 but not more than \$20,000;
- a second-degree felony if the value is over \$20,000.

HB 796 also modifies the penalties for negligent arson. Currently, negligent arson is a fourth-degree felony. With HB 796 it would become:

- a third-degree felony if it causes death or great bodily harm;
- a fourth degree-felony if property with a value of \$2,500 or more is destroyed or damaged;
- a misdemeanor if property with a value of less than \$2,500 is destroyed or damaged.

HB 796 would also modify the crime of aggravated arson. Currently, one commits the second-degree felony of aggravated arson by willfully or maliciously, through the use of explosive or fire, damaging certain property such as vehicles and utility lines or causing a person great bodily injury. With HB 796, aggravated arson would be limited to those situations in which one “maliciously and willfully” sets a fire or causes an explosion which results in “great bodily injury” (for which the crime is a second-degree felony) or “temporary, painful disfigurement to another person or results in an impairment to the functions of a member or an organ of another person’s body” (for which the crime is a third-degree felony).

#### Significant Issues

HB 796 proposes inclusion of the words “or intended to be destroyed or damaged” in the definitions of petty misdemeanor, misdemeanor, fourth-degree felony and second-degree felony arson. However, no such language is included in the definition of third-degree felony arson.

Negligent arson is currently a fourth-degree felony in the event it causes bodily injury to another. HB 796 would make negligent arson a third-degree felony if it causes great bodily harm to another person. With HB 796, there would be no crime of negligent arson if it caused injury which is deemed to be anything less than great bodily harm. “Great bodily harm” is defined by the New Mexico criminal code as “an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.” NMSA §30-1-12(A).

The HB 796 proposal regarding aggravated arson uses, in the definition of third degree felony aggravated arson, language which is similar, although not identical, to language used in the §30-1-12(A) definition of “great bodily harm.” Pursuant to §30-1-12(A) the “loss or impairment of the function of any member or organ of the body” constitutes “great bodily harm.” However, pursuant to HB 796, aggravated arson which causes “an impairment to the functions of a member or an organ of another person’s body” is a third degree felony and thus must not involve “great bodily harm,” since the presence of “great bodily harm” would make the aggravated arson a second degree felony. There appears to be a substantial conflict between proposed HB 796 and ex-

isting NMSA §30-1-12(A).

**FISCAL IMPLICATIONS**

There is no direct fiscal impact on the state as a result of HB 796. However, there will likely be secondary impact through fewer plea bargains and more trials and appeals. This impact will fall on the courts, district attorneys' offices, public defenders and corrections department.

**SJM/njw**