F I S C A L   I M P A C T   R E P O R T

SPONSOR HJC **ORIGINAL DATE** 1/31/2006 **LAST UPDATED** 2/16/06 **HB** 392/HJCS/aSJC

SHORT TITLE Prohibit Profiteering During Emergencies **SB**

ANALYST McOlash/Lewis/Earp

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 445.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the Attorney General (AGO)
Regulation and Licensing Department (RLD)
Administrative Office of the Courts (AOC)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SJC Amendments

The SJC amendments to HJCS/HB392 add a new subsection to the bill which exempts sales by growers, producers or processors of raw or processed food products from the provisions of the bill, except to the extent that the retail sales of such products to the ultimate consumer occurs within the area of the determined abnormal market disruption.

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 392, with emergency clause, provides that it is an unconscionable trade practice pursuant to the Unfair Practices Act for any person to profiteer during a state of emergency or disaster as declared by the president of the United States or the governor; provided that the governor or the district court issues an order declaring that the emergency or disaster has caused or appears likely to cause an abnormal market disruption within the state. The bill adds definitions of “abnormal market disruption,” “disaster,” “necessary property or service,” and “profiteering during a state of emergency or disaster.”

The bill provisions for public notice and exemptions in certain circumstances, and provides that willful violation of the prohibition against profiteering during a state of emergency or disaster is punishable by a fine of up to $1,000 per violation, with an aggregate total not to exceed $25,000 for any 24-hour period. A court may also suspend or revoke a business licenses or certificate for continuous and willful violations.

A severability clause provides that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SIGNIFICANT ISSUES

According to the Office of the Attorney General (AGO), when a disaster such as a hurricane or earthquake strikes, increased demand for emergency goods and services, coupled with constrained supplies may lead to higher prices. While some sellers may charge higher prices because operating costs have increased due to emergency conditions, others may reap large profits selling scarce necessities to desperate buyers who have no alternatives. When faced with emergency conditions, citizens demand government action to relieve hardships. One course of action the government may consider is price controls to stop price gouging and keep goods affordable.

According to the Department of Finance and Administration (DFA), New Mexico does not have a "price-gouging" law. The DFA suggests that HB 392 presumably will fill this need as a reaction to the perceived price-gouging after Hurricane Katrina.

Current statute (Section 57-12-10 NMSA 1978) includes provisions allowing any person who suffers any loss of money or property, real or personal, under the Unfair Practices Act to bring an action to recover damages.

ADMINISTRATIVE IMPLICATIONS

The Administrative Office of the Courts (AOC) predicts a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO suggests that consumers may be taken unfair advantage of during a declared state of emergency, if such state of emergency results in abnormal disruptions of the marketplace, resulting in greatly increased prices for essential consumer goods and services.

BMC/ML:nt:mt