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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2006

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Profiteering During Emergencies SB 445

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
\$1,000.0		Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB 392

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
\$1,000.0			Non-Recurring	Anti-Profiteering Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Financial Institutions Division of the Regulation and Licensing Department (FID)

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

Department of Finance and Administration – General Counsel (DFA/GC)

SUMMARY

Synopsis of Bill

Senate Bill 445 amends the Unfair Practices Act to prohibit unconscionable trade practices that result in prices that grossly exceed the prices of similar goods or services readily obtainable in similar transactions by similar persons. The bill defines disasters, necessary properties or ser

VICES, and profiteering and adds new material to the Act to prohibit such profiteering during these emergencies or disasters.

The bill creates an Antiprofitteering Fund in the State Treasury and appropriates \$1,000,000 to the Fund for use by the AGO in FY 2006 and subsequent fiscal years for the investigation and prosecution of violations of the antiprofitteering provisions.

Section 3 provides for a civil penalty of up to \$1,000 per violation, with an aggregate total of \$25,000 for any 24-hour period. The bill also allows a court to suspend or revoke business licenses or certificates for continuous and willful violations.

Section 6 (Severability) 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.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

This bill creates a new fund and provides for a one-time, non-reverting, appropriation for use in FY 2006 and subsequent fiscal years. The fiscal impact, overall, will be proportionate to the enforcement of this law. New laws, amendments to existing laws, and new hearings have the potential to increase court caseloads, thus requiring additional resources.

Continuing Appropriations language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

New Mexico does not have a “price-gouging” law and, presumably, SB 445 will fill this need as a reaction to the perceived price-gouging after Hurricane Katrina.

Senate Bill 445 allows for the establishment of price controls for certain goods and services during times of emergency or disaster. The price controls allow sellers of emergency goods or services to charge:

1. the pre-emergency price plus a reasonable profit;
2. the average price for similar goods and services in the area plus a reasonable profit; or
3. the seller’s actual cost.

The reasonable profit margin cannot exceed 20%, unless allowed by a court.

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.

PERFORMANCE IMPLICATIONS

The courts are participants in performance-based budgeting. The bill will have an impact on the

cases disposed of as a percentage of cases filed; the percentage change in case filings by type; and clearance rates.

POSSIBLE QUESTIONS

What does it mean to “grossly exceed’ a price?

How is the “time of a state of emergency or disaster” defined? Only as declared by the President or Governor? Can a court find that an event constitutes a disaster in absence of a declaration?

Does 57-12-10 NMSA 1978 apply to cases of profiteering?

BMC/mt