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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR King LAST UPDATED \_\_\_\_\_ HB 456

SHORT TITLE Money Laundering Investigation and Forfeiture SB \_\_\_\_\_

ANALYST Segura

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

New Mexico Correctional Department (NMCD)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 456 amends NMSA 30-42- , The Racketeering Act to include additional offenses of money laundering, accepting earnings of a prostitute, a violation of the Indian Arts and Crafts Sales Act and Human Trafficking.

The bill also amends NMSA 30-51-4 of the Money Laundering Act penalties to conform to penalties of other New Mexico financial and property crimes statutes such as Larceny, Embezzlement, and Fraud. The AGO indicates the bill creates a range of penalties and provides consistency with other New Mexico related statutes.

The bill proposes to have the person found to have committed the crime of racketeering pay the costs of the investigation and prosecution to the general fund of the governing body of the investigating and prosecuting agencies.

Also, the bill would mandate the forfeiture of any interest acquired or maintained in violation of the Money Laundering Act and any interest, security or claim in property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled or conducted or in which the person has participated in violation of the Money Laundering Act.

## **FISCAL IMPLICATIONS**

House Bill 456 does not contain an appropriation.

The NMCD is estimating that the enactment of this bill would result in \$160,000 in incarceration and probation/parole supervision costs. According to AOC, it is difficult to determine with any reasonable reliability whether the changes in the money laundering statutes would result in increased activity in the courts. Racketeering cases are rare but complex, and the changes that the bill seeks are not foreseen to add a tremendous amount to the cases that will ordinarily be prosecuted in the Judiciary.

The DPS indicates that the proposed legislation could have significant fiscal implications to the department. The enactment of the bill would require the department to establish a program and hire personnel needed to manage the seizure, administration and management of the property while it is held. They raise the concern that there will be costs associated for conducting title/mortgage lien analysis which will become a financial burden/responsibility to the seizing law enforcement agency.

## **SIGNIFICANT ISSUES**

The Department of Public Safety raises significant concerns within the Forfeiture Act, stating that it is a cumbersome and potentially unworkable process with which to deal with these cases. The Forfeiture Act was passed in the wake of the New Mexico Supreme Court Case, *State v. Nunez*. Nunez found that forfeitures under the Controlled Substances Act were punitive, rather than remedial in nature and required that the forfeiture action be carried out in the context of the criminal case in a bifurcated trail.

In addition, the Act provides that state district courts have jurisdiction over forfeiture proceedings. NMSA 31-27-6 (B). The potential property subject to forfeiture under the proposed bill includes money, real property, personal property, and other types of financial interests. Filing a forfeiture complaint within 30 days of seizure may prove problematic because of the potential difficulty in identifying the owners and interests of the property. For example, title searches would need to be conducted to determine ownership and comply with notice requirements.

As noted in 31-27-6D(2) , if the state fails to prove, by clear and convincing evidence, that the person charged with the crime for which the property is alleged to be property subject to forfeiture is the owner of the property:

- (1) The forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless possession of the property is illegal; and

- (2) The owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

The DPS state that these provisions of the Forfeiture Act may make the forfeiture of “any interest acquired or maintained in violation of the Money Laundering Act; and any interest, security or claim in property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled or conducted or in which the person has participated in violation of the Money Laundering Act” as contemplated by this bill difficult to achieve. Also, the Forfeiture Act requires money to be deposited with the court upon seizure, (*Albin v Bakas*) 141 N.M. 742.

The AOC indicates that absent forfeiture provisions in the law such as the one proposed by HB 456, would make it difficult for New Mexico criminal justice authorities to enter into cooperative agreements with federal authorities.

### **OTHER SUBSTANTIVE ISSUES**

DPS suggests that the Forfeiture Act should be amended to deal with time frames and issues involving the deposit of money with the courts.

RMS/svb