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FISCAL IMPACT REPORT

ORIGINAL DATE 03/06/11

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Forfeiture of Embezzled School Money SB 439/SJCS

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 439 amends Section 30-16-8 NMSA-1978 that “Money or property obtained as a result of an embezzlement committed against a school district or a public school is subject to forfeiture pursuant to the provisions of the Forfeiture Act.”

Effective date of provisions is July 1, 2011.

FISCAL IMPLICATIONS

No fiscal impact is identified.

SIGNIFICANT ISSUES

The Forfeiture Act [Sections 31-27-1 to 31-27-8 NMSA 1978] permits law enforcement to seize property that has been embezzled. The Act establishes conditions when a court order is needed for law enforcement to seize the property. Additionally, the Forfeiture Act permits the state to obtain a forfeiture order from a court for the property that was embezzled.

Either the Attorney General (AG) or the PED, upon receiving a commission from the Attorney General, would have to file legal papers to obtain forfeiture of embezzled property. Law enforcement would need to assess whether they could seize embezzled property with or without a court order.

The Forfeiture Act has, among others, the following requirements:

31-27-6

- B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter for which the property is alleged to be subject to forfeiture.
- C. The forfeiture proceeding shall be brought in the same proceeding as the criminal matter and presented to the same trier of fact; provided:
 - (1) The two issues shall be bifurcated;
 - (2) The rules of criminal procedure shall apply in the criminal matter and the rules of civil procedure shall apply in the forfeiture proceeding; and
 - (3) If the criminal defendant is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Money or property embezzled from a school district or public school would not be subject to forfeiture pursuant to the Forfeiture Act.

CS/bym:svb