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## FISCAL IMPACT REPORT

SPONSOR Nibert ORIGINAL DATE 1/26/2021  
LAST UPDATED 2/02/2021 HB 66/aHCEDC  
SHORT TITLE Uniform Code Secure Transaction Language SB \_\_\_\_\_  
ANALYST Hanika-Ortiz

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

|              | FY21 | FY22 | FY23 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | NFI  | NFI  | NFI  |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
Secretary of State (SOS)  
Regulation and Licensing Department (RLD)

### **SUMMARY**

#### Synopsis of HCEDC Amendment

The House Commerce & Economic Development Committee amendment further clarifies that exempted transactions include those transactions by a state or a governmental unit of a state.

#### Synopsis of Original Bill

HB66 amends the New Mexico Uniform Commercial Code (“UCC”), primarily to make conforming amendments to statutes related to secured transactions.

Section 1 defines *good faith* as “honesty in fact and the observance of reasonable commercial standards of fair dealing” and *public-finance transaction* as “a secured transaction in connection with which: (A) debt securities are issued; (B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation or assignor or assignee of a security interest is a state or governmental unit of a state”.

Section 2 adds *public-finance transaction* to the list of transactions exempted from the scope of

the UCC at Section 55-9-109(a).

Lastly, Section 4 repeals a provision providing that amendments made to the UCC in 1985 are declaratory of the meaning of the UCC as it existed before the amendments.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

No fiscal impact

### **SIGNIFICANT ISSUES**

SOS noted repealing the “Presumption that rule of law continues unchanged” provision is not common and is incorporated in most states’ UCC statutes to bring clarity on the statutory interpretation; codifying that, if a change in law has not clearly been made, then the previous provisions would apply. Without this provision, uniformity in application could be sacrificed.

According to RLD, existing language in New Mexico’s UCC already excludes a “public-finance transaction” with the already-existing exception for “...other transfer(s) by this state or a governmental unit of this state” (pg. 33, line 7). This bill’s amendments are likely intended to make that more clear, by using the definition of “public-finance transaction” in the official text.

### **TECHNICAL ISSUES**

SOS noted the bill adds “if” to the following sentence: “(3) **if** the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and” (pg. 34 line 2). This may be unnecessary as part (a) pg. 33 lines 13-15 end in “if” and part (3), as amended, is a continuation of part (a). Therefore, SOS suggests striking “if” on pg. 34 line 2.

AHO/al/rl