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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/12

SPONSOR Gentry LAST UPDATED _____ HB 13

SHORT TITLE Criminal Acts as Public Corruption Offenses SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	\$31.7-317.0	\$31.7-317.0	\$63.4-634.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Municipal League
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 13 is anti-corruption legislation that amends various criminal statutes to increase the penalties for certain public corruption offenses. The increased penalties include:

- increasing the basic sentence of imprisonment by one year, when the crime is committed by a person elected or appointed to a position with or employed by a public entity or when any person is convicted of having an unlawful interest in a public contract, where the value received is more than \$50, or demanding or receiving a bribe by a public officer or employee; and
- being barred from being a lobbyist or contracting with a public entity, which includes the state or one of its agencies, departments, institutions or political subdivisions (a knowing and willful violation of which would constitute a third degree felony).

To trigger the sentence enhancement for embezzlement, the thing embezzled or converted must be valued at more than \$500. To trigger the lobbying and contract bar for unlawful interest in a public contract, the value received by a person must be more than \$50.

The “public corruption” offenses to which these increased penalties apply are:

- embezzlement (30-16-8 NMSA 1978);
- paying or receiving public money for services not rendered (30-23-2 NMSA 1978);
- making or permitting false vouchers (30-23-3 NMSA 1978);
- having an unlawful interest in a public contract (30-23-6 NMSA 1978);
- bribing a public officer or employee (30-24-1 NMSA 1978);
- demanding or receiving a bribe by a public officer or employee (30-24-2 NMSA 1978)
- soliciting or receiving an illegal kickback (30-41-1 NMSA 1978); and
- offering or paying an illegal kickback (30-41-2 NMSA 1978);

Section 9 of HB 13 requires all public entities to post notice of public corruption offenses and their penalties. The list of public corruption offenses in this section includes (in addition to the list above to which increased penalties apply) violating the ethical principles of public service and taking an official act for personal financial interest (both of which are currently fourth degree felonies under the Governmental Conduct Act), and tampering with public records (also currently a fourth degree felony).

The effective date of the bill is July 1, 2013.

FISCAL IMPLICATIONS

According to the NMSC, the enhanced sentences proposed for public corruption offenses may have a small impact on the state prison population. The fiscal impact in the above table is a range based on the incarceration of one to 10 individuals as the result of the passage of this legislation.

The cost to incarcerate a male inmate ranges from an average of \$38,070 per year in a state owned/ operated prison to \$31,686 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$29,375 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

SIGNIFICANT ISSUES

The AODA has noted that New Mexico’s statutes contain many (slightly different) definitions of “public” servants and “public” institutions. Often the different definitions are intentional, and vary depending on the context. Unless the legislature intends to make such distinctions, it would be helpful if the public servants subject to the public corruption offenses and other corrupt practices identified in HB 13 were identical, but they are not. For example, Section 10-16-3(D) applies to legislators and public officers and employees. Section 10-16-3 applies to public officers and employees (but does not mention legislators). The sentence enhancement amendments of HB 13 apply to “a person elected or appointed to a position with or employed by a public entity.” It is not entirely clear whether that definition includes legislators and all public officers and public employees. Every time the definitions change, it offers an opportunity for parties to argue about who is included in the definition. A similar problem may arise with HB 13’s definition of “public entity” as “the state or one of its agencies, departments, institutions or political subdivisions.” Other New Mexico statutes offer differently worded definitions of public

entities. Even HB 13 changes the definition when it comes to who must post a list of offenses and penalties: Section 9 of HB 13 requires every “state agency, department, political subdivision and institution” to post the list. Because HB 13’s definition of “public entity” also includes “the state,” which is broadly defined in other statutes, that suggests that other entities besides state agencies, departments, political subdivision and institutions are covered by HB 13’s sentence enhancement and contracting/lobbyist provisions, even if those entities are not required to post the list of offenses and penalties. That will be a subject for argument.

TECHNICAL ISSUES

As currently written, NMSA 1978, Section 30-23-6, unlawful interest in a public contract, applies to certain acts by sellers and purchasers as well as certain acts by “a public officer or public employee.” HB 13 amends Section 30-23-6 to provide that “whoever” commits this offense, when the value received by the person is more than fifty dollars the basic fourth degree felony sentence shall be increased by one year. It appears that this is the only HB 13 amendment to sentence enhancements that applies to both public and non-public offenders. Given that the other amendments in HB 13 specify that the sentence enhancements only apply to persons elected to, appointed to or employed by a public entity, it is not clear whether including private offenders was intentional.

NCJ/svb