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FISCAL IMPACT REPORT

ORIGINAL DATE 06/19/20

SPONSOR Baca LAST UPDATED _____ HB _____

SHORT TITLE Create Crime of Looting SB 16

ANALYST Rabin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
See Fiscal Implications			Recurring	Crime Victims Reparation Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Likely Minimal; See Fiscal Implications				Recurring	Agency Operating Budgets (DPS, district attorneys, public defenders, courts, and NMCD)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Attorney General's Office (NMAG)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Crime Victims Reparation Commission (CVRC)
 Department of Public Safety (DPS)

No Response Received

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 16 would create the crime of looting within the Criminal Code, which is defined as “knowingly and without authority of law or consent of the owner: 1) entering any home or dwelling or any commercial business or property in which normal security of property is unavailable because of fire, natural disaster, riot, mob, or other man-made disaster or emergency; and (2) obtaining or exerting control over or damaging or removing property of the owner.” The bill would make looting a fourth degree felony, imposes a minimum sentence of at least 100 hours of community service, and requires the defendant to make restitution to the owner of the looted property.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

Any increase in criminal offense or penalties has an impact on the workload of all elements of the criminal justice system, including law enforcement, courts, district attorneys, public defenders, jails, and prisons. However, because the elements of the crime of looting as defined in SB16 overlap with existing criminal offenses, the additional costs related to this bill will likely be low, as incidents likely to lead to looting charges under this bill are already addressed in current law.

Incidents that could only be charged as misdemeanor offenses under current law, such as criminal damage to property with damages under \$1,000, could be escalated to fourth degree felonies under the provisions of the bill, potentially making those offenses more likely to be pursued by law enforcement and go to trial, creating additional costs to the state and local entities. Additionally, if a charge of looting is added to a charge or charges of other offenses that exist under current law related to the same incident, this could result in a longer period of incarceration, at additional cost. The Corrections Department adds that the community service and restitution required under this bill may be under the supervision of its probation and parole officers, which could result in a minor cost increase.

The Public Defender Department (PDD) notes that if the crime of looting is charged in addition to other crimes, it could increase public defender workloads and needed resources.

Additional felony sentences that could be imposed under this law would require additional payments of crime victims reparation fees, which are \$75 for a felony and provide revenue for the crime victims reparation fund. This could result in some additional revenue to this fund.

Because it is unclear to what extent this law could or would be applied in place of or in addition to current offenses, it is impossible to accurately estimate the resulting costs.

The Administrative Office of the Courts (AOC) notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The conduct described by the definition of “looting” within SB16 overlaps with several existing offenses outlined within the Criminal Code, including trespass (a misdemeanor), breaking and entering (a fourth degree felony), non-residential burglary (a fourth degree felony), larceny (a misdemeanor or felony depending on the value of property stolen), and criminal damage to property (a misdemeanor or felony depending on the value of property damage). PDD notes that, depending on the nature of the damage, crimes such as arson may also be implicated within this definition. PDD argues that “there are ample criminal statutes in place to punish and deter the targeted conduct so that the legislation is not needed.”

It is not clear if the charge of looting may be charged and sentenced as a separate offense alongside one or more of these similar offenses related to a single incident and may vary among the different offenses. PDD notes this issue, explaining that “It is unclear whether this crime would be charged to the exclusion of other crimes under a general-specific analysis,” and adding that “Enactment of this legislation would lead to litigation to determine whether the general-specific doctrine would preclude charging existing crimes when “looting” occurs. Alternatively, it would certainly lead to case-by-case double jeopardy litigation if looting were charged in addition to any of the overlapping crimes noted above.”

PERFORMANCE IMPLICATIONS

AOC notes that the courts are participating in performance-based budgeting. This bill may impact the courts’ performance-based budgeting measures, which may result in a need for additional resources. For example, the district court’s performance measure for clearance rates may be impacted if new crimes carrying severe penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

ADMINISTRATIVE IMPLICATIONS

AOC states there may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

TECHNICAL ISSUES

The Attorney General’s Office (NMAG) provides the following technical analysis:

The phrase “without authority of law” appears to be an attempt to protect peace officers and potentially Good Samaritans from prosecution for acts that might otherwise amount to looting. This phrase, however, is not otherwise used in the Criminal Code. The drafter should consider replacing “without authority of law” with “unlawfully”, which is defined and discussed at length in the Criminal Code. *See, e.g.*, UJI 14-132 NMRA. Though this phrase is most often used to distinguish legal from illegal touching of one’s person, there is nothing to suggest that reading is its only application.

OTHER SUBSTANTIVE ISSUES

NMAG notes that the portion of the bill mandating restitution is duplicative of the existing victim restitution statute. Restitution is already mandatory by law per Section 31-17-1(A) NMSA 1978.