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FISCAL IMPACT REPORT

SPONSOR Dixon / Maestas / Rehm **ORIGINAL DATE** 02/13/21 **LAST UPDATED** 02/22/21 **HB** 144/aHCPAC/aHJC
SHORT TITLE Damage to Property by Theft **SB** _____
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Law Offices of the Public Defender (LOPD)
 Office of the Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 144 strikes all of the HCPAC amendments, removes the provision requiring an offender to pay restitution to the owners of the regulated material and damaged property, and adds a provision to the Sale of Recycled Metals Act that prohibits a secondhand metal dealer from purchasing or receiving any regulated material that the dealer knows is not lawfully possessed by the seller.

Synopsis of HCPAC Amendment

The House Consumer Public Affairs Committee amendment to House Bill 144:

- Changes the penalty provision of the bill to apply criminal penalties for criminal damage

to property by theft or attempted theft of regulated material according to the amount it costs to repair the property or replace the regulated material. A cost of less than \$1,000 is a petty misdemeanor, between \$1,000 and \$2,500 is a misdemeanor, and more than \$2,500 is a fourth degree felony.

- Adds a provision to the Sale of Recycled Metals Act that prohibits a secondhand metal dealer from purchasing or receiving any regulated material that the dealer knows is not lawfully owned by the seller.

NMAG notes the HCPAC amendment could create conflicting standards for secondhand metal dealers. Currently, Section 57-30-2.4(A) of the Sale of Recycled Metals Act provides that metal dealers may not purchase certain items of regulated materials without first obtaining written documentation the seller is the rightful owner or that the material was lawfully obtained – the seller must prove the propriety of the sale. In contrast, the new subsection (C) would only prohibit dealers from receiving regulated materials when the dealer has actual knowledge the seller was not the owner.

Synopsis of Original Bill

House Bill 144 creates the crime of criminal damage to property by theft or attempted theft of regulated material, which consists of the unlawful taking or attempted taking of a regulated material that results in damage to real or personal property when the cost to repair the damage exceeds \$2,500. The crime is punishable as a fourth degree felony and an offender must pay restitution to the owners of the regulated material and damaged property.

The term “regulated material” includes aluminum, bronze, copper or brass, steel, and lead materials, as defined in the bill. “Regulated material” also includes utility access covers, water meter coves, guard rails, street signs, traffic signals, and catalytic converters.

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

FISCAL IMPLICATIONS

LOPD states that creation of any new crime is likely to create new prosecutions and, therefore, additional clients for LOPD. However, because the crime created by HB144 covers conduct that is already criminal under a variety of statutes, it is unlikely there would be an increase in the number of prosecutions. Any additional litigation regarding the proper interpretation and application of the new crime could likely be absorbed under LOPD’s current operating budget.

AOC states 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 the bill and commenced prosecutions and appeals from convictions. 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.

NMSC and NMCD state that while it is difficult to determine the effect of HB144 on the state’s prison population, the creation of any new crime will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. NMSC notes that the average length of

stay for fourth degree property crimes is 539 days. NMCD reports the average cost to incarcerate a single inmate in FY20 was \$44.8 thousand; however, due to the high fixed costs of the state's public prison facilities, LFC estimates a marginal cost (the cost per each additional inmate) of \$27.8 thousand per inmate per year across all facilities.

SIGNIFICANT ISSUES

According to AODA, HB144 seeks to hold accountable those who cause property damage to public utilities, construction industries, commercial mobile radio service carriers, and government and common carriers when damage occurs during the theft or attempted theft of regulated materials. In addition, people who damage the property of industries critical to the public's infrastructure are required to make restitution for the damage they cause to the property of these industries using regulated materials.

LOPD notes that the crime described in HB144 is similar to existing crimes. Criminal damage to property of another is already proscribed as a fourth-degree felony for damage exceeding \$1,000. See NMSA 1978, § 30-15-1. Likewise, the crime of larceny is already proscribed as a third-degree felony for property with value greater than \$2,500 but less than \$20 thousand and a second-degree felony for property with value exceeding \$20 thousand. See NMSA 1978, § 30-16-1. Attempted larceny is punished as fourth-degree and third-degree felonies, respectively. See NMSA 1978, § 30-28-1. Restitution is currently addressed in NMSA 1978, § 31-17-1.

Because HB144 addresses criminal damage to very specific type of property, i.e., "regulated material," LOPD states that a court reviewing the issue might determine that criminal charges brought under the bill's provisions would preclude prosecutors from pursuing the existing, more generally-worded felonies. See, e.g., *State v. Cleve*, 1999-NMSC-017, ¶ 17 (as a matter of legislative intent, when a general statute and specific statute both address the same conduct, courts will find that the more specific statute is intended as an exception and the broader provision cannot apply). Nevertheless, LOPD notes that the possibility remains that a conviction under HB144 in addition to convictions for criminal damage to property and larceny would constitute a double jeopardy violation under the Fifth Amendment to the United States Constitution and Article II, Section 15 of the New Mexico Constitution.

BG/rl/sb/al