

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction **Substitute** _____

Date 6 February 2025
Bill No: SB 155-280

Sponsor: Antonio Maestas
Determination of
Short Title: Embezzlement Penalty

Agency Name and Code Number: 280 Law Offices of the Public Defender [LOPD]

Person Writing: Kate Baldrige/Kim Chavez Cook
Email: Kathleen.baldrige@lopdm.us
kim.chavezcook@lopdm.us

Phone: 505-395-2890

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 155 is identical to SB 264 introduced in the 2023 legislative session. The bill would change how the penalties for course-of-conduct embezzlement is determined. The penalty would be determined by the dollar amount embezzled in any consecutive twelve-month period, with the maximum penalty set at a second degree felony for embezzlement of more than \$20,000.

FISCAL IMPLICATIONS

The impact of any change in law can be difficult to determine, but SB 155 is unlikely to have a major fiscal impact on the Law Offices of the Public Defender (LOPD). A change in how a crime is charged does not necessarily lead to change in how often or in how many cases the crime is charged. Because it would depend on the facts of each case, *see Significant Issues*, the proposed change could lead to some cases having more counts of lower level felonies and other cases having one higher penalty count in lieu of multiple low level felonies. The impact on workload is impossible to estimate. LOPD may have to consider a request for additional resources in the future if the bill leads to an unanticipated change in how prosecutors handle these cases that causes more of them to be brought or makes them more difficult to defend.

SIGNIFICANT ISSUES

By application of longstanding double jeopardy precedent, current law already aggregates the total value for an entire course of conduct against a particular victim.

However, if the conduct is not continuous, in cases where a person has committed multiple *discrete* acts of embezzlement within a year (not constituting a “course of conduct”), current law may result in multiple lower-level charges. This bill *could* reduce the number of counts in an embezzlement case by aggregating them based on an arbitrary one-year charging period, while increasing the penalty per count due to the total value.

Meanwhile, in cases where a person committed an ongoing “course of conduct” over *multiple years*, this change could change the practice of charging a single aggregated charge to result in one count per year (i.e., more counts than current law). If these are felonies, and if the person has

prior felonies, they would also incur more habitual offender enhancement time, as such enhancements are applied to *every count* in a single case. *See* NMSA 1978, 31-18-17. SB 155 could significantly increase the total sentence for that category of defendant (the multi-year, single victim embezzler). However, the precise impact depends on the actual amount pilfered over time, and the person's criminal history.

Critically, the impact of the bill would depend on the specific facts of each case. It does not achieve any particular result in embezzlement cases generally; it would create hugely varied outcomes in different cases. This bill is somewhat consistent with the "single larceny doctrine" where embezzlement is typically committed as a "course of conduct" offense, but prosecutors are already able to aggregate the property value for a course of conduct embezzlement.

In contrast to the single larceny doctrine, LOPD notes that it is fairly arbitrary to determine harm based on a one-year time period. Current law punishes the aggregate of an ongoing course of conduct, whether it is less than or more than one year. This means that the total dollar amount results in higher level felonies under current law. Moreover, if the person commits identifiably discrete acts of embezzlement (not ongoing conduct) or embezzled from different victims during the year, the conduct already supports multiple charges. The change in law seems unnecessary, but is not without precedent. Section 30-16-33 determines the dollar amount for "Fraudulent use of a credit card" (to determine penalty) "in any consecutive six-month period."

For some people, this bill would result in multiple petty misdemeanors becoming a single felony. For some people it would turn one second-degree felony into multiple felonies (of unknown degree, since it would entirely depend on the specific amounts embezzled in each case).

Overall, higher prison penalties are not an effective deterrent, and are not generally appropriate for a non-violent offense already subject to restitution, the best method for addressing the actual harm suffered in financial crimes.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

Status Quo. The penalty for embezzlement will be determined without regard to any aggregating time period, allowing prosecutors considerable discretion in how to aggregate course-of-conduct embezzlements for charging purposes, with no cap on the number of charges brought for a given time period.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None noted.