

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/28/2025

Check all that apply:

Bill Number: SB155

Original Correction
Amendment Substitute

Sponsor: Sen. Antonio Maestas

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Determination of Embezzlement Penalty

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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 revenue 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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Bill (“SB”) 155 proposes to amend the embezzlement penalties in NMSA 1978, Section 30-16-8 (entitled “Embezzlement”) by adding the phrase “in any consecutive twelve-month period” to each penalty provision. This amendment changes how multiple acts of embezzlement are treated.

Instead of treating each act of embezzlement as a separate crime, the bill appears to require that all embezzlement acts committed within a twelve-month period be aggregated into a single offense. The severity of the charge would be determined by the total value of all property embezzled during this time, ranging from a petty misdemeanor for amounts of \$250 or less to a second-degree felony for amounts exceeding \$20,000.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

First, this bill appears to treat multiple acts of embezzlement committed within a 12-month period as one crime, regardless of circumstances, intent, or number of victims. Currently under *State v. Brooks*, courts can examine whether multiple acts of embezzlement were committed with a single criminal intent. *See* 1994-NMSC-062, ¶ 15, 117 N.M. 751. SB155, however, appears to eliminate this analysis by requiring all acts within twelve months to be treated as one crime. This could create a problem when handling separate criminal acts involving different victims and schemes. For example, if someone embezzles from their employer in March, then embezzles from their social organization in August, these distinct acts would be treated as one offense. If it is the intent of the drafters to permit the State to charge separate counts of embezzlement that occur in a twelve-month period where the defendant’s embezzlement conduct is independent or distinct or involves additional victims, additional language may be necessary to make that clear.

Second, the bill could create double jeopardy issues that prevent the State from prosecuting subsequently discovered crimes. For example, if a Defendant is convicted of a fourth degree felony for embezzling in two instances each with a value of \$1,200, and it is later discovered that another act of embezzlement took place valued at \$150 between the two other instances. It is conceivable that the State could be precluded from bringing the new charge because that act took

place within the same twelve-month period and would be statutorily defined by this bill as being part of the same offense as the other acts of embezzlement. In that situation, the defendant would wholly escape punishment for the subsequently discovered act. The subsequently discovered act would not be used to enhance the penalty for the embezzlements charged in the first instance and could be barred as a successive prosecution for the same offense after the initial conviction.

Third, jurisdictional questions may arise with embezzlement that cross county lines. For example, if a defendant embezzles \$2,000 from Bernalillo County and then embezzles \$3,000 from another victim in Sante Fe County a few months later, prosecutors will need to determine which county has jurisdiction over the combined \$5,000 offense. This could lead to procedural complications between district attorneys' offices.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A