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FISCAL IMPACT REPORT

SPONSOR Pettigrew/Zamora LAST UPDATED _____
ORIGINAL DATE 3/7/25
BILL
SHORT TITLE Perjury For False Legislative Testimony NUMBER House Bill 359
ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

State Ethics Commission (SEC)

Health Care Authority Department (HCAD)

SUMMARY

Synopsis of House Bill 359

House Bill 359 (HB359) would amend Section 30-25-1 NMSA 1978, the statute governing perjury to add that perjury includes knowingly untrue statements made in legislative proceedings, including hearings of standing or interim committees, even if the statement is not given under oath. However, an exception is made for statements given by members of the public during designated public comment periods at legislative hearings. The amendments narrow application to cover legislative perjury separately.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) provides the following:

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, and appeals from convictions, as well as challenges to the law. 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 New Mexico Attorney General provides the following:

Under the bill, it is only criminal to make a false statement to the Legislature if the person who makes the statement knows it is false, specifying the necessary criminal intent involved. Punishing only those false statements made knowingly is important to avoid chilling constitutionally protected speech. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (“[P]unishment of error runs the risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press.”).

To subject an individual to criminal liability, HB359 requires that the individual be “requested to testify.” However, the bill does not provide any guidance concerning what this means, including who may make such a request or what conduct constitutes testifying. This could subject the law to vagueness or due process challenges. See, e.g., *State v. Marchiondo*, 1973-NMCA-137, ¶ 4, 85 N.M. 627 (“A statute violates due process if it is so vague that persons of common intelligence must necessarily guess at its meaning. The vagueness doctrine is based on notice and applies when a potential actor is exposed to criminal sanctions without a fair warning as to the nature of the proscribed activity.” (text only)); *United States v. Lesh*, 107 F.4th 1239, 1247 (10th Cir. 2024) (“The void for vagueness doctrine addresses two concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” (text only)).

The State Ethics Commission provides the following:

The new provisions of the perjury statute raise a question of enforceability to the extent that it would hold criminally liable someone who did not commit or swear under oath to tell the truth. See Rule 11-603 NMRA. In general, the mens rea requirements in criminal law would likely require that a person at the very least commit to giving truthful statements to the Legislature before being held criminally liable for knowingly failing to do so. See also *State v. Campos*, 1996-NMSC043 ¶ 38, 122 N.M. 148 abrogated on other grounds by *State v. Groves*, 2021-NMSC-003, 478 P.3d 915 (knowledge crimes require either conscious wrongdoing or the purposeful doing of an act that the law declares to be a crime). While the proposed amendment includes “knowing that statement to be untrue” it does not require the statement to be under oath, affirmation, or penalty of perjury. Including “oath, affirmation or penalty of perjury” provides an individual providing testimony that their statements are subject to prosecution, a requirement HB359 would remove.

This poses a second question related to the constitutionality of the proposed changes. An individual has a Fifth Amendment right against self-incrimination which includes the fear of perjury. If someone is not properly informed of their rights to avoid self-incrimination, then their rights under the Fifth Amendment will form the basis of a defense against such claims against them. Section 30-25-2 of the perjury statute supports this premise, which provides: “refusal to take oath or affirmation consists of the refusal of any person, when legally called upon to give testimony before any court, administrative proceeding,

legislative proceeding or other authority in this state, authorized to administer oaths or affirmations, to take such oath or affirmation. Whoever commits refusal to take oath or affirmation is guilty of a petty misdemeanor.” § 30-25-2 (1963).

TECHNICAL ISSUES

The Health Care Authority Department (HCA) provides the following:

The exclusion of public testimony is not clearly defined. The bill could benefit from clarifying whether the term "public" includes registered lobbyists, subject-matter experts, or contracted advisors who are not state employees.

OTHER SUBSTANTIVE ISSUES

HCA provides the following:

The lack of a clear mechanism for determining intentionality—such as whether an individual knowingly made a false statement versus providing incorrect information based on misunderstanding or error—could lead to enforcement challenges and potential legal disputes over how the law is applied.

The bill’s provisions could result in inconsistent application across different legislative settings, particularly if there are discrepancies in how committees document and handle testimony.

FC/hj/SL2