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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/07  
 LAST UPDATED 3/22/07      HB \_\_\_\_\_

SPONSOR Neville

SHORT TITLE Twelve-Month Embezzlement Aggregation      SB 162/aHJC

ANALYST Ellie Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Administrative Office of the Courts (AOC)  
 Corrections Department  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of

The House Judiciary Committee amendment deletes the language that would combine incidents of embezzlement within a twelve-month period to be one, single act of embezzlement.

#### Synopsis of Bill

Senate Bill 162 is a proposed amendment to existing NMSA 1978, Section 30-16-8 (2006), strikes the current language in Subsection A, "Each separate incident of embezzlement or conversion constitutes a separate and distinct offense" and adds to Subsections B-F, "in any consecutive twelve-month period". The amended language allows the State to charge an individual with aggregate incidents of embezzlement within a twelve-month period as one, single act of embezzlement. The penalties remain the same for any charged act.

## SIGNIFICANT ISSUES

The Public Defender Department reports that although the amendment creates a more efficient method of charging and trying embezzlement cases, e.g., one cause number as opposed to several cause numbers, by eliminating the language “each separate incident of embezzlement or conversion constitutes a separate and distinct offense” and combining all acts of embezzlement committed within a twelve-month period into one offense, the legislature runs the risk of offending a defendant’s constitutional right to due process and to present a defense against each act of embezzlement. For example, if a defendant were charged with one count of embezzlement for five acts of embezzlement during a twelve-month period, the jury would receive only one instruction on the elements of embezzlement and only two verdicts: guilty or not guilty. Perhaps the defendant committed one of the five acts, but not the other four.

This legislation appears to presume that all acts of embezzlement represent a continuous course of conduct. This may in fact be true in some cases, but not in all cases. Taking the above-mentioned example where there is one named victim for all five counts of embezzlement, then the purpose of this statute – to punish a pattern of conduct – would be served by the proposed amendments. However, if there were five separately named victims, then the defendant could potentially be punished for acts against only one named victim and not the other four.

This bill will also increase the level of crimes which can be charged in many cases. Under current law, an embezzler who takes less than \$250 at a time can be charged only with a series of petty misdemeanors, even if the total amount taken is substantial; under this proposal, the amounts from each incident can be added together to create a higher level of crime, up to a second degree felony if the total exceeds \$20,000 in a 12 month period.

EO/mt