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FISCAL IMPACT REPORT

ORIGINAL DATE 2/21/09

SPONSOR Ingle LAST UPDATED _____ HB _____

SHORT TITLE Fraudulent Benefits Involving Public Funds SB 612

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|----------------------|----------------------|----------------------|-------------------------|------------------|
| Total | | Unknown See Below | Unknown See Below | Unknown See Below | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 612 creates the following second degree felony crimes:

- Knowingly obtaining, pursuant to a scheme or artifice to defraud, any benefit involving public assets, property, funds or services by means of false or fraudulent pretenses, representations, promises or material omissions.
- Knowingly participating in a scheme or artifice to defraud with a person who, pursuant to that scheme or artifice to defraud, obtains any benefit involving public assets, property, funds or services by means of false or fraudulent pretenses.

SB 612 provides that a scheme or artifice to defraud includes a scheme or artifice to deprive a person of the intangible right of honest services.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. 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

In the wake of recent public corruption scandals, this bill seeks to strengthen the criminal code by creating a new crime that specifically addresses the fraudulent use of public assets for private gain.

Currently, most public corruption crimes are either fourth degree felonies or misdemeanors. However, the current fraud statute imposes a second degree penalty when more than \$20,000 is involved.

The AOC provides the following:

The wording differs between Subsections A and B in terms of what means are used to obtain the public assets, property, funds or services. In Subsection A, the means include false or fraudulent pretenses, representations, promises or material omissions.

In Subsection B, the means are limited to “false or fraudulent pretenses.” Is there an intended difference in the means used or are they intended to be the same? There is no definition of “false or fraudulent pretenses” in the bill.

The PDD notes the prohibited actions in this bill are most likely already encompassed within the general fraud statute, NMSA 1978, §30-16-6, last amended in 2006. This bill though will enact a specific fraud statute will control in this particular context over the general fraud statute. The general fraud statute, unlike this bill, provides for different degrees of penalty depending on the amount of property fraudulently obtained.

ADMINISTRATIVE IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

DW/mt