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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE Crime of Obstruction of a State Audit SB 436

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$31.7-317.0	\$31.7- 317.0	\$62.4-624.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Auditor (OSA)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 436 (SB 436) creates the fourth degree felony crime of “Obstruction of a State Audit,” consisting of a person who, with intent to deceive, mislead or interfere, obstructs the performance of an audit, special audit, examination or investigation being conducted pursuant to the Audit Act, Section 12-6-1 NMSA 1978 et. seq. The bill specifies the actions constituting obstruction to be: (1) destroying, concealing or altering any document or record; (2) making or causing to be made a false or misleading report; or (3) impeding the State Auditor, personnel of the State Auditor’s Office (OSA) or independent auditors approved by the State Auditor.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

The fiscal impact in the table above is based on a range of between one and 10 individuals incarcerated for a one year period every year as a result of this legislation.

SIGNIFICANT ISSUES

The OSA has stated the following:

This is a targeted measure that is critical to protect against fraud, waste and abuse in government. This legislation should act as a deterrent against efforts to obstruct auditors from detecting fraud, waste and abuse. There are currently no provisions of state law that criminalize this type of conduct.

In recent years, the State Auditor and independent auditors approved by the State Auditor have encountered instances in which 1) persons have threatened an auditor during the course of an audit in order to obstruct the work of auditors; 2) persons have destroyed or altered documents in order to delay and obstruct an audit; and 3) persons have concealed information or provided false information in order to delay or obstruct an audit.

The Administrative Office of the District Attorneys (AODA) has noted that “auditing is essential to proper governmental functioning. The misconduct that can obstruct an audit does not fit well within New Mexico’s existing criminal statutes. SB 436 addresses that misconduct. The fourth degree felony penalty is consistent with the penalties imposed under related provisions, such as the statute prohibiting tampering with public records.”

NCJ/svb:blm