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FISCAL IMPACT REPORT

SPONSOR Baldonado ORIGINAL DATE 2/5/16
LAST UPDATED _____ HB 262

SHORT TITLE Property Value for Arson Offenses SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 262 proposes to determine the severity of punishment in Section 30-17-5 NMSA 1978 for arson by changing from an assessment of the "damage" to the assessment of the "total value of the property damaged".

FISCAL IMPLICATIONS

Responding agencies reported no fiscal impact.

SIGNIFICANT ISSUES

AOC states that a plain reading of the new language, "total value of the property damaged" requires the assessment of the total value of the property, not the value of the damage to the property. This reading may result in a sentence that could be considered inconsistent with the principle of proportional justice, providing that the severity of the punishment should be proportionate to the severity of the crime. The severity of the sentence may therefore depend not on the level of damage caused, but on the total value of the property that was subject to damage. For example, arson damaging property with a value over \$20,000 may be punishable as a second

degree felony, even if the resulting damage was limited to small area of scorched paint, whereas the same act damaging property with a value less than \$250 would be punishable only as a petty misdemeanor.

The U.S. Supreme Court held that the Eight Amendment would be offended by punishments that are “grossly disproportional to the gravity of a defendant's offense”, *United States v. Bajakajian*, 524 U.S. 321 (1998). See also discussion on “just desserts (retribution)” model and use of proportionality when establishing minimum sentences, “Theories of Punishment and Mandatory Minimum Sentences”, Presentation before the U.S. Sentencing Commission by David B. Muhlhausen, Ph.D., Heritage Foundation’s Senior Policy Analyst (May 27, 2010), available at: <http://www.heritage.org/research/testimony/theories-of-punishment-and-mandatory-minimum-sentences>

AODA states that it is unclear what effect HB262 would have on the arson statute. The New Mexico Court of Appeals has determined that the arson statute does not apply if just personal property was burned but the physical structure where it was located was not harmed. (See, *In re Gabriel*, 2002-NMCA-047) In the *Gabriel* case a 17-year old juvenile set fire to clothing in a store but the building itself was not damaged. The court determined that since the legislature had not expressly included burning of personal property in the definition of arson, unless it was “...an appurtenance or fixture to real property or structure,” or within the items defined as an “occupied structure,” the child did not commit arson when the clothes were burned. *Id.*

The current arson statute is virtually the same as it was when interpreted by the *Gabriel* court so personal property would still not be included in the “total value of the property damaged” even if a fire or explosion was maliciously or willfully caused with the purpose of destroying damaging the specific items listed in the statute. Of course, the cost of the damage to the structures or the other specific items listed in the arson statute would still be relevant in fixing the penalty if the other requirements of the statute are met. There is another statute that prohibits criminal damage to real or personal property, without regard for how it is done, but it offers only two possible penalties: petty misdemeanor, or a fourth degree felony if the damage is over \$1000.00. (See, Sect. 30-15-1, NMSA 1978)

“Arson consists of a person maliciously or willfully starting a fire or causing an explosion with the purpose of destroying or damaging: (1) a building, occupied structure or property of another person; (2) a bridge, utility line, fence or sign; or (3) any property, whether the person’s own property or the property of another, to collect insurance for the loss.” (See, Sect. 30-17-5(A), NMSA, 1978). As noted above, the penalties range from a petty misdemeanor if the damage was less than \$250.00, increasing incrementally, to a second degree felony if the damage was over \$20,000.00. (See, Sect. 30-17-5(B)—(F), NMSA 1978.) As used in the statute an “occupied structure” includes a boat, trailer, car, airplane, structure or place adapted for the transportation of persons or for carrying on business therein whether or not a person is actually present.” (See, Sect. 30-17-5(I), NMSA 1978).

TECHNICAL ISSUES

The bill does not specify how the “total value of the property” is to be determined.

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