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## FISCAL IMPACT REPORT

SPONSOR Rodella/Ruiloba/ ORIGINAL DATE 2/23/17  
Martinez LAST UPDATED \_\_\_\_\_ HB 508

SHORT TITLE Sufficient Surety for Bail Bonds SB \_\_\_\_\_

ANALYST Downs

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with Section 59A-51-1 NMSA 1978 and Rule 5-401 and 5-401B NMRA

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)

Administrative Office of the Courts (AOC)

Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 508 amends Section 31-3-5 NMSA 1978 to add a new subparagraph prohibiting the magistrate or district court from accepting a bond from a paid surety (commercial bondsman) unless it is backed by sufficient surety. House Bill 508 adds a new subsection which defines sufficient surety as the full amount of the bond utilizing cash, property, or surety, as determined by the defendant, and precludes sufficient surety from including an unsecured promise to pay all or part of a bond upon forfeiture of that bond. This subsection would also allow the court to specify the method the bond is to be secured upon specific and sufficient factual findings made on the record.

### FISCAL IMPLICATIONS

The Public Defender Department stated there will be no fiscal impact, but indicated House Bill 508 could have a “heavy impact the counties, as many more people are likely to remain in jail pending trial.”

The Administrative Office of the Courts did not provide a specific fiscal impact, but stated the following:

House Bill 508 would create the need for courts to have more hearings to review bonds in order to ensure compliance with the new requirements. The new requirements of House Bill 508 would make it difficult for jail personnel to determine whether a surety bond is backed by sufficient surety in order to accept a surety bond posted at a detention center. This difficulty could lead to fewer jails accepting surety bonds, which would delay defendants' release and force them to seek judicial review by the court setting bond.

Conversely, if the jail released someone on a secured bond, but the court was unable to accept the bond because it did not meet the new requirements, the court would have to conduct a hearing to correct the bond or address the issue of the defendant's release in violation of this section. The uptick in hearings would require additional court resources.

The new requirements would also necessitate the expenditure of resources on trainings for judges and staff. Court personnel would need to know how to determine whether a paid surety is backed by sufficient surety.

## **SIGNIFICANT ISSUES**

The Public Defender Department reported prohibiting surety bonds could be unconstitutional and provided the following commentary:

The New Mexico Constitution recognizes that people who have only been accused of a crime have not yet been convicted, that they may not ever be convicted, that only a trial can convict them, and that they have a need to work to support their families in the meantime. The constitution's right to pretrial release was established to protect those rights. One of the tools used to allow indigent defendants to continue to support their families while awaiting trial is the unsecured appearance bond, where a person pledges to forfeit money to the court in the event he or she does not appear for trial.

Bail bondsmen charge money to offer the court a secured bond for an accused person's release. Not all poor New Mexicans have the money to pay a bail bondsman, so the courts properly look to whether the least costly unsecured bond would ensure an accused person's appearance - since getting the person back to court for trial is the only purpose of the bond in the first place. House Bill 508 appears to make unsecured bonds no longer an option for the courts. This would mean that all bonds would have to be secured by either cash, property or by a bondsman.

## **CONFLICTS**

The Administrative Office of the Courts reported concern that House Bill 508 conflicts with the Bail Bondsman Licensing Law, Section 59A-51-1 NMSA 1978, which gives the Office of the Superintendent of Insurance the authority to determine that a licensed bail bondsman is backed by sufficient surety. The Administrative Office of the Courts stated:

Since House Bill 508 does not allow the licensing of a bondsman to act as prima facie evidence that a paid surety is backed by sufficient surety, it would require an independent

determination be made by the defendant that the paid surety is sufficiently insured, or has adequate available assets, to cover the full amount of the bond required by the court. The determination may be a challenge for the defendant for two reasons. First, the defendant may be unable to determine whether a paid surety has outstanding bonds posted for other clients which would cause the defendant's bond amount to exceed the total amount for which a surety is insured. Second, if the paid surety is using property or cash as collateral for the bond, the defendant may be unable to determine if encumbrances exist against those assets for because of other outstanding bonds previously posted.

In most instances, surety bonds are posted at detention centers when defendants are released. Courts will usually receive the paperwork the following business day. Since House Bill 508 prohibits the court from accepting a bond that is not backed by sufficient surety, it may pose an issue if the court, upon receipt of the bond paperwork, finds that the determination was not properly made and the bond is not sufficiently backed. The court would be in a position to be prohibited from accepting the bond after a defendant has already been released.

The Attorney General reported House Bill 508 may also conflict with Rule 401. It provided the following analysis:

Rules 5-401 and 5-401B NMRA detail the different types of secured bonds the courts may order for those persons eligible for bail under the New Mexico Constitution. Paid sureties licensed under the Bail Bondsmen Licensing Law are required to execute the bail bond for the full amount set by the court. Rule 5-401 allows for five bail options pending trial: (1) release on the defendant's personal recognizance; (2) release upon execution of an unsecured personal appearance bond; (3) release upon the execution of an appearance bond accompanied by a cash deposit to the court of a specified percentage of the total amount set for bail; (4) release upon the execution of a bond secured by property belonging to either the defendant or an unpaid surety; and (5) release upon either execution of a bond by a licensed bail bond agent or execution of appearance bond by the defendant accompanied by a cash deposit of one hundred percent of the amount set for bail.

## **ALTERNATIVES**

The Administrative Office of the Courts suggested that if the concern House Bill 508 is seeking to address is paid sureties posting bonds without a sufficient surety to back it, a better approach may be to require paid sureties to be licensed under the Bail Bondsman Licensing Law. That would only require the paid sureties to present a valid license, which would reduce the fiscal and administrative implications to the courts.

JD/jle