

LFC Requester:	
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 1-21-16
Original **Amendment** **Bill No:** HB182
Correction **Substitute**

Sponsor: R. Gonzales and M. Youngblood **Agency Code:** 264
Short **Person Writing** Gail MacQuesten
Title: Crime of Cargo Theft **Phone:** 466-0532 **Emai** gailmacquesten@q.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	(unknown)	(unknown)	(unknown)	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB182 adds a new provision to the Criminal Code creating the crime of cargo theft.

Cargo theft consists of stealing commercial goods being transported by a vehicle or stealing any vehicle engaged in the transportation of commercial goods. “Commercial goods” is defined as goods being transported for purchase or sale. “Vehicle” is defined as the vehicle being used to transport commercial goods and any trailer, container or similar conveyance drawn or utilized by the vehicle.

Cargo theft is a second degree felony punished by 9 years imprisonment and a fine not to exceed the value of the property stolen and the cost of recovering the property. The amount of the fine is based upon the fair market value of the property stolen.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

There will be additional costs to the district attorneys, who will have to determine whether to charge this crime instead of, or in addition to, existing less specific criminal provisions. Charging cargo theft will require additional findings, and there will likely be litigation concerning: whether the crime should be charged instead of, or in addition to, existing less specific criminal provisions; what knowledge requirement applies (does the defendant have to know that he or she is stealing commercial goods, or that the vehicle is engaged in the transportation of commercial goods?); the meaning of “any trailer, container or similar conveyance drawn or utilized by the vehicle;” and whether separate charges available for theft of the vehicle and theft of the trailer it pulls. In addition, determining the amount of the fine will involve special findings regarding the fair market value of the property stolen, and the cost of recovering the property.

New jury instructions will be required.

SIGNIFICANT ISSUES

HB182 creates the specialized crime of cargo theft, which consists of stealing commercial goods being transported by a vehicle or the theft of any vehicle engaged in the transportation of commercial goods.

New Mexico already has statutes governing theft crimes, including larceny, burglary, robbery, embezzlement and unlawful taking of a motor vehicle. It is difficult to compare HB182 to these existing provisions because each of the existing theft crimes has different required showings, and different penalties. And which of the existing crimes would apply in a particular case depends on that facts of that case. However, it is helpful to look at the simplest theft crime: larceny, or the stealing of something belonging to another. Larceny can be any degree of crime from a petty misdemeanor to a second degree felony, depending on the value of the stolen property, and the nature of the stolen property. (Special provisions apply to larceny of a firearm or larceny of livestock.) The fine amount varies with the degree of offense, with a second degree felony carrying a possible fine of \$10,000. So, charging a crime as a cargo theft instead of a larceny may make the crime much more serious, or have little or no impact, depending on the facts. For example, larceny of an inexpensive item from a storeroom would be a petty misdemeanor, but stealing that same item from a truck delivering it to the storeroom would be a second degree felony. Stealing a truck full of items would likely be a second degree felony under the larceny statute (assuming the value of the truck and other stolen items is over \$20,000), punishable by nine years imprisonment and a \$10,000 penalty. If the case were prosecuted under HB182, it would be a second degree felony, carrying a sentence of nine years, but the fine would be higher than the \$10,000 fine under the larceny statute, because under HB182 the fine is determined by the value of the property.

There are a number of questions under HB182 that would likely be litigated:

- Is cargo theft to be charged instead of, or in addition to, an existing general crime? (Simple larceny would likely be a lesser included offense of cargo theft. But other theft crimes, such as robbery, have elements not included in cargo theft, and cargo theft has elements no included in robbery.)
- Because HB182 sets the crime out in the alternative (the stealing of goods or the stealing of the vehicle) does that mean that if a defendant steals a delivery truck full of goods he can be charged with two crimes under HB182?
- At what point are goods “being transported?” When they have been loaded on a pallet for shipment, when the pallet is loaded on the truck, or only when the truck is in transit from the point of origin to the destination? Do they cease “being transported” when the truck arrives at its destination, or only after they have been unloaded?
- Does the vehicle have to be transporting commercial goods when stolen for the crime to apply? Or is the theft of an empty delivery truck a theft of a “vehicle engaged in the transportation of commercial goods,” and therefore punishable under this statute?
- What is the knowledge requirement for the crime? Does the defendant have to know that the goods are being transported for purchase or sale, or that the vehicle is being used to transport commercial goods for purchase or sale?

PERFORMANCE IMPLICATIONS

As discussed above, HB182 raises complicated questions regarding the charging of theft crimes. Cases brought under HB182 will require additional findings, and it is likely that there will be

litigation regarding how HB182's provisions are to be interpreted.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The theft of commercial goods and vehicles engaged in the transportation of commercial goods will be prosecuted under existing statutes.

AMENDMENTS

None suggested.