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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Jaramillo	<b>LAST UPDATED</b>	02/05/2024
	Unsafe Use of Public Roadways & Spaces	<b>ORIGINAL DATE</b>	
<b>SHORT TITLE</b>	Act	<b>BILL NUMBER</b>	Senate Bill 248
		<b>ANALYST</b>	Sanchez

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

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Cost to County Jails	Indeterminate but minimal	\$9.6 to \$19.2	\$9.6 to \$19.2	\$19.2 to \$38.4	Recurring	See Fiscal Implications

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Law Offices of the Public Defender (LOPD)  
 Office of the Attorney General (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 Department of Public Safety (DPS)

#### Agency Analysis was Solicited but Not Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Adult Parole Board (APB)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of Senate Bill 248

Senate Bill 248 seeks to regulate the use of public roadways and spaces through the enactment of the "Unsafe Use of Public Roadways and Spaces Act." The bill defines specific terms related to public and nonpublic forums, solicitation, and pedestrian walkways. It prescribes regulations for solicitation activities in these areas, distinguishing between allowed and unlawful practices based on the time of day and location. The bill also sets forth penalties for violations, distinguishing

between petty misdemeanors and misdemeanors for different types of solicitation violations, including aggressive solicitation practices.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## **FISCAL IMPLICATIONS**

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB248 may increase the number of incarcerated individuals.

The penalty for violating the provisions outlined in Senate Bill 248 are either petty misdemeanors or full misdemeanors, punishable by up to a year in jail; for purposes of this analysis, it is estimated an individual could spend between six months and one year incarcerated for this offense. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could increase costs by \$9,614 to \$19.2 thousand to counties.

It is difficult to estimate how many individuals will be charged, convicted, or serve time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime, at a cost of \$9,614 to \$19.2 thousand. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25; however, a minimal cost may apply in FY24 for individuals detained for some time prior to adjudication.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB248, are not included in this analysis but may be incurred.

## **SIGNIFICANT ISSUES**

Analysis from the New Mexico Sentencing Commission stated:

Panhandling laws are often overturned on First Amendment grounds, and it is hard to judge how a particular court will judge a particular law... Laws banning aggressive panhandling – or, in the context of SB248, aggressive solicitation – are more likely not to fall afoul of First Amendment protection than laws restricting or banning all panhandling or solicitation. This points to the importance of the Severability clause in SB248, as the restrictions on solicitation could conceivably be found unconstitutional, while the ban on aggressive solicitation would be more likely to be allowed under the Constitution.

Analysis from the Department of Public Safety noted:

Restrictions on solicitation have always been viewed as restrictions on protected speech, but jurisprudence on the subject has not eliminated the ability to reasonably enact such restrictions. In *Martin v. City of Albuquerque*, 396 F.Supp. 3d 1008, 1019 (USDC DNM 2019), the court found the City had presented “a truly content-neutral justification” for its ordinance by “proffering the public safety justification.” However, the court also found the ordinance not sufficiently narrowly tailored to serve the substantial governmental interest. *Id.* at 1028. SB248 attempts to narrowly tailor its restrictions; DPS believes it succeeds in this.

In *Martin*, the United States District Court agreed with the parties that the activities of passively soliciting donations by holding signs on medians and exit and entrance ramps, providing donations from a vehicle while stopped in traffic and handing out informational leaflets to motorists, all constitute speech protected by the First Amendment to the United States Constitution. The court noted that “in most First Amendment challenges to regulations covering streets, sidewalks and even medians, courts have found them to be, without question and without particularized analysis, traditional public fora.” *Id.* at 1020. “The most important consideration [in determining whether property is a traditional public forum is] whether the property shares physical similarities with more traditional public for[a], whether the government has permitted or acquiesced in broad public access to the property and whether expressive activity would tend to interfere in a significant way with the uses to which the government has as a factual matter dedicated the property.” *Id.* at 1022.

In *Martin*, the court concluded that the “travel lanes” as defined in the City of Albuquerque ordinance were not traditional public fora. Therefore, restrictions on individuals standing in the travel lanes were constitutional so long as “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.* at 1023. However, the other areas on which the City was placing restrictions – “within six feet of a travel lane”, “within any median not suitable for pedestrian use” defined as “less than six feet in width”, within a roadway with a posted speed of 30 miles per hour or more or located within twenty-five feet of an intersection with such a roadway”, in a landscaped area or “otherwise identified by signage as not suitable for pedestrian use . . . based on identifiable safety standards” – were traditional public fora. In the traditional public fora, the government restrictions had to be content neutral time, place and manner restrictions that 1) serve a significant government interest; 2) are narrowly tailored to advance that interest; and 3) leave open ample alternative channels of communication. *Id.* at 1023-24.