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FISCAL IMPACT REPORT

Cadena/
Louis/Chasey/
Armstrong, D./
Martinez, RS

SPONSOR _____

ORIGINAL DATE 2/25/19
LAST UPDATED _____

HB 577 _____

SHORT TITLE "Out-of-State Inmate" Definition _____

SB _____

ANALYST Edwards _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Potentially moderate	Potentially moderate	Potentially moderate	Potentially moderate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

Administrative Office of the Courts (AOC)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 577, amending the Privately Operated Correctional Facilities Oversight Act, includes persons incarcerated on behalf of the United States within the definition of out-of-state inmate, making those inmates subject to the monitoring, inspection, and other requirements of the Act.

FISCAL IMPLICATIONS

NMCD explains "the bill appropriates no money to the NMCD to cover the costs of the Secretary having to spend his or her time monitoring and inspecting privately operated facilities which house ten or more out of state inmates on behalf of the federal government. The Otero County Correctional Facility houses numerous ICE inmates, and there are several other privately operated facilities in this state which incarcerate ten or more ICE or other federal government inmates. The bill constitutes an unfunded mandate."

There are at least two private facilities in New Mexico that consistently house ten or more prisoners on behalf of the United States, Cibola County Correctional Center (operated by CoreCivic) and Otero County Correctional Center (operated by Management and Training Corporation).

SIGNIFICANT ISSUES

NMCD explains:

While the Act as amended by this bill would require the secretary of the NMCD to engage in onerous inspections of all privately operated facilities which house ten or more ICE or other federal government inmates, the Act does not and never has given the secretary any authority to terminate or modify any contract between a privately operated facility and the federal government to house ten or more inmates. The Act as amended by this bill would not only require the secretary to monitor and inspect any privately operated facility which houses both NMCD inmates and federal government inmates (such as the Otero County facility, which the NMCD already does because it houses some of its NMCD inmates there), but it would also require the secretary to monitor and inspect those privately operated facilities—of which there are several--which do not incarcerate any NMCD inmates but do incarcerate ten or more federal government inmates. The bill would require the secretary or his designee to expend his or her valuable time and resources monitoring and inspecting privately operated facilities incarcerating solely or primarily federal government inmates—inmates over which the secretary has no authority or control.

NMCD does not house any federal government inmates in its NMCD operated prisons except on rare occasions, and does not ever house ten or more of them at one time in any one of its prisons. The county jails and facilities in New Mexico are the entities which sometimes house ICE or other federal government inmates pursuant to contracts, and the counties use private companies operating their county facilities to effectuate these contracts.

It would be more reasonable for the Act to therefore require the counties to monitor and inspect their own facilities housing federal government inmates instead of requiring the NMCD secretary to do so. Instead of the NMCD secretary having to monitor and report deficiencies to the county, the counties could much more efficiently and directly monitor and inspect their own facilities for deficiencies. After all, the counties have the ability to terminate their contracts with the private prison operator if that operator fails to house ten or more out of state federal government inmates in accordance with the minimum standards set forth in the Act—the NMCD and its Secretary has no such authority.

IAD states:

The State-Tribal Collaboration Act, Section 11-18-2 NMSA 1978, uses the definition “Indian nation, tribe or pueblo” means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico. The State of New Mexico has the Jicarilla Nation and the Navajo Nation.

As currently written, House Bill 577 does not include “nation” in the definition of the “out-of-state inmate”. To be inclusive, IAD recommends the language of Indian nation, tribe or pueblo in the “out-of-state inmate” definition.

TECHNICAL ISSUES

IAD recommends on page 1, line 25, after Indian insert “nation”.

TE/gb/al