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## FISCAL IMPACT REPORT

**SPONSOR** Martinez/Lopez/ **ORIGINAL DATE** 1/24/19  
Rep. Roybal Caballero **LAST UPDATED** 2/18/19 **HB** \_\_\_\_\_

**SHORT TITLE** No Resources for Federal Immigration Law **SB** 196/aSPAC

**ANALYST** Torres

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

|              | FY19   | FY20 | FY21 | 3 Year Total Cost       | Recurring or Nonrecurring | Fund Affected                       |
|--------------|--|------|------|-------------------------|---------------------------|-------------------------------------|
| <b>Total</b> | Potentially Substantial, See Fiscal Implications |      |      | See Fiscal Implications | Recurring                 | General Fund/Local Government Funds |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 195.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Association of Counties – Declined to analyze SB196

Department of Homeland Safety and Emergency Management (DHSEM)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to SB 196 amends page 2, line 24 of the bill. The amendment strikes the word “judge” and inserts the word “court.” This amendment does not create substantive changes to the bill.

#### Synopsis of Original Bill

SB 196 directs that no state or local law enforcement agency may use state or federal funds or resources to detect or apprehend anyone whose only violation of law is that they are a foreign citizen in the U.S. in violation of federal immigration laws. By terms of the amended language, actors would be authorized to receive such persons only upon a judicial warrant or order from a criminal proceeding.

SB 196 exempts counties with existing intergovernmental service agreements to house federal immigration detainees.

Section 3 of SB 196 repeals Section 29-1-10 NMSA 1978 (granting state and local law enforcement permission to participate in the Federal Law Enforcement Assistance Act of 1965).

### **FISCAL IMPLICATIONS**

It is not clear either in the bill or in other portions of Chapter 29, NMSA 1978, what the consequences are if a state or local police officer enforces federal immigration law in violation of this section. The bill could have negative consequences for the state and local governments if such foreign citizens were allowed to sue the state or local government for a violation of these provisions.

Furthermore, this bill could potentially make New Mexico a sanctuary state in the view of the federal government. In the case of many federal law enforcement grants the federal government requires immigration cooperation assurances as a prerequisite to receiving funding. Should this bill pass, the state could stand to lose millions of dollars in federal funding. For example, over the summer of 2018, New Mexico, along with the rest of the nation, did not receive the more than \$335 million allocated for state and local Justice Assistance Formula Grants (JAG) after a federal judge issued an injunction which barred the Department of Justice from imposing immigration assurances as a prerequisite to receiving JAG funding in any jurisdiction. At the Department of Public Safety (DPS), the nearly \$1 million in JAG funds received annually covers overtime incurred from DPS investigative agents in support of the Controlled Substances Act and training for agents to enhance investigative skills.

This bill may eliminate Operation Stonegarden for border protection and other federal homeland security funding, of which New Mexico receives almost \$3 million per year.

### **SIGNIFICANT ISSUES**

SB 196 exempts counties with existing intergovernmental service agreements to house federal immigration detainees. Therefore, New Mexico facilities such as the Cibola Correctional Facility that currently are authorized to detain immigrants would not be affected until the expiration of their contracts.

By terms of the amended language, actors would be authorized to receive such persons only upon a judicial warrant or order from a criminal proceeding. An administrative warrant such as those typically used by federal law enforcement to arrest or detain immigrants it believes are in the U.S. without legal status would not be adequate.

The NMAG notes:

Some local and state law enforcement agencies cooperate in federal immigration enforcement authorized by the Immigration and Nationality Act “287 (g)” agreements, which allow federal immigration officers essentially to deputize local or state law enforcement to do their work. However, compliance with such agreements is voluntary. President Donald Trump’s Executive Order 13767 (“Border Security and Immigration Enforcement Improvements”) issued January 25, 2017 encouraged expansion of the use

of 287 (g) agreements by the Department of Homeland Security (DHS), but by its express terms noted that these agreements should be made only to “the extent permitted by law, and with the consent of State or local officials, as appropriate,” and use of the agreements “shall be in addition to, rather than in place of, Federal performance of these duties.” (Emphasis added)...

Passage of SB 196 likely would not violate federal law, though it limits New Mexico law enforcement’s exercise of the federal government’s immigration enforcement responsibilities.

## TECHNICAL ISSUES

The NMAG points out that:

SB 196 contains a list of specific prohibitions against using New Mexico resources for enforcement of federal immigration laws (“identifying, detecting, apprehending, arresting, detaining or prolonging the detention of a person”). SB 196 applies to a similarly extensive list of governmental actors (“neither the state nor a political subdivision of the state or their agencies or instrumentalities, including home rule municipalities ...”). It prohibits using or authorizing the use of “public funds, personnel, property, equipment or resources” for federal immigration enforcement. This may be perfectly fine, and a simpler, more global prohibition may not be possible. However, caution is in order, as New Mexico courts have read long lists to exclude terms not expressly included. *Holguin v. Fulco Oil Services LLC*, 2010-NMCA-091, pgh. 23, 139 N.M. 98, 245 P. 3d 42 (finding “If the Legislature intended for the statute to apply to all . . . there would be no need to include the specific list. . .” and noting that a “statute must be construed so that no part of the statute is rendered surplusage or superfluous.”)

For instance, if lawmakers want to prohibit all political subdivisions of the state from spending their resources for federal immigration law enforcement, they may want to make clear whether the prohibition applies to contracted agents of the political subdivision (such as private contractors who may be seen as “instrumentalities” of the county). SB 196’s use of the phrase “agencies or instrumentalities” in the list of governmental actors prohibited from cooperating with federal immigration enforcement may be inadequate to achieve a universal prohibition on local and state law enforcement cooperation in federal immigration activities, as designating a private actor as an “instrumentality” of government requires determining whether “under the totality of the circumstances the government entity is so intertwined with the private entity that the private entity has become an alter ego of the public entity.” See *Memorial Med. Ctr. V. Tatsch Constr., Inc.*, 2000-NMSC-030, pgh. 35, 129 N.M. 677, 12 P. 3d 431.

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