

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: Feb. 13, 2025

Check all that apply:

Bill Number: HB 376

Original Correction
Amendment Substitute

Sponsor: Rep. Luis Terrazas, Rep. Jenifer Jones, Rep. Rebecca Dow, Rep. Rod Montoya, Rep. Angelita Mejia

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Analysis: Felicity Strachan

Short Title: BORDER SECURITY DIVISION IN DPS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill proposes to create a new “border security division” under the department of public safety.

Sections 1 and 2 create the border security division within the public safety department.

Section 3(A) includes definitions. Section 3(B) states that the director of the border security division will be appointed by the secretary of public safety and lays out the powers and duties of the division, including the duties of preventing the illegal entry into the U.S. of persons, contraband, and firearms. Section 3(B) also tasks the division with enforcing “immigration and nationality laws, including Title 8 of the United States Code.” The bill authorizes the division to perform such duties as operating checkpoints to stop vehicles and question the occupants.

Section 4 authorizes the governor to “develop and execute an interstate compact for border security among interested states” to provide for joint action among the compacting states in sharing “intelligence on illegal activity occurring at the border with Mexico” as well as state resources “for the construction of a physical barrier or a comprehensive technological surveillance system, or both, on state land to deter or detect illegal activity” at the Mexican border.

Section 5 proposes an amendment to NMSA Section 30-31-20 to add a “counterfeit” substances to the Controlled Substances Act, and to increase sentences for trafficking controlled substances. Section 5 adds new language providing that a first offense of drug trafficking resulting in the death of a human being is a second degree felony resulting in the death of a human being with a mandatory minimum sentence of 12 years. The bill defines second and subsequent offenses resulting in the death of a human as a first degree felony for trafficking a controlled substance resulting in the death of a human being.

Section 6 proposes to amend NMSA Section 30-31-21, adding language to increase the penalty for the distribution of certain Schedule I and II drugs from a second degree felony to a first degree felony.

Section 7 proposes to amend NMSA 1978 Section 30-31-22(C)(1) and (D)(4)(a) to except counterfeit substances of Schedule I and II drugs from the sentences currently provided for counterfeit substances.

Section 8 proposes to amend Section 31-18-15 NMSA 1978, regarding sentencing. The bill proposes to make the sentence for a first degree felony for trafficking a controlled substance resulting in the death of a human life imprisonment. A second degree felony for trafficking resulting in the death of a human would be eighteen years imprisonment. The bill also proposes a fine of \$17,500 for a first degree trafficking felony resulting in death, and a fine of \$12,500 for a second degree trafficking felony resulting in death.

Section 9 appropriates \$30,000,000 from the general fund to the department of public safety for expenditure in fiscal year 2026; \$15,000,000 from the general fund to the department of health for expenditure in fiscal years 2026; and \$10,000,000 from the general fund to “the local government division of the department of finance and administration” for expenditure in fiscal years 2025 and 2026.

Section 10 declares that the act should take effect immediately “for the public peace, health and safety.”

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.

SIGNIFICANT ISSUES

Section 3 of the bill may be preempted by federal law. For instance, under HB 376, the border security division is tasked with enforcing “immigration and nationality laws, including Title 8 of the United States Code.” However, the federal government has plenary power and authority over the border. *See, e.g. United States v. Flores*, 541 U.S. 149, 153-154 (2004). This includes authority over searches and seizures at the border. *Id.* In *Arizona v. United States*, 567 U.S. 387 (2012), the United States Supreme Court struck down state laws that similarly aimed to create a parallel enforcement scheme for federal immigration laws. The Court held that Arizona’s attempts to enforce immigration law were preempted by federal law.

Although Section 4 authorizes the governor to enter into an interstate compact, it provides little guidance in that it does not identify a purpose, definitions, or applicability of the compact.

The definition of “illegal immigrant” in Section 3 might bring state and federal law into conflict. As defined, the term includes anyone who is not “a lawful citizen, a permanent resident or authorized to work, visit or study in the United States by the United States citizenship and immigration services.” But other individuals may be lawfully present in the United States but not be, for example, immediately authorized to work. The bill could require the State to take action against such people.

Authorizing the department to set up checkpoints for the express purpose of questioning motorists “about [their] citizenship” raises potential concerns about racial bias in enforcement. Moreover, stopping motorists without any particularized suspicion of any criminal offense would raise serious concerns under the Fourth Amendment and Article II,

Section 10 of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB 257, which proposes to create an “office of border security” with different functions.

Conflict with SB 250, HB 9, and SB 87, which would generally prohibit the conduct described in Section 3.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.