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: 2/5/25

Bill Number: SB250

Check all that apply:

Original X Correction ____

Amendment ____ Substitute ____

Sponsor: Sens. Antonio Maestas, Cindy Nava, and Linda M. López, and Reps. Angelica Rubio and Yanira Gurrola

Short Title: State Enforcement of Immigration Law

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

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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:

SB250 would change how state and local governments interact with federal authorities in the context of immigration enforcement.

Section 1 seeks to create a new statute that would prohibit state and local governments from using public resources for the purpose of "identifying, detecting, apprehending, arresting, detaining or prolonging the detention of a person based on a suspicion or knowledge that the person has entered or is residing in the United States in violation of federal immigration laws or for the purpose of assisting agents of the federal government in any such activity based on such suspicion or knowledge."

Section 2 would repeal NMSA 1978, Section 33-3-16 (1984), which requires detention officials to receive individuals detained by "legal process issued by or under the authority of the United States." In its place, Section 2 would create a new statute that would permit detention officials to receive individuals detained by "a warrant or order issued by a United States district judge in a criminal proceeding[.]" Section 2 also provides definitions for "jail administrator" and "sheriff" for use in the statute.

Section 3 would repeal NMSA 1978, Section 29-1-10 (1966), which permits all state and local law enforcement agencies to participate in the Federal Law Enforcement Assistance Act of 1965.

FISCAL IMPLICATIONS

If Section 3 of the bill would disqualify law enforcement from Office of Justice Programs, the NMDOJ could lose funding for certain law enforcement programs, such as the ICAC and Human Trafficking task forces.

SIGNIFICANT ISSUES

Under the Tenth Amendment, states do not have to cooperate with federal immigration enforcement efforts. *See New York v. United States*, 505 U.S. 144, 188 (1992) ("The Federal Government may not compel the States to enact or administer a federal regulatory program.");

Printz v. United States, 521 U.S. 898, 935 (1997) ("The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program."). The Legislature has plenary authority to prohibit local governments, even home rule municipalities, from taking certain actions. *See State ex rel. Torrez v. Bd. of Cnty. Comm'rs for Lea Cnty.*, __-NMSC-__, ¶¶ 25-29 (S-1-SC-39742, Jan. 9, 2025) (discussing state preemption).

Section 1 would prohibit the use of public resources for the purpose of "identifying" individuals who reside in the United States in violation of immigration laws. This could conflict with 8 U.S.C. § 1373. Under Section 1373(a), state governments cannot "prohibit, or in any way restrict" any governmental entity or official from "sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." The Second Circuit has held that Section 1373 is facially constitutional under the Tenth Amendment, although it left the door open to certain as-applied challenges. *See City of New York v. United States*, 179 F.3d 29, 35 (2d Cir. 1999).

Section 2 defines the term "jail administrator" to include only one who "reports directly to the administrative head of the local governmental entity or governing body." It is unclear how this provision would operate if a local government chose to have a jail administrator directly report to someone below the administrative head of the local government.

Section 2 permits detention officials to accept federal detainees only when held by "a warrant or order issued by a United States district judge in a criminal proceeding." By its terms, this would not apply to warrants issued by a United States magistrate in a criminal proceeding. Unless this restriction is intended by the drafters, the language could be altered to read "issued by a United States district judge or magistrate in a criminal proceeding."

Section 3 would repeal Section 29-1-10, which permits all state and local law enforcement to participate in the Federal Law Enforcement Assistance Act of 1965. That Act was substantially changed by subsequent legislation, including versions of the Omnibus Crime Control and Safe Streets Act. The original public law to which Section 29-1-10 refers, "Public Law [89]-197," has been repealed. The current equivalent of the financial assistance under the 1965 Act is administered by the U.S. Department of Justice's Office of Justice Programs (OJP). Because it is somewhat unclear what law Section 29-1-10 refers to, the potential effect of repealing it is similarly unclear.

Assuming that Section 29-1-10 authorizes law enforcement agencies to access federal funding and training under the OJP, it is unclear what effect repealing the statute would have. Because SB250 does not affirmatively bar law enforcement from participating in OJP, such agencies may still be able to participate under other authority empowering them to enter into agreements. *See, e.g.*, NMSA 1978, § 3-18-1(B) (1972) (permitting municipalities to enter into contracts). If the intent of the bill is to prohibit law enforcement agencies from participating in OJP programs, that could have an adverse effect on law enforcement training and equipment. In FY2024, entities in New Mexico received $35.9 million dollars through OJP awards. *See* https://charts.ojp.usdoj.gov/t/public/views/OJPAwardsDashboard/AwardsBySolicitations?%3Aembed=y&%3Aiid=1&%3AisGuestRedirectFromVizportal=y

PERFORMANCE IMPLICATIONS

Only if fiscal impacts noted above affect the agency.

ADMINISTRATIVE IMPLICATIONS

As with Performance Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Direct conflict with SB87.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.