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FISCAL IMPACT REPORT

SPONSOR <u>Thorton/Boone/Townsend/Ezzell/Paul</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/06/2025</u>
SHORT TITLE <u>Create Office of Border Security</u>	BILL NUMBER <u>Senate Bill 257/ec</u>
	ANALYST <u>Fischer</u>

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$4,000.0	Nonrecurring	General Fund
	\$2,000.0	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
 Department of Public Safety (DPS)
 Border Authority (NMBA)
 State Land Office (SLO)

SUMMARY

Synopsis of Senate Bill 257

Senate Bill 257 (SB257) appropriates \$2 million from the general fund to create a new Office of Border Security as an adjunct agency pursuant to the Executive Reorganization Act and another \$4 million from the general fund to the Office of Border Security to coordinate collaborative efforts between the federal government and local governments to construct a fence on the New Mexico/Mexico border. Both appropriations are for expenditure in fiscal years 2026 through 2029 and any unexpended amount in either appropriation will revert to the general fund at the end of FY29.

The bill contains an emergency clause making it effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The appropriation of \$4 million contained in SB257 is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY29 shall revert to the

general fund.

The appropriation of \$2 million contained in SB257 is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY29 shall revert to the general fund. Although SB257 does not specify future appropriations, establishing a new department creates an expectation the department will continue in future fiscal years; therefore, this cost is assumed to be recurring.

SB257 also creates a nonreverting border security fund, subject to appropriation by the Legislature, to carry out the provisions of the Border Security Act.

The State Land Office (SLO) notes that the Commissioner of Public Lands is mandated by the New Mexico Enabling Act (Act of Congress of June 20, 1910, 36 Stat. 557, Ch. 310, § 10) to obtain “true value” for the public use of state trust land. See, *Lassen v. Arizona*, 385 U.S. 458 (1967). Approximately 24 total miles of state trust land are adjacent to the Mexican border, and approximately three miles (3 sections) directly abut the border. To the extent that the Office of Border Security requests the use of, or access to, state trust land for border enforcement purposes, including rights of way for construction and maintenance, the Office of Border Security would be required to compensate the State Land Office should the agency approve any such requests. The State Land Office did not comment if the appropriations in SB257 would be adequate to cover such costs.

SIGNIFICANT ISSUES

Senate Bill 257 creates a new Office of Border Security with a director appointed by the governor and confirmed by the Senate. The office is authorized to hire staff, exercise eminent domain, and enter into joint powers agreements with the federal government. The office is tasked with coordinating collaborative efforts between federal and local governments for the construction, security, and maintenance of a border fence.

SLO notes that, separate from the issue of true value compensation, the Commissioner of Public Lands has the “direction, control, care and disposition of all public lands.” N.M. Const. Art. XIII, Sec. 2. The Commissioner has “complete dominion, which is to say complete control, over state lands,” *Burguete v. Del Curto*, 1945-NMSC-025, ¶ 11, 49 N.M. 292, and “very large discretion [and] almost unlimited power with respect to the public lands owned by the state,” *State ex rel. Otto v. Field*, 1925-NMSC-019, ¶ 69, 31 N. M. 120.

SB257 provides for the exercise of the power of eminent domain to condemn private property, presumably for placement of border fence, but not public (i.e., state trust land) property. Consistent with the Enabling Act, the bill does not grant the Office of Border Security the power of eminent domain over state trust lands managed by the Commissioner of Public Lands. Therefore, the bill does not establish the ability of the Office of Border Security to place a border fence on state trust land or to use state trust land in any way for the placement, maintenance, or access to such a border fence.

The Department of Public Safety noted that the constitutionality of SB257 would likely be challenged in the courts if passed, given Congress’s assertion of exclusive authority over immigration as derived from the Supremacy Clause in the U.S. Constitution, which provides that federal law is the supreme law of the land. State and local governments are preempted from

making laws in areas where the federal government has asserted its authority.

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