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FISCAL IMPACT REPORT

SPONSOR Martinez DATE TYPED 2/2/04 HB _____

SHORT TITLE County Detention Facility Reform Act SB 162

ANALYST Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	63,600.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$63,600.0		Recurring	New Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 149 and SB 90

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department
Office of Attorney General

SUMMARY

Synopsis of Bill

Senate Bill 162 creates a new County Detention Facility Reform Fund in the State Treasury, to be administered by the Corrections Department. The bill appropriates \$63.6 million from the general fund to the new County Detention Facility Reform Fund for expenditure in FY 2005 and subsequent years, and unexpended balances do not revert at the end of the fiscal year.

Money in the Fund may not be used by the Corrections Department for administration of the Fund. Money in the Fund is to be used for reimbursing counties for the incarceration of a "state

prisoner” (defined essentially as a person charged with or convicted of a felony) who:

- 1) has violated his parole and is charged with a parole violation;
- 2) while on parole is charged with a violation of local, state, tribal or federal law;
- 3) is awaiting transportation and commitment to the Corrections Department following pronouncement of a judgment, sentence or order of confinement;
- 4) is charged with a violation of his probation by the department or by a district court;
- 5) is sentenced, ordered or removed by the district court to incarceration in a county detention facility; or
- 6) is incarcerated on the basis of an arrest and hold order or a warrant used by the Corrections Department.

The bill sets the rate of reimbursement at eight times the federal hourly minimum wage per day (currently \$5.15 per hour so cost would be \$41.20 per day). In addition, the counties would be reimbursed for the cost of medical, dental, mental health, and vision care, including prescription drugs, as well as ambulatory and transportation services.

The bill also repeals Section 33-3-3 NMSA 1978, which provides that the county jail shall be used as the place of detention for offenders charged with or convicted of crimes and committed by lawful order.

Significant Issues

The Corrections Department is concerned that the definition of “state prisoner” is an extremely broad and unusual definition of a state prisoner.

The Attorney General’s Office also expressed concern regarding the definition of “state prisoner” contained in Senate Bill 162. They state: “Section 2E appears to be the first attempt in New Mexico law to define the term “state prisoner.”

The AG’s concern is state prisoners are going to look at this definition and attempt to craft an appeal “I’m not a state prisoner under your definition, set me free.”

- a) The definition should likely use the language “means only in this section.”
- b) The definition should clarify which “state.” Just New Mexico? What about extradition cases?

The definition should likely use the language “only a misdemeanor” because some prisoners may have concurrently committed both a misdemeanor and felony.”

Both the Corrections Department and the Attorney General’s Office expressed concern with repealing Section 33-3-3. The Corrections Department believes that if Section 33-3-3 NMSA is repealed, there will be no statutory provision in the law requiring county jails to house persons charged with criminal offenses. The Attorney General’s Office explains that county jails hold or

are available to hold county inmates. It has nothing to do with state prisoners. Repeal of Section 33-3-3 NMSA repeal would appear to delete the statutory requirement that county jails are available to hold county inmates (i.e. with the repeal, a county could build a jail and yet its inmates could be barred from it).

FISCAL IMPLICATIONS

Senate Bill 162 appropriates \$63.6 million from the general fund to the newly created County Detention Facility Reform Fund for expenditure in FY 2005 and subsequent fiscal years. Any remaining balances at the end of FY05 do not revert but remain in the Fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The Corrections Department believes that in both the short term and the long term, the bill will result in a substantial increase in the administrative burden on Central Office Business Managers, accounts payable personnel and other employees who will have to verify and pay hundreds of thousands of new claims for “state prisoners.”

The Corrections Department believes that this additional burden could impact their ability to keep current contractors paid timely.

RELATIONSHIP

SB 162 relates to HB 149 which appropriates \$1 million to the Corrections Department to reimburse counties for transporting inmates and SB 90 which appropriates \$2 million to the Corrections Department to reimburse counties for housing and transporting inmates. The General Appropriations Act also contains \$1 million in the Corrections Department budget for reimbursing counties for housing inmates.

POSSIBLE QUESTIONS

1. What is the purpose of repealing Section 33-3-3 NMSA 1978?

PRF/lg:yr