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FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/15
 SPONSOR SPAC LAST UPDATED 2/24/15 HB _____
 SHORT TITLE Weapons of Mass Destruction Act SB 180/SPACS/aSJC
 ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Homeland Security and Emergency Management (DHSEM)
- Department of Public Safety (DPS)
- Attorney General’s Office (AGO)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Amendment to the Senate Public Affairs Committee substitute to Senate Bill 180 would eliminate Section 5 of the substitute that would have provided penalties and established crimes related to the possession, manufacture, and use of, or threat to use, a weapon of mass destruction.

Synopsis of SPAC Substitute

The Senate Public Affairs Committee (“SPAC”) Substitute for SB 180 amends the Explosives Act, Sections 30-7-17 through 30-7-22 NMSA 1978, to rename it the “Weapons of Mass Destruction and Explosives Act.” The SPAC Substitute also defines “weapon of mass destruction” (WMD) to mean a chemical warfare agent, weaponized biological warfare agent, nuclear agent or radiological agent. The bill defines the following additional terms: “chemical warfare agent”; “nuclear agent”; “radiological agent”; “vector”; “weaponized”; and “weaponized biological warfare agent.”

FISCAL IMPLICATIONS

Defining WMDs and including them in the definition of false report may result in an increase in the number of individuals moving through the criminal justice system increasing costs for DAs, PDs, courts, jails and prisons. There is no estimate for how many more individuals would come into contact with the criminal justice system as a result of this bill.

SIGNIFICANT ISSUES

DHSEM provided the following:

DHSEM, in partnership with DPS, Department of Energy and the National Nuclear Detection Office, led strategy and planning sessions throughout most of 2014. The effort resulted in a new nuclear detection program, to better protect our citizens and the nation from radiological and nuclear terrorism. During the strategy and planning sessions, involved agencies recognized the need for legislation that would further support the essential goal of protecting the citizens of New Mexico and provide law enforcement with the necessary legal framework to address threats.

AGO provided the following:

There is existing federal law that deals with weapons of mass destruction and is broader in scope. Most, if not all, weapons of mass destruction are highly classified matters of national security and are typically handled by the United States Attorney's Office. Since it is a matter of national security, the attorneys handling such cases have to have extremely high levels of security clearance. Most prosecutors at the State level do not hold those security clearances and would be unable to actually enforce the Act in a court of law.

AODA provided the following:

Although some of the actions described under SB180 involving harm to persons or property may be prosecuted under existing law, much of the conduct prohibited under SB180 would be difficult or impossible to prosecute under existing law. The federal government and many states have therefore enacted laws specifically addressing weapons of mass destruction. The federal law will only apply in situations in which the federal courts have jurisdiction, such as the use of interstate commerce. And the states are free to enact their own laws on the subject of weapons of mass destruction.

PDD stated that “the Act defines “chemical warfare agent” so broadly as to potentially include virtually any weapon, so that the Act could impose terrorist-level penalties to crimes already routinely handled by the existing law in New Mexico.”

EC/bb