

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/15
 LAST UPDATED 3/9/15 HB _____

SPONSOR Martinez

SHORT TITLE Law Enforcement & Federal Immigration Laws SB 315

ANALYST Chenier

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	See fiscal implications	See fiscal implications	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See fiscal implications	See fiscal implications	See fiscal implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 315 prohibits state or local law enforcement agencies from using state funds, equipment, personnel, or resources and prohibits state or local law enforcement from accepting federal funds, personnel, or resources “for the purposes of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship who have entered or are residing in the United States” in violation of US immigration laws (Title 8 United States Code).

In addition, Senate Bill 315 specifies that the “workforce solutions department” is not a law enforcement agency for purposes of this Act.

FISCAL IMPLICATIONS

Senate Bill 315 appears to replace Section 29-1-10 NMSA 1978 altogether which potentially prevents any state and or local law enforcement agency from receiving available federal funding for detecting individuals that may be in violation of federal immigration laws.

Agencies such as the New Mexico Corrections Department (NMCD) and other local law enforcement agencies receive funding to enforce federal immigration laws. For example, in FY14 NMCD received \$471.2 thousand in “state criminal ‘alien’ assistance act” funding allowing NMCD to hold undocumented foreign nationals in NMCD facilities.

SIGNIFICANT ISSUES

DPS provided the following:

The plain language of the bill is narrowly drafted forbidding the use by local and state officers of federal money in only one circumstance: when the officers are investigating or apprehending individuals solely on the basis of federal immigration laws. This bill, therefore, still allows local and state law enforcement officers who work in border areas the ability to apprehend a person they witness entering the United States illegally. This is a significant concern for ranchers and farmers whose property is along the Mexican border. Under this bill, citizens of New Mexico still would have the ability to call local law enforcement officers when they have concerns that someone is entering upon their land illegally. And those subjects, should it be determined they are on private land illegally, would be subject to New Mexico trespass laws, regardless of citizenship. In furtherance of enforcing state trespass law, local and state officers would make contact with the suspect and ask for identifying information for the purpose of investigating the trespassing violation. If during this process, the local and state officer learns the individual is an undocumented immigrant who has entered the United States illegally, a violation of federal law, the officer could notify federal authorities of the contact, the reason for contact and the location of the individual. Furthermore, if the federal agency requests the officer to detain the individual until their arrival, the officer still could do that under this bill because they are investigating trespass crimes.

In addition, the proposed bill still permits local and state officers to respond to a request by a federal law enforcement officer for assistance. This is because the officer would not be investigating federal immigration law, but rather merely coming to the aid of another law enforcement officer.

Since this bill would predominantly affect officers along the border on New Mexico, it does not address local and state officers assigned to federal task forces, who are cross-commissioned or “deputized” as federal agents and have the legal authority and responsibility to enforce federal laws outside the immigration context.

AGO provided the following:

This Bill raises concerns about whether state or local law enforcement officers and resources should be used in any capacity to assist with federal immigration law enforcement. From a practical standpoint, there are problems with “racial profiling,” or at least the impression of “racial profiling,” and the lack of cooperation in immigrant communities if state and local law enforcement become seen as an agent of ICE.

Assisting the federal government to enforce immigration laws could also expose state and local law enforcement to civil lawsuit liability for violating constitutional rights of residents.

We are aware of only one state, Arizona, that passed legislation to allow local law enforcement to assist in immigration law enforcement. This bill thus appears designed to affirm as a matter of Sate policy that law enforcement officers in New Mexico should not play any active role in federal immigration matters.

TECHNICAL ISSUES

Section 29-1-10 NMSA 1978 erroneously cites Public Law 98-197. This should be removed. The Federal Law Enforcement Assistance Act of 1965 was repealed by Public Law 90-351 in 1968. Therefore, the current law in section 29-1-10 NMSA 1978 has no force or effect, and the bill's striking of that language will not affect the ability of law enforcement offices in New Mexico to apply for and receive available federal grants.

EC/je/bb