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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/15
 SPONSOR Cervantes LAST UPDATED 3/13/15 HB _____
 SHORT TITLE Sentencing Law Fiscal Impact Reports and Funds SB 649/aSFC
 ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Recurring	General Fund
Total		Reduces Appropriation Power	Reduces Appropriation Power	Reduces Appropriation Power	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 649 removes the appropriation of \$176.5 thousand.

Synopsis of Bill

The Bill would create a non-reverting Criminal Justice Special Fund with no immediate appropriation. **Future appropriations would come from a requirement that the legislature, in bills that are covered by SB 649, include appropriations equal to amounts indicated in the NMSC fiscal impact statements. Furthermore, these appropriations are to be made from the general fund to the proposed criminal justice special fund.**

SB 649 proposes to appropriate \$176.5 thousand from the General Fund to the New Mexico Sentencing Commission (NMSC) to cover expenses related to fiscal impact statements in personal and other costs. Unexpended balances revert to the general fund.

SB 649 requires the NMSC to prepare fiscal impact statements for any legislation that will create a new crime or repeals an existing crime for which imprisonment is authorized, increases or

decreases the period of imprisonment authorized for an existing crime, imposes or removes mandatory minimum terms of imprisonment or modifies the law governing release of inmates in such a way that the time served in prison will increase or decrease. The fiscal impact statements will reflect projected increases in annual operating costs to the New Mexico Corrections Department (NMCD) including details related to increases or decreases in the inmate population.

The bill requires the NMCD to annually provide the NMSC with the average operating costs per inmate and the number of inmates in adult correctional facilities. The bill also requires the NMCD to annually provide the NMSC with admission and release data for all inmates in adult correctional facilities. The Judiciary is also required to annually provide the NMSC with requested data necessary to prepare fiscal impact statements.

FISCAL IMPLICATIONS

The power to appropriate rests with the Legislature. This bill may be in conflict with Article III of the New Mexico Constitution in that it requires the legislature to make appropriations at levels specified by an executive branch agency.

SB 649 would create the criminal justice special fund in the state treasury, which is a nonreverting fund, consisting of appropriations, gifts, grants, donations, and bequests made to the fund. Money will be appropriated from the general fund to the criminal justice special fund at levels specified by the NMSC within the commission's fiscal impact statements. Money in the fund will be subject to appropriations by the legislature for criminal justice purposes.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as ear-marking reduces the ability of the legislation to establish spending priorities.

The bill creates a process for appropriations for criminal penalties that is contrary to the current appropriation process. It would require the legislature to appropriate an amount that is calculated by an executive agency (NMCS) to the Criminal Justice Special Fund and, then, to re-appropriate the amount to agencies to be used in their operating budgets.

SIGNIFICANT ISSUES

NMCD stated that:

NMCD already provides data required in the bill to NMSC for annual inmate population projections and quarterly updates. NMSC and its limited staff already analyze bills introduced during the legislative session. This bill would expand NMSC's current workload by requiring it to provide additional detail on relevant bills' projected fiscal impact to NMCD over a six year period. If NMSC were able to provide this type of analysis, it would be very beneficial to NMCD in helping it more appropriately plan for overall population growth and growth in particular classifications of inmates.

Any "new crime" or related bill tends to increase immediate costs for not only NMCD, but also for the district attorneys, public defenders, and the judiciary. This bill would help better calculate or estimate these costs, and would give the legislature and the Governor more information to use in deciding which new laws should or should not be passed.

NMSC provided the following:

The NMSC is well placed to measure the fiscal impact of criminal justice bills on the NMCD, due to its association with university research scientists and access to needed data. The NMSC already produces and publishes inmate population projections for the NMCD.

A bill similar to SB 649 passed both chambers of the Legislature in 2007 and was subsequently pocket vetoed by the Governor Bill Richardson. (See HB 296, sponsored by Representative Joseph Cervantes).

In 2008, Senate Memorial 47 instructed the Legislative Finance Committee, the Department of Finance and Administration and the NMSC to meet and discuss the methodology, data and resources needed to produce the fiscal impact statements contemplated in the 2007 legislation.

CONFLICT

This bill may be in conflict with legislative procedure in that it requires appropriations to be attached to legislation that may or may not have been reviewed by the NMSC at the time of introduction.

The bill may not take into consideration costs that may be able to be absorbed due to fund balances and other sources of revenue within the NMCD's budget.

EC/aml/bb