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FISCAL IMPACT REPORT

ORIGINAL DATE 3/02/17
 SPONSOR SJC LAST UPDATED 03/06/17 HB _____
 SHORT TITLE No Local Enforcement of Fed Immigration Law SB 270/SJCS
 ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB116, SM39 and SM42

SOURCES OF INFORMATION

LFC Files

RESPONSES RECEIVED FROM

Administrative Office of the Courts (AOC)
 Office of the Attorney General (OAG)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of SJC Substitute

Senate Judiciary Committee substitute for Senate Bill 270 proposes to amend Section 29-1-10 NMSA 1978 to

- Prohibit agencies of the state or a political subdivision from using public funds, equipment, personnel or resources and from accepting or using federal funds, equipment, personnel or resources for detecting or apprehending persons whose only violation is being in the United States illegally;
- Exclude the Workforce Solutions Department from the prohibition;
- Remove references to repealed federal law;
- Bar denying benefits to people based on immigration status, ethnicity or religion unless required by (another) law;
- Prevent state and political subdivision employees from requesting information or investigating a person’s immigration status, ethnicity or religion; and
- Require department secretaries or agency directors to implement the provisions of this bill.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes that courts and commentators have considered the constitutional issues surrounding state enforcement or lack thereof of federal immigration law with regard to the Supremacy Clause, Article VI, Cl.2, and whether federal immigration law preempts state immigration whereby states can refuse to enforce unconstitutional federal laws, with regard to equal protection and due process, and with regard to the Tenth Amendment to the U.S. Constitution, reserving powers to the states that are not delegated to the United States by the Constitution.

Title 8, Chapter 12 of the United States Code governs immigration and nationality. While it is generally recognized that states and localities may enforce the criminal provisions of the Immigration and Nationalities Act, 8 U.S.C Section 1101, et seq., it is also recognized that states are not required to enforce federal laws and enact regulatory programs that congress mandates.

AOC cites a 2012 U.C. Irvine Law Review article, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, Vol. 2:247 (2012), University of San Francisco Law Professor Bill Ong Hing undertakes a thorough discussion of state laws regarding immigration, particularly with regard to the Tenth Amendment to the U.S. Constitution and preemption. The professor, after examining a multitude of federal and state case law, concludes

The constitutionality of sanctuary policies is clear. Unlike anti-immigrant subfederal laws intended to regulate immigration, sanctuary policies, community policing, and confidentiality approaches are not about regulating the admission of immigrants. Sanctuary policies are about public safety and decisions on how to spend public funds and establish priorities, and therefore are not preempted. Congress cannot commandeer local authorities to enforce federal immigration laws. Thus, as long as sanctuary communities that choose not to ask about immigration status do not bar volunteer communications and follow other federal requirements of cooperation, they clearly are not preempted. In fact, I believe that there is a good argument that policies that instruct police officers not to ask about immigration status and also not to talk about immigration status that they are aware of may also be protected; a federal statute that is intended to mandate subfederal entities to allow voluntary communication could very well run afoul of the Tenth Amendment depending on how courts view the mandate-prohibition distinction. The central teaching of the Tenth Amendment cases is that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the states to require or prohibit those acts. Congress may not, therefore, directly compel states or localities to enact or to administer policies or programs adopted by the federal government. It may not directly shift to the states enforcement and administrative responsibilities allocated to the federal government by the Constitution. Such a reallocation would not only diminish the political accountability of both state and federal officers, but it would also compromise the structural framework of dual sovereignty and separation of powers. Thus, Congress may not directly force states to assume enforcement or administrative responsibilities constitutionally vested in the federal government. Forcing subfederal entities to allow voluntary cooperation raises the specter of violating those principles.

The Attorney General’s Office (NMAG) opines that SB270 committee substitute may be subject to legal challenge on the grounds that it stands as an obstacle to accomplishment and execution of full purposes and objectives of federal immigration law. The bill; however, is in keeping with the U.S. Constitution’s 10th Amendment, which reserves to the States authority not expressly granted to the federal government and does not violate the supremacy clause. See *Arizona v. U.S.*, 567 U.S. 387, 132 S.Ct. 2492 (2012) (recognizing that, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.” The bill does not affect the rights of federal law enforcement officers to act on directives from the federal government.)

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percentage change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

The Workforce Solutions Department (WSD) states regulations under the New Mexico Administrative Code, for each department that administers benefits and services, may need to be updated to specifically reference that immigration status cannot be taken into consideration regarding the decision in eligibility for benefits and services, and to state that immigration status cannot not requested or investigated, unless otherwise required by law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB116 No Local Enforcement of Fed Immigration Law, SM39 Detrimental U.S./Mexico Federal Policies and SM42 Denounce Ban of Certain Muslims, HB292 No state Land for Border Wall, SM82 Oppose Federal Immigration Orders

ABS/sb