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FISCAL IMPACT REPORT

SPONSOR Ely/Rubio ORIGINAL DATE 2/26/19
 LAST UPDATED _____ HB 625

SHORT TITLE Action on Behalf of Refugee Children SB _____

ANALYST Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$250.0	\$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Indeterminate			Recurring	Refugee Services Program Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>\$150*	>\$150*	> \$300*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal implications.

Relates to HB 624 and HB 626.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)
 Children, Youth, and Families Department (CYFD)

SUMMARY

Synopsis of Bill

HB 625 provides civil penalties for a person, governmental agency or detention facility that (1) separates a refugee child from the child's parent or guardian without a finding by a district court that the parent or guardian is unfit or presents a danger to the child; (2) detains a refugee child without a judicial determination of probable cause to believe that the child committed an offense contrary to law; or (3) allows a child to suffer great bodily harm or to die through neglect of the child's basic needs as determined by the Children, Youth and Families Department (CYFD). The penalties for violation are as follows:

- A civil penalty of \$50 thousand to \$100 thousand for each violation;
- The costs of a civil action brought to recover damages or penalties; and
- Reasonable attorney fees, including the fees of the Attorney General (AG)

HB 625 requires the AG to investigate suspected violations, and permits the AG to bring a civil action for violations. The bill provides that the remedies are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

HB 625 creates the "Refugee Services Program Fund" funded by appropriations by the legislature, damages collected and penalties, legal fees or costs of investigation recovered pursuant to the Act.

HB 625 defines "detention facility" to mean any building or structure that houses detained refugees, including a federal or state prison, a private prison, a county or municipal jail or any detention facility, whether government-operated or privately operated. The bill defines "refugee" to mean a displaced person who has crossed national boundaries and who has applied, is applying or intends to apply for asylum status.

HB 625 appropriates \$100 thousand from the general fund to the refugee services program fund for FY20 and subsequent years to provide services to children who crossed national boundaries into NM and who have applied, are applying or intend to apply for asylum status.

HB 625 appropriates \$150 thousand from the general fund to the AG for FY20 for support and prosecution of violations by persons, governmental agencies or detention facilities pursuant to the Act.

The effective date of the act is July 1, 2019.

FISCAL IMPLICATIONS

HB 625 appropriates \$100 thousand from the general fund to the non-reverting refugee services program fund for FY20 and subsequent fiscal years to provide services to children who crossed national boundaries and are applying for asylum status.

This bill also appropriates \$150 thousand from the general fund to the attorney general for use in FY20 to prosecute violations as outlined in the bill. Unencumbered funds revert to the general fund.

CYFD reports that it currently only provides services to refugee children who come into its custody, and that “if the intention of the bill is to expand CYFD’s role to provide services to all refugee children, there will be an additional fiscal impact, which is unlikely to be absorbable through existing resources. A specialized unit, focused on refugee children, may be necessary to complete the requirements of this bill.”

If the New Mexico Attorney General (NMAG) succeeds in litigation against the person, government agency or detention facility for violations of the act, that party is liable for civil penalties between \$50 thousand and \$100 thousand for each violation. Costs of recovery; reasonable attorney fees and the money collected by the Attorney General is directed to the refugee services program fund. Revenues from such litigation are indeterminate.

NMAG reports that the new duties and responsibilities of HB 625 will have an additional operating budget impact of \$150 thousand a year. Any additional costs incurred by CYFD would be in addition to \$150 thousand.

Continuing Appropriations language

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

The Administrative Office of the Courts notes that:

There is a possibility that the federal government will contest this legislation as entering the field occupied by federal immigration law in violation of the supremacy clause of the U.S. Constitution. The Justice Department has contested other state laws related to immigration when the state law has “the purpose and effect of making it more difficult for federal immigration officers to carry out their responsibilities.”

Similarly, the New Mexico Attorney General contends:

The issue presented by HB 625 may be one of first impression in the state as to whether a federal law enforcement officer or other federal official is subject to immunity under the Supremacy Clause. The question of when state criminal processes may be applied against federal law enforcement officers presents an unmediated juxtaposition of the two opposing concepts of federalism: the Supremacy Clause and the Tenth Amendment. In areas legitimately subject to federal criminal jurisdiction, the Supremacy Clause provides that federal law trumps state law with which it conflicts. The specific question addressing the scope of a state’s authority to prosecute a federal officer was heard in Idaho v. Horiuchi, 253 F.3d 359 (9th Cir.) (en banc), vacated as moot, 266 F.3d 979 (9th Cir. 2001). Unfortunately, the case was never fully decided because the court dismissed it as moot after the state eventually dropped the charges. While not a civil proceeding (like the penalties created in HB 625), the Horiuchi case provides useful analysis regarding the concept of the Supremacy Clause as it affects state regulation of federal officers.

Section A (3) establishes a violation if a person, governmental agency or detention facility separates “a child” rather than specifying that the child must be a “refugee child.”

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If this omission is unintentional, the bill should clarify that it applies only to a refugee child.

The definition of “refugee” in HB 625 requires a demonstration of applying or intending to apply for asylum status. The federal definition of “refugee” does not involve a demonstration of such intent.

The Children, Youth, and Families Department highlights:

The language of the bill addresses great bodily harm or death caused only by neglect. It should also address harm or death caused by abuse. See proposed amendment.

Protection of refugee children is important. If this bill intends for CYFD to expand its role in that protection, then it is possible that a specialized unit will be necessary to properly accomplish that task.

The bill also provides that CYFD will determine if a person, governmental agency, or detention facility has allowed a child to suffer great bodily harm or to die through neglect of the child’s basic needs. This subsection of the bill references “a child” and not “a refugee child”, as the other two subsections setting forth violations do. Under current statute, CYFD only investigates allegations of abuse or neglect by a parent, guardian, or custodian based on a referral to CYFD’s statewide central intake. The provision greatly broadens CYFD’s investigative responsibilities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to HB 624, restricting contracts for immigration detention facilities, and HB 626, prohibiting the state or a political subdivision of the state from contracting with a detention facility involved with the separation of a refugee child from that child’s parent or guardian absent specified findings.

OTHER SUBSTANTIVE ISSUES

Section 1(B)(3) of HB 625 provides that “fees of the attorney general” may be assessed as a penalty against an individual or entity in violation of the proposed legislation. The New Mexico Attorney General does not generally impose fees for prosecution, and clarification in the language of the statute as to what these fees may include or should exclude would be useful.

AMENDMENTS

Page 2, line 3 after “through” add “abuse or”.

Clarify whether the section of the bill requiring CYFD to determine if a person, governmental agency, or detention facility has allowed a child to suffer great bodily harm is intended to open up CYFD’s authority to cover *all* children; or whether this authority is limited to the bill’s intended target population of refugee children (page 2, lines 2 through 4).

IT/al