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FISCAL IMPACT REPORT

SPONSOR SJC LAST UPDATED _____
ORIGINAL DATE 3/8/23
SHORT TITLE No Detaining for Fed Immigration BILL CS/Senate Bill
Violations NUMBER 172/SJCS
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	No Fiscal Impact	No Fiscal Impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received (on Original) From
New Mexico Attorney General (NMAG)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SJC Substitute for Senate Bill 172

The Senate Judiciary Substitute for Senate Bill 172 (SB172/cs) prohibits law enforcement agencies and officials, along with units of state or local governments, from entering into or renewing any type of agreement, including intergovernmental service agreements, to house or detain individuals for federal civil immigration violations. In the event of an existing agreement, the agency, official, or unit of government must terminate that agreement no later than January 1, 2024. SB172/cs also prohibits these same entities from entering into a contract involving a private party regarding an immigration facility, selling any public or government-owned property or building to a private entity to establish such a facility or taking any financial or other actions relating to a privately owned, managed, or operated facility of this kind.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

In their analysis of the original bill, responding agencies report no fiscal impact to the state.

SIGNIFICANT ISSUES

In its analysis of the original bill, NMAG called attention to Section 287(g) of the Immigration and Nationality Act (INA), which authorizes the U.S. Department of Homeland Security (DHS) to enter into written agreements with state or local law enforcement agencies. 8 U.S.C. § 1357(g). As a result, NMAG warned that:

This bill may implicate the Supremacy Clause. California attempted to enact a similar law, which stated that “a person shall not operate a private detention facility within the state.” Cal. Penal Code § 9501. In that statute, “AB 32 would prevent ICE's contractors from continuing to run detention facilities, requiring ICE to entirely transform its approach to detention in the state or else abandon its California facilities.” *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022). The statute was challenged for violating the intergovernmental immunity doctrine, and in 2022, the 9th Circuit held: (1) future injuries alleged by United States and operator were sufficient to satisfy injury-in-fact requirement for Article III standing; (2) California statute violated the supremacy clause; and (3) the statute was preempted under doctrine of obstacle preemption. *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022).

Because of the substantially similar nature of this bill to the bill enacted in California, New Mexico could be subject to a similar lawsuit, though that issue has not been examined in the 10th Circuit. However, the analysis in *Geo Group* from the 9th Circuit is instructive here: the Supremacy Clause precludes states from dictating to the federal government who can perform federal work. A state may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority.” *Sperry v. State of Fla. ex rel. Florida Bar*, 373 U.S. 379, 385 (1963). Because the bill seeks to limit a state or local government or law enforcement from performing federal work by prohibiting their ability to enter into a contract to house federal immigration detainees, it could be a violation of the Supremacy Clause and would need to be more closely examined.

ADMINISTRATIVE IMPLICATIONS

NMAG noted that it necessarily would be involved in any court challenge arising from this legislation.

MD/al/ne