

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 376 does two separate things – it creates the Border Security Division in DPS, and it contains new measures concerning the trafficking of fentanyl.

For the Border Security Division, the director of the division is to be appointed by the DPS Secretary. The division would be given the following duties:

- 1) prevent illegal entry of a person, illegal contraband and firearms into the country by land, water or air;
- 2) enforce immigration and nationality laws, including Title 8 of the United States Code;
- 3) seek out and apprehend people who smuggle an illegal immigrant into the country;
- 4) prevent the illegal trafficking of people and contraband;
- 5) facilitate the flow of legal immigration and goods;
- 6) operate checkpoints to stop vehicles and question occupants about the occupants' citizenship;
- 7) visually inspect the exterior of vehicles and may send those vehicles and their operators to secondary inspection areas;
- 8) provide technical assistance and other border security activities to local law enforcement agencies;
- 9) establish satellite offices in the town of Santa Teresa and the village of Columbus; and
- 10) hire border patrol security to implement the duties and responsibilities of the division.

HB 376 also states that the governor may develop and execute an interstate compact for border security among interested states; provided that the compact shall not increase the power of the compacting states in a way that could encroach on or interfere with federal power.

The second half of the bill concerns drug trafficking. Specifically, Section 30-31-20 NMSA 1978, the trafficking in controlled substances statute, is amended so that the following is added to the definition of “traffic” under distribution, sale, barter, or giving away of; and possession with intent to distribute:

- 1) a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug; and
- 2) a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug.

(Conforming changes are made in Section 30-31-22, concerning prohibition of distribution or controlled or counterfeit substances.)

The penalty for intentionally trafficking in this section is changed for a first offense to a “second degree felony for trafficking a controlled substance”, with the enhancement that the person shall serve a minimum term of imprisonment of nine years. For the first offense resulting in the death

of a human being, the person would be guilty of a second degree felony for trafficking a controlled substance resulting in the death of a human being and shall be sentenced pursuant to the new felony provision in Section 31-18-15 NMSA 1978; provided that the person shall serve a minimum term of imprisonment of twelve years.

For second and subsequent offenses, if the offense results in the death of a human being, the person would be guilty of a first degree felony for trafficking a controlled substance resulting in the death of a human being and shall be sentenced pursuant to the new felony provision in Section 31-18-15.

Those new provisions are first degree felony for trafficking a controlled substance resulting in the death of a human being, with a basic sentence of life imprisonment; and second degree felony for trafficking a controlled substance resulting in the death of a human being, with a basic sentence of 18 years imprisonment. New potential fines are attached to these new felonies, for a first degree felony for trafficking a controlled substance resulting in the death of a human being, \$17,500; and for a second degree felony for trafficking a controlled substance resulting in the death of a human being, \$12,500.

HB 376 also amends Section 30-31-21, concerning distribution to a minor, by adding the additional penalty provision that a person who violates this section with respect to a controlled substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers is guilty of a first degree felony.

There is a significant appropriation in support of the establishment of the Border Security Division and fentanyl efforts, as follows: \$30,000,000 to for the hiring of border patrol security and the purchase of transportation vehicles and other equipment needed to conduct border patrol surveillance; \$15,000,000 to DOH to conduct a wide range of services that impact fentanyl users, including health care services to address fentanyl addiction; conduct educational programs in public schools and higher education in fentanyl addiction and prevention, and assist state and local law enforcement agencies in identifying and screening illegal fentanyl stashes; and \$10,000,000 to the Local Government Division of DFA for the purchase of border cameras and license plate readers for local law enforcement agencies.

HB 376 contains an emergency clause.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 376 potentially is in violation of the logrolling provisions of the New Mexico Constitution as the creation of the DPS Border Security Division and the penalty enhancements and changes to

controlled substances are not related.

HB 376 seems to be creating new felony, “second degree felony for trafficking a controlled substance”, but no corresponding change in felony sentencing statute, so it is unclear if the base sentence for “second degree felony for trafficking a controlled substance” should be the normal second degree felony sentence of nine years.

HB 376 creates two new additional felonies in the state’s felony structure. NMSC is opposed to further complicating the existing felony sentencing structure by creating special penalties.

In FY 2024, there were 449 drug trafficking admissions to NMCD. Fentanyl was implicated in about 18% of drug trafficking cases that result in a prison sentence. It is difficult to determine what the effect of passing HB 376 would be on the state’s prison population, but the increased penalties included in the bill and the broader scope for escalating penalties could lead to more people being incarcerated by the Corrections Department, and/or people being incarcerated for longer periods of time. The average per day cost to incarcerate someone in the state’s prison system is \$155.63/day; this average includes private and public facilities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS