

LFC Requester:	Harry Rommel
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Feb 15, 2025 *Check all that apply:*
Bill Number: HB376 Original Correction
 Amendment Substitute

Sponsor: Rep. Luis Terrazas, Rep Jenifer Jones, Rep Rebecca Dow, Rep. Rod Montoya, Rep Angelita Mejia **Agency Name and Code** State Land Office - 539
Short Title: BORDER SECURITY DIVISION IN DPS **Number:** _____ **Person Writing** Sunalei Stewart
Title: _____ **Phone:** 505-827-5755 **Email** sstewart@nmslo.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	\$30 million - DPS	Nonrecurring	General Fund
None	\$15 million - DOH	Nonrecurring	General Fund
\$10 million – DFA/LGD		Nonrecurring	General Fund

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No fiscal impact	No fiscal impact	No fiscal impact			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB275

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Establishes a Division of Border Security within Department of Public Safety (DPS), placing a broad-ranging new mandate to enforce “border security” – a function never historically exercised by DPS – on equal footing with the State Police Division, Law Enforcement Academy, and other core divisions of DPS. The director of the new Border Security Division would be appointed by the DPS cabinet secretary.

The bill would also permit the Governor to enter into an interstate compact for border security with other states, but only to perform certain narrow functions, like sharing law enforcement intelligence on “illegal activity” (not defined in the bill) “occurring at the border with Mexico,” and marshaling state funds for a border wall and border surveillance systems.

The bill would also amend the Controlled Substances Act to prohibit not only enumerated controlled substances but counterfeit versions of those controlled substances, and to amend sentencing minimums for violation of the Act.

The bill appropriates \$55 million for several subcategories of expenditure, including vehicles and equipment for border surveillance, health care services to address fentanyl addiction, and the purchase of cameras and license plate readers for local law enforcement agencies.

FISCAL IMPLICATIONS

The Commissioner of Public Lands is mandated by the New Mexico Enabling Act (Act of Congress of June 20, 1910, 36 Stat. 557, Ch. 310, § 10) to obtain “true value” for the public use of state trust land. See, *Lassen v. Arizona*, 385 U.S. 458 (1967).

Approximately 24 total miles of state trust land are adjacent to the Mexican border, and approximately three miles (3 sections) directly abut the border. To the extent that the Border Security Division requests the use of, or access to, state trust land for border enforcement purposes, including rights of way for construction and maintenance, the Division would be required to compensate the State Land Office should the agency approve any such requests.

SIGNIFICANT ISSUES

Separate from the issue of true value compensation, the Commissioner of Public Lands has the “direction, control, care and disposition of all public lands.” N.M. Const. Art. XIII, Sec. 2. The Commissioner has “complete dominion, which is to say complete control, over state lands,” *Burquete v. Del Curto*, 1945-NMSC-025, ¶ 11, 49 N.M. 292, and “very large discretion [and] almost unlimited power with respect to the public lands owned by the state,” *State ex rel. Otto v. Field*, 1925-NMSC-019, ¶ 69, 31 N. M. 120. To the extent that the Border Security Division requests the use of, or access to, state trust land for border enforcement purposes, including

rights of way for construction and maintenance, the Division would be required to compensate the State Land Office should the agency approve any such requests.

The bill creates a defined term, “illegal immigrant,” that exists nowhere else in New Mexico state statute, and that would deem entire categories of person “illegal” simply by virtue of their immigration status, whether or not those individuals ever committed any crimes.

Under the New Mexico Constitution, in general “no bill embracing more than one subject shall be passed” outside of appropriations bills. N.M. Const., art. IV, § 16. This bill not only rolls together its creation of a border enforcement division within DPS with substantive changes to criminal statutes, but also adds language appropriating money for purposes described nowhere in the bill, such as “conduct[ing] educational programs in public schools ... in fentanyl addiction and prevention.” The bill, therefore, may violate the single subject requirement of the state constitution.

DPS is already empowered and funded to conduct law enforcement activity on the New Mexico side of the US-Mexico border. The new Border Security Division appears to be an effort to duplicate already-existing federal border patrol activities. As a federal responsibility, the cost of immigration enforcement has generally fallen on the federal government – as opposed to New Mexico taxpayers – in performing what are quintessentially federal law enforcement activities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill overlaps in limited part with SB275, which would establish an Office of Border Security under the Governor.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS