

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: February 5, 2025

Check all that apply:

Bill Number: SB 257

Original x Correction
Amendment Substitute

Sponsor: Sen. Anthony L. Thornton,
Sen. Pat Boone, Sen. James G.
Townsend, Sen. Candy
Spence Ezzell, Sen. Nicholas
Paul

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Analysis: Charles J. Gutierrez

Short Title: Create Office of Border
Security

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 titles this legislation the “Border Security Act.”

Section 2 provides definitions, defining the terms “border fence,” “director,” “fund,” “office,” and “security.”

Section 3 contains various subsections. Subsection A creates the “office of border security” as an adjunct agency under the Executive Reorganization Act. Subsection B provides that the director of the office will be appointed by the governor with the advice and consent of the senate. Subsection C allows the director to appoint a deputy. Subsection D allows the director to employ staff, as provided in the Personnel Act. Subsection E provides the office with the power of eminent domain to condemn private property for public use and the power to enter into joint powers agreements with the federal government. Subsection F provides that the office shall coordinate collaborative efforts between the federal government and local governments for the construction, security, and maintenance of a border fence.

Section 4 creates a border security fund, consisting of appropriations, gifts, grants, and donations. It provides that the fund is subject to appropriation by the Legislature to carry out the provisions of the act.

Section 5 provides an appropriation of 4 million dollars for expenditure in 2026 to 2029 to coordinate with the federal government for construction of a border fence. It also provides an appropriation of 2 million dollars for 2026 to 2029 for operational expenses for the office.

Section 6 declares that this is an emergency, allowing it to take effect immediately.

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.

N/A

SIGNIFICANT ISSUES

The term “public use” for eminent domain purposes has been construed in a broad manner and, additionally, nothing prevents a sovereign from exercising eminent domain and transferring property to a private actor. *See, e.g., Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005) (holding that government may take private property and transfer to another private entity for economic development purposes); *State v. Wilson*, 2021-NMSC-022, ¶ 25 (stating that New Mexico courts turn to [both state and] federal cases for guidance, since ‘[o]ur state Constitution provides similar protection’ to the Takings Clause in Amendment V of the United States Constitution”). This bill, however, presents a rather unique situation where a state would use its eminent domain power to assist in the execution of a federal policy. Further, the federal government has plenary power and authority over the border. *See, e.g., United States v. Flores-Montano*, 541 U.S. 149, 153-154 (2004) (“It is axiomatic that the United States, as sovereign, has the inherent authority to protect, and a paramount interest in protecting, its territorial integrity.”); *id.* (stating that the executive has plenary authority over searches and seizures at the border). As such, this bill may be subject to a challenge for violating the takings clause based on a want of a valid “public use” justifying the exercise of eminent domain. *See* N.M. Const., art. 2, § 20 (“Private property shall not be taken or damaged for public use without just compensation.”).

Additionally, the bill in its present form allows the newly-created adjunct agency to exercise eminent domain power and enter into joint powers agreements without tethering those powers to any specific duty or function.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

The bill refers to “the country of Mexico”—the official name is “the United Mexican States.”

OTHER SUBSTANTIVE ISSUES

This bill provides a single required duty for the newly created adjunct agency - to “coordinate collaborative efforts between the federal government and local governments for the construction, security, and maintenance of a border fence.” This duty – essentially to serve as a conduit between the federal government and local governments – is vague and ambiguous in its actual meaning and function. For example, it is unclear whether the agency itself will be responsible for building any portion of the border wall.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A