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FISCAL IMPACT REPORT

SPONSOR	Sens. Duhigg, Ortiz y Pino and O'Neill/Rep. Chasey	LAST UPDATED	2/2/24
		ORIGINAL DATE	1/29/24
SHORT TITLE	Public Bodies and Federal Immigration Violation	BILL NUMBER	Senate Bill 145/aSHPAC
		ANALYST	Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	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 analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Border Authority (NMBA)
 Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 145 requires that an existing agreement within the scope of the bill be terminated by the earliest effective date permissible under the termination provision.

Synopsis of Original Senate Bill 145

Senate Bill 145 prohibits public bodies or individuals acting on their behalf from entering into or renewing any type of agreement, including intergovernmental service agreements, to detain individuals for federal civil immigration violations. In the event of an existing agreement, the public body must terminate that agreement no later than May 15, 2024. The bill also prohibits these same entities from selling, trading, leasing, or otherwise disposing of a building to facilitate such activities, or using public funds or assets, receiving per diem or any other payments, or otherwise taking any financial or other actions relating to such activities.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

In their analysis of SB145, responding agencies report no fiscal impact to the state.

SIGNIFICANT ISSUES

NMAG advises:

Basically, this bill may violate the Supremacy Clause. California attempted to enact a similar law prohibiting a “person” from operating a private detention facility within the state. See Cal. Penal Code § 9501. In *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), the U.S. Court of Appeals for the 9th Circuit found that California’s statute “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.” 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). While it is unclear and, possibly, unlikely that this Act would “prevent ICE’s contractors from continuing to run detention facilities” in New Mexico, the possibility exists and thus opens the door to future litigation. In other words, if prohibition of State cooperation with ICE contractors precludes them from continuing to run detention facilities in New Mexico, then a court may overturn this Act pursuant to the Supremacy clause.

Furthermore, 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. See *Sperry v. State of Fla. ex rel. Florida Bar*, 373 U.S. 379, 385 (1963). Because the bill seeks to limit the State, albeit through its public bodies, from performing federal work by prohibiting its ability to enter into an agreement that supports the detention of those who violate federal immigration laws, it could be a violation of the Supremacy Clause and would need to be more closely examined.

Additionally, New Mexico Border Authority reports it may need to partner with U.S. Customs and Border Protection of the U.S. General Services Administration on infrastructure projects at the U.S. Ports of Entry where individuals are temporarily detained. It expresses concern the bill is not specific enough to differentiate between temporary detention of individuals at U.S. Ports of Entry and other detention facilities. It also notes that it is currently working on a project with these federal agencies for a sidewalk and parking lot that are connected to a facility where immigration laws are enforced, and questions whether that project would be impacted under this bill.

ADMINISTRATIVE IMPLICATIONS

NMAG notes that it would likely be involved in any court challenge to this bill should it be enacted.

OTHER SUBSTANTIVE ISSUES

NMAG points out that the bill does not define “public body,” which could lead to confusion and possibly litigation over the scope of coverage.

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