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FISCAL IMPACT REPORT

ORIGINAL DATE 1-21-09

SPONSOR Rehm LAST UPDATED _____ HB 30

SHORT TITLE No Firearms for Undocumented Persons SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB22 and HB23

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department (CD)
 Public Defender Department
 District Attorneys (DA)
 New Mexico Sentencing Commission (NMSC)
 Administrative Office of the Courts (AOC)

No Responses Received From

Attorney General's Office
 Department of Public Safety

SUMMARY

Synopsis of Bill

House Bill 30 amends Section 30-7-16 NMSA 1978 to include undocumented persons from receiving, transporting or possessing any firearm or destructive device in the state of New Mexico. If in violation, the undocumented person would be charged with a fourth degree felony. It defines undocumented person as an individual not legally present in the United States at the time of the possession at issue.

FISCAL IMPLICATIONS

The additional felony convictions resulting from this bill would increase the Department's costs by leading to minimal to moderate increases to the inmate population. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty, especially when it comes to estimating the number of illegal aliens present in this country at any given time. As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department's increased costs associated with the creation of this new crime.

SIGNIFICANT ISSUES

According to the Public Defender Department, the conduct at issue, possession of a firearm or destructive device by an illegal alien, is already prohibited under federal law. 18 USC § 922(d) (5) (A) states that no person can provide a firearm to an illegal alien. Moreover, 18 USC § 922(g)(5)(A) makes clear that an illegal alien may not lawfully possess a firearm affecting interstate commerce since no firearms are manufactured in the state of New Mexico, the conduct prohibited under this state bill is already prohibited and prosecuted under federal law.

PERFORMANCE IMPLICATIONS

Corrections Department contends that this bill would negatively impact its ability to perform prison-related services with current levels of staffing if there were more than just a few additional convictions. The illegal alien prison gang population has grown and this population is more staff intensive than some segments of the prison population.

ADMINISTRATIVE IMPLICATIONS

According to the Corrections Department, typically undocumented persons are promptly deported once they serve their prison sentence. As a result, these offenders do not typically serve probation or parole terms in this country because of their prompt deportation. Thus, the department will not be as affected by this crime bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB22, which modifies existing law to establish a lifetime ban on possession of a firearm or a destructive device for a felon in the state of New Mexico and HB23, which makes it unlawful to carry a firearm while trafficking a controlled substance, establishing it as a new third degree felony.

POSSIBLE QUESTIONS

The Public Defender Department explained that federal law already prohibits possession of a firearm or destructive device by an illegal alien, how would a state law enhance the existing federal law? What makes them both necessary?