

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 136

SHORT TITLE: Unlawful Use of Unmanned Aircraft

SPONSOR: Muñoz/Campos

LAST UPDATE: 02/05/2026 **ORIGINAL DATE:** 02/05/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts/DAs/LOPD	See "Fiscal Implications"	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund
Total	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the Courts

Administrative Office of the District Attorneys

Law Offices of the Public Defender

Regulation and Licensing Department

Department of Military Affairs

Department of Public Safety

Agency or Agencies That Were Asked for Analysis but did not Respond

Office of the Attorney General

SUMMARY

Synopsis of Senate Bill 136

Senate Bill 136 (SB136) enacts a new section of the Criminal Code, Chapter 30 NMSA 1978, to create two new criminal offenses related to the operation of unmanned aircraft systems, commonly referred to as drones. The bill does not amend an existing statutory section; instead, it adds a new standalone section to the Criminal Code that defines prohibited conduct, exceptions, and penalties related to drone-based surveillance and interference with sensitive facilities.

First, SB136 creates the offense of unlawful use of an unmanned aircraft, which consists of operating an unmanned aircraft to capture an image of a person, privately owned real property,

or a critical infrastructure facility with the intent to conduct surveillance on the person, property, or facility captured in the image. For purposes of the new section, “unmanned aircraft” is defined broadly to include any aircraft operated without the possibility of direct human intervention from within or on the aircraft, and “image” is defined expansively to include the capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, as well as other conditions existing on or about property or an individual. This offense is generally classified as a misdemeanor; however, the bill elevates it to a fourth-degree felony if the captured image is used in the commission of a felony or if the image contains information or records that are confidential or prohibited from public disclosure by law.

The bill separately creates the offense of unlawful use of unmanned aircraft near a critical infrastructure facility. Under this provision, a person commits a fourth-degree felony by operating an unmanned aircraft in proximity to a critical infrastructure facility in a manner that interferes with the operations of the facility, causes a disturbance to the facility, or results in physical contact with the facility or with any person or object on the premises of or within the facility. The term “critical infrastructure facility” is defined in the new section to include a wide range of public and private facilities and systems, such as communications networks, electric generation, transmission, and distribution systems, natural gas and petroleum pipelines and related facilities, water pipelines, state and local confinement facilities, national guard and United States Department of Defense facilities, and municipal and county airports.

The new section also establishes a series of express exceptions under which the capture of images or the operation of unmanned aircraft does not constitute a criminal offense. These exceptions include circumstances in which the person, owner, or operator of the property or facility consents; when the unmanned aircraft is operated by or on behalf of a federal, state, local, or tribal government entity acting within the scope of its authority; when the activity is conducted pursuant to a valid warrant or court order; and when the activity is undertaken for legitimate commercial purposes, professional or scholarly research, academic activities, licensed surveying or engineering work, or insurance underwriting, rating, or claims adjustment activities. Through these exceptions, the bill seeks to delineate criminal conduct while preserving lawful governmental, commercial, and professional uses of unmanned aircraft.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison or jail, or in the length of time individuals are incarcerated, that might result from SB136 could have moderate fiscal impacts. The bill creates new criminal offenses, including a misdemeanor and a fourth-degree felony, which could increase the number of individuals sentenced to county jails or state prisons. In addition to the potential for new crimes to lead to additional admissions, felony penalties may also affect incarceration length, which could reduce releases relative to admissions and increase the average daily population over time.

Although the number of individuals who may be charged or convicted under the bill is unknown, any increase in felony convictions could affect the state correctional system. The Corrections Department reports the average cost to incarcerate a single inmate was approximately \$61.5 thousand per year in FY25; however, due to high fixed costs in prison operations, LFC estimates

the marginal cost of each additional inmate is approximately \$27.2 thousand per year. To the extent that SB136 results in additional felony convictions or longer incarceration periods, long-term costs to the state general fund could increase. Misdemeanor convictions are expected to affect county jail populations, and any associated detention costs would likely fall on county general funds rather than on the state.

Beyond incarceration, SB136 may also have fiscal implications for other components of the criminal justice system that are not included in incarceration cost estimates. Additional system costs, such as costs to courts for increased trials, to prosecutors and public defenders for additional casework, and to law enforcement agencies for investigation and evidence analysis related to unmanned aircraft systems, are difficult to quantify and are not included in this analysis. Several agencies report that any increases in workload are expected to be low and manageable within existing resources. Still, the magnitude of these impacts will depend on enforcement practices and the volume and complexity of cases arising under the new offenses.

While SB136 does not contain an appropriation and agencies generally report no immediate fiscal impact, the creation of new criminal penalties introduces uncertainty regarding future incarceration and system costs. Any increase in admissions or time served associated with the bill would be expected to increase long-term correctional expenditures for the state and detention costs for counties.

SIGNIFICANT ISSUES

Senate Bill 136 raises several legal, interpretive, and implementation issues that may affect how the new offenses are applied and enforced. The bill conditions criminal liability on an “intent to conduct surveillance,” but does not define the term “surveillance” within the statute. As a result, courts may be required to interpret whether particular drone operations—such as hovering, repeated flyovers, or real-time observation without recording—meet the statutory threshold. The absence of a definition may also complicate determinations of probable cause and proof of intent, particularly when no stored images are recovered or when images are streamed or deleted.

The bill’s broad definition of “image,” which includes the capture of sound waves and various forms of electromagnetic data, may expand the scope of conduct potentially subject to prosecution beyond conventional photography or video recording. This expansive definition could raise questions about how emerging technologies, such as thermal imaging or environmental sensing, intersect with existing privacy doctrines and constitutional protections. Agency analyses note that warrantless aerial observation has been addressed in prior state and federal case law, and the bill’s application may prompt litigation regarding the boundary between lawful observation from navigable airspace and prohibited surveillance when drone activity interferes with property use or privacy interests.

Several agencies also identify potential ambiguity in terms such as “near,” “interfere,” and “disturbance” in the context of operations near critical infrastructure facilities. Without further statutory clarification, these terms may be subject to differing interpretations by law enforcement, prosecutors, and courts, which could affect consistency in charging and enforcement. In addition, while the bill includes multiple exceptions intended to preserve lawful governmental, commercial, academic, and professional activities, some agencies note that the exception for “legitimate commercial purposes” could be interpreted broadly and may warrant judicial interpretation to determine its limits relative to the underlying prohibitions.

Finally, SB136 operates alongside existing criminal statutes addressing conduct such as trespass, voyeurism, and harassment, as well as federal aviation regulations governing unmanned aircraft systems. Although the bill seeks to address conduct not explicitly covered by current state law, its interaction with existing statutes and regulatory frameworks may raise issues of overlap, prosecutorial discretion, and potential double jeopardy when the same conduct could be charged under multiple provisions.

TECHNICAL ISSUES

Several agencies note that some provisions of SB136 may present drafting and interpretation issues that could affect how the bill is implemented if enacted. Most notably, the bill requires proof that a person acted with the intent to conduct “surveillance,” but the term is not defined in statute. Agencies indicate this could complicate enforcement and prosecution, particularly in cases where a drone is used to observe people or property without clearly storing or transmitting images. Determining intent may rely on circumstantial evidence, such as flight patterns or duration of observation, which could lead to disputes over whether particular conduct meets the statutory standard. These questions would likely be resolved through court interpretation over time.

Agencies also point to potential ambiguity in several operative terms, including what it means to operate a drone “near” a critical infrastructure facility, to “interfere with” or cause a “disturbance” in facility operations. Without further clarification, these terms could be interpreted differently across cases, which may affect consistency in enforcement. In addition, some agencies note the bill may overlap with existing criminal statutes, such as trespass or voyeurism, depending on the facts of a case, which could raise questions about how charges are applied when multiple statutes address similar conduct. Finally, one agency observes that while the bill includes exemptions for governmental activity, it does not explicitly reference certain military or defense-related operations, which may require clarification to ensure the scope of the exemptions aligns with existing state and federal authorities.

SS/dw