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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/09

SPONSOR O'Neill LAST UPDATED _____ HB 104

SHORT TITLE Reimburse Counties for Felon Health Care SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate but Substantial	Indeterminate but Substantial	Indeterminate but Substantial	Indeterminate but Substantial	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 104 would enact a new section of the County Detention Facility Reimbursement Act mandating the New Mexico Corrections Department to reimburse counties for health care costs incurred by felony offenders while located in county detention facilities.

FISCAL IMPLICATIONS

Information is included in the Significant Issues section below. The fiscal impact to NMCD would be significant if it has to reimburse counties for actual health care costs.

For FY09 \$5.1 million from the general fund was appropriated to the DFA special funds for this purpose. It would be anticipated that any additional costs for health care would be appropriated to this fund. Data from the New Mexico Sentencing Commission suggests that there are approximately 1,400 jail detainees at any one time for which NMCD would assume the health care liability. As a comparison, the FY09 base medical contract for NMCD is approximately \$40 million for 6,700 inmates. If the inmate medical problems for prison and jail inmates are similar then the anticipated cost would be approximately \$8 million. It would be reasonable to assume this would be on the high side since jails would not have nearly as many long term inmates with problems related to aging but many other medical conditions such as drug abuse would be similar.

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context

SIGNIFICANT ISSUES

NMCD comments.

Under the current act, money in the county detention facility reimbursement fund is utilized to reimburse counties for the housing or incarceration of “felony offenders.” A felony offender is defined as a person convicted of a felony and sentenced to confinement in a facility designated by the correction department who (1) has been released from confinement and is a dual supervision offender (on both probation and parole) and has violated his parole or is charged with a parole violation; or has violated probation or is charged with a probation violation; or while on parole, is charged with a violation of local, state, tribal, federal or international law; or (2) has been released from confinement and is serving a parole term and has violated his parole or is charged with a parole violation; or while on parole, is charged with a violation of local, state, tribal, federal or international law; or (3) is awaiting transport and commitment to the corrections department following the revocation of parole or a sentencing hearing for a felony conviction.

The current Act uses a formula to calculate the distribution amount for each county, and requires the Sentencing Commission to provide certain information to the State Treasurer each year so that the Treasurer can then distribute the money in the Fund pursuant to the formula. Generally speaking, the counties that incarcerate more felony offenders are to receive more money out of the fund.

NMCD continues that there are three primary problems with the bill.

First, it overlooks the fact that the money reimbursed to the county for incarcerating felony offenders already includes a medical care component. In other words, the formula used by the Act to calculate the distribution or reimbursement amount for each county already includes money to cover the costs of health care provided to felony offenders by county facilities.

Second, it encourages the counties to provide elective surgeries and other unneeded treatments for felony offenders because it knows the Department will have to pay for those treatments. In other words, by requiring the Department to pay actual costs, it encourages the counties to “stick” the Department with large medical bills by providing medical care well beyond what is medically reasonable or necessary. The bill appropriates no money to the Department to pay for what is likely to be numerous, substantial medical bills.

Third, it does not require the counties to consult with the Department about the felony offenders’ medical care, and does not give the Department an opportunity to remove the felony offender (if feasible) before the treatment is provided or to discuss its concerns about the necessity of treatment before the treatment is provided. The bill therefore appears to be attempting to punish the Department for housing felony offenders in the county facilities even though the law requires the counties to house those offenders as needed.

MW/mt