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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/13
 SPONSOR Rue LAST UPDATED 02/28/13 HB _____
 SHORT TITLE Detention Facility Audit Act SB 526
 ANALYST Soderquist

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	\$350.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Children, Youth and Families Department (CYFD)
 Office of the State Auditor (OSA)

No Response Received from

Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 526 requires the Attorney General’s Office (AGO) to audit detention facilities, both adult and juvenile, in accordance with the federal Prison Rape Elimination Act and the provisions of the Detention Facility Audit Act. The proposed legislation delineates specific professional requirements for the auditor; endows the auditor with the power to subpoena; identifies specific activities required of the auditor; and calls out specific employment prohibited to same. The bill also enacts penalties. Finally, the bill appropriates \$350.0 thousand from the general fund to the attorney general’s office to support the requirements of the bill.

FISCAL IMPLICATIONS

The appropriation of \$350.0 thousand contained in this bill is for FY14, but as the proposed legislation requires an audit of each detention facility at least once every three years, it should be considered a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY14 shall revert to the general fund.

SIGNIFICANT ISSUES

The 2003 Prison Rape Elimination Act supports the elimination, reduction and prevention of sexual assault and rape within corrections systems; mandates national data collection efforts; provides funding for program development and research; creates a national commission to develop standards and accountability measures; applies to all federal, state and local prisons, jails, police lock-ups, private facilities and community settings such as residential facilities.

Further, it directs the Bureau of Justice Statistics to carry out, annually, a comprehensive statistical review and analysis of the incidence and effects of prison rape and prohibits the receipt of Federal grants by penal facility accreditation organizations that fail to adopt accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

The proposed legislation would encourage meaningful, documented compliance with federal law on prison rape prevention. As no response was received from the Corrections Department (NMCD), it is difficult to ascertain the potential impact the proposed legislation would have on current or future federal funding related to compliance with the Prison Rape Elimination Act.

ADMINISTRATIVE IMPLICATIONS

Compliance with the provisions of the proposed legislation would require additional activities on the part of agencies to aggregate data and provide effective oversight.

The response from the State Auditor reflects some concern that a detention facility audit does not constitute an audit of financial affairs and transactions and, as such, is not the type of audit the OSA would normally be responsible for. The bill appropriately provides that the detention facility auditors shall be certified by the USDOJ.

ALTERNATIVES

The response from the AGO suggests the inclusion of a safety provision in the event that the agency is unable to secure a qualified auditor despite a thorough request for proposal process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The response from the AGO states that failure to comply with the national standards established by the National Prison Rape Elimination Commission could result in a 5 percent reduction of federal funding received by the state for prison purposes. However, with no response from the NMCD, it is difficult to verify current levels of funding or the potential loss of funding as a result of non-compliance.

RS/blm