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FISCAL IMPACT REPORT

SPONSOR Roybal Caballero ORIGINAL DATE 02/22/17
LAST UPDATED 03/10/17 HB 116/aHJC
SHORT TITLE No Local Enforcement of Fed Immigration Law SB _____
ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB270
Relates to SM39 and SM42

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Public Safety (DPS)
Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 116 changes the presence of a person with foreign citizenship from residing in the United States to present in the United States and strikes the reference to federal law.

Synopsis of Bill

House Bill 116 proposes to amend Section 29-1-10 NMSA 1978 to prohibit law enforcement agencies of the state or political subdivision from using state funds, equipment, personnel or resources and from accepting or using federal funds, equipment, personnel or resources for detecting or apprehending persons whose only violation is being in the United States illegally. The bill excludes the Workforce Solutions Department. Additionally, the bill removes references to repealed federal law.

FISCAL IMPLICATIONS

According to the Attorney General's Office (AGO) this bill could possibly jeopardize federal funding and other assistance for state and local law enforcement agencies.

SIGNIFICANT ISSUES

The Department of Public Safety (DPS) believes that this bill does not have an exception for law enforcement officers working in border areas to apprehend a person who they witness entering into the United States illegally or for a state, county or local law enforcement officer to respond to a request by a federal law enforcement officer for assistance. The bill also fails to address any state and local officers assigned to federal task forces, who are cross-deputized federal agents, and who have the legal authority and responsibility to enforce federal law.

The Attorney General's Office notes that this bill appears designed to affirm as a matter of State policy that law enforcement officers in New Mexico should not play an active role in enforcing federal immigration law. The bill does not prohibit the use of state or federal resources to arrest such individuals if they commit any crime in New Mexico, including illegal entry on private property after crossing the Mexican border.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB270 No Local Enforcement of Fed Immigration Law

Relates to SM39 Detrimental U.S./Mexico Federal Policies and SM42 Denounce Ban of Certain Muslims

OTHER SUBSTANTIVE ISSUES

AGO cites 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act (INA)) which authorizes the U.S. Department of Homeland Security (DHS) to enter into written agreements with state or local law enforcement agencies. These agreements allow state and local law enforcement officers to be trained and deputized to act as immigration agents. The law does not require state and local officers to have such an agreement in place or otherwise ask permission to contact the federal government regarding an individual's immigration status. While current law does not preclude state and local law enforcement to make arrests for violations of federal law under INA, there is not a legal obligation that state and local law enforcement enforce federal immigration law. See United States v. Vasquez-Alvarez, 176 F3d 1294 (10th Cir. 1999)

The AGO also notes that the US Supreme Court has held that state laws are preempted when they conflict with federal law, as well as when they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. It is not clear whether this bill would conflict with any existing federal law.

DPS states that if this bill, if passed as is, would prohibit a State or local law enforcement officer to arrest or apprehend a subject whose only known violation is of federal immigration law. At the request of a federal agency, it should allow for an exception to detain (not arrest) an individual who is already detained for a violation of state law until their arrival. This would allow for the federal agency, in its discretion, to continue with a federal investigation for

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violation of United States federal laws. This is would also be consistent with the “spirit of the law”, the mutual aid, and police team concepts nationwide.

ABS/jle/al/jle