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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/25/19

**SPONSOR** Rubio/ Maestas      **LAST UPDATED** \_\_\_\_\_      **HB** 624

**SHORT TITLE** Immigration Detention Facilities Act      **SB** \_\_\_\_\_

**ANALYST** Edwards

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
(Potentially substantial, see fiscal implications)	(Potentially substantial, see fiscal implications)	(Potentially substantial, see fiscal implications)	Recurring	Federal Revenues

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Potentially substantial, see fiscal implications	Recurring	General Fund/Local Government Funds			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 577.

Conflicts with House Bill 195 and its duplicate Senate Bill 196.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 624 enacts the Immigration Detention Facilities Act and defines an immigration detention facility to be a facility that houses or detains for any length of time a non-US citizen for purposes of civil immigration custody or detention. The bill restricts use of state and local resources for civil immigration custody or detention purposes in the future.

The Act limits non-federal law enforcement agencies from creating a new federal contract or renewing or modifying a federal contract to detain noncitizens for civil immigration custody for adults unless there has been public notice and at least two separate public meetings. The Act contains similar limitations for contracts relating to detaining noncitizen minors for civil immigration custody purposes.

The Act requires that a nonfederal law enforcement agency extending the term of a federal or private contract for housing or detention of a noncitizen for purposes of federal immigration detention:

- adhere to applicable federal and state detention standards, at a minimum, or face the possibility the attorney general, a district attorney or a municipal or tribal attorney may bring a civil action for injunctive and other appropriate equitable relief;
- shall not deprive a noncitizen access to an attorney “or any other person authorized by the federal department of justice or access to a translator or interpretation services”; and
- shall not involuntarily place a noncitizen in segregated houses “because of the noncitizen's actual or perceived gender, gender identity, gender expression or sexual orientation” and shall allow a transgender or gender-nonconforming noncitizen the option to choose a housing placement consistent with the noncitizen's gender identity.”

A person injured by violation of applicable federal or State standards of detention in a federal or private facility that houses or detains a noncitizen for purposes of federal immigration detention is allowed to pursue a private right of action in district court and, upon a showing that the plaintiff has suffered injury, the court may award damages and punitive damages and order injunctive relief and shall award the cost of the suit, including reasonable attorney fees. The relief provided in Section 5 is in addition to remedies otherwise available pursuant to common law or other New Mexico statutes.

Section 6 authorizes and requires the secretary of corrections or the secretary’s designee to conduct announced and unannounced inspections of facilities used to house a noncitizen—either an adult or a minor-- for purposes of federal immigration detention and to report annually beginning January 30, 2021. Subsection B of Section 6 also requires the secretary or the secretary’s designee by no later than December 31, 2019, to complete a review of immigration detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in New Mexico, including immigration detention facilities in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal office of refugee resettlement or the federal department of homeland security. Section 6 also requires that the secretary’s review be done “in consultation with civil, human and migrant rights organizations, or individuals or organizations with a demonstrated commitment to humane treatment of vulnerable populations” and shall include a review of the (1) conditions of confinement; (2) standard of care and due process provided to the persons already housed or detained in New Mexico for purposes of civil immigration proceedings; and (3) circumstances around the apprehension and transfer to the facility of the housed or detained individuals and by no later than December 31, 2019, provide the legislature and the governor with a comprehensive report outlining the findings of the review, which report shall be posted on the website maintained by the Corrections Department and shall be otherwise made available to the public upon its release to the legislature and the governor. Finally, Subsection 6 also requires that the secretary be provided all necessary access for observations needed for doing the reviews, including access to detainees, officials, personnel and records.

Section 7 authorizes and requires the State attorney general to appoint two independent monitoring commissions—one south of and one north of the 34th parallel—comprised of seven members appointed from civil, human and migrant rights organizations, or individuals from organizations with a demonstrated commitment to humane treatment of vulnerable populations. The commissions must meet at least four times per year. They have free access to every part of an immigrant detention facility used to house noncitizens for purposes of federal immigration detention, and “every individual detained therein”, including those in any specialized housing, residence or confinement that is part of the immigration detention facility.” The independent monitoring commissions shall: visit the facilities, conduct hearings on complaints made by persons detained there; have access to “all records, logs, memoranda, video and audio recordings and internal documents within an immigration detention facility except for medical records that may be accessed only with the informed consent of a detained individual”; and report annually to the attorney general as to their activities.

### **FISCAL IMPLICATIONS**

This bill could potentially make New Mexico a sanctuary state in the view of the federal government. In the case of many federal law enforcement grants, the federal government requires immigration cooperation assurances as a prerequisite to receiving funding. Should this bill pass, the state and its counties could lose millions of dollars in federal funding. For example, over the summer of 2018, states nationwide, including New Mexico, did not receive more than \$335 million allocated for justice assistance formula grants (JAG) after a federal judge issued an injunction that barred the Department of Justice from imposing immigration assurances as a prerequisite to receiving JAG funding in any jurisdiction. As a result, the Department of Public Safety did not receive until close to the end of FY18 almost \$1 million in JAG funds that cover overtime costs incurred by DPS investigative agents in support of the Controlled Substances Act and training for agents to enhance investigative skills. As another example, this bill could eliminate Operation Stonegarden for border protection and other federal homeland security funding, of which New Mexico receives almost \$3 million per year.

NMCD states “the bill’s requirement that the secretary or his or her designee engage in detailed reviews of and provide detailed reports regarding all New Mexico immigration detention facilities constitutes an unfunded mandate. The reviews (including the related tours or inspections of the facilities), the consultations done with civil rights organizations as part of the reviews, and the various reports required by the bill will take a substantial amount of time and effort on the part of the secretary or the designee, and the bill appropriates no money to cover these significant costs. The NMCD is appropriated money each year to care for its inmates and probationers/parolees, not to monitor or oversee immigration detention facilities operated by counties or their private vendors for the federal government. The legislature will likely be resistant to appropriating to the NMCD to perform functions such as those required by this bill when those functions are not related to NMCD inmates or NMCD probationers/parolees.”

### **SIGNIFICANT ISSUES**

NMCD explains the department “is not an expert in the state and federal standards which apply to immigration detention facilities, as housing immigrants in such facilities is not its mission or function. If the secretary or NMCD makes mistakes or omissions in its reviews and reports due to this lack of expertise, NMCD will face civil liability and public and media criticism. It is unreasonable and unfair to place the NMCD in this position by forcing it to perform functions

regarding non-NMCD inmates and non-NMCD facilities.”

NMCD also submitted the following:

The bill will require that the secretary conduct tours and inspections of immigration detention facilities where no NMCD inmates are housed. There several such facilities in New Mexico, and they are located all over the state. It is the counties and/or their private facility operators who primarily enter into contracts with the federal government to house non-citizen adults and minors facing civil immigration proceedings. The secretary and NMCD have over 7,000 NMCD inmates to confine and keep safe, and approximately 18 thousand offenders on probation or parole to supervise. NMCD’s core statutory mission is supervise inmates and probationers and parolees placed under the supervisor or custody of NMCD, not to supervise or monitor immigration detention facilities not owned or operated by NMCD or immigrants not in NMCD custody.

NMCD has limited manpower and resources to supervise and assist NMCD inmates and probationers/parolees and cannot afford to devote its already limited resources to inspect or review numerous immigration facilities. It makes much more sense for the counties, who enter into contracts to have immigration-related inmates housed in their facilities, to monitor and inspect how their own facilities are being operated. After all, it will be the counties who are likely to be sued by non-citizen immigrants if they are injured or damaged during their stay in a county facility holding non-citizens for purposes of civil immigration proceedings, and their motivation to reduce their exposure to liability should make the counties very motivated to closely monitor their own immigration detention facilities. It also makes much more sense to have the northern and southern monitoring commissions engage in the inspections and report writing and to perhaps to work with the counties regarding the reviews and report writing.

The bill’s requirement that the secretary perform reviews in consultation with civil rights organizations is nebulous and difficult. What organizations is NMCD to consult with? What is the scope of the consultation? Does the consultation require that the civil rights groups attend and participate in the tours and inspections? What happens if the organizations disagree with the secretary over the scope and content of the reviews? What happens if an organization is not included in the consultation process, and then complains about it—does the Secretary have to conduct another review after consultation with that one additional or several additional organizations? What happens if the civil rights organizations disagree with the Secretary over the content of the prepared reports?

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 195 and its duplicate Senate Bill 196 prohibit spending State funding on federal immigration enforcement, which contradicts the permission to contract provisions of House Bill 624.

Relates to House Bill 577, “ Out-of-State Inmate” definition.

#### **TECHNICAL ISSUES**

NMAG explains “the Act created by House Bill 624 is all new material. However, it may be

necessary to amend the corrections facilities statutes such as NMSA 1978, Sec. 33-3-1(B), ‘Contracts between local public bodies and private independent contractors for the operation, or provision and operation, of a jail’ or ‘Privately Operated Correctional Facilities Oversight’, NMSA 1978, Sec. 33-15-1 to 33-15-4 in order to enact the specific contracting limitations set forth in the Immigration Detention Facilities Act.”

TE/sb