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FISCAL IMPACT REPORT

ORIGINAL DATE 2/9/2020

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Licensure Eligibility Without Lawful Presence SB 137/SJCS

ANALYST Gaussoin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	Indeterminate but minimal	Indeterminate but minimal	Recurring	Other state funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

Responses Received for Original Bill From

Regulation and Licensing Department

Attorney General (NMAG)

Administrative Office of the Courts (AOC)

Medical Board (NMMB)

Board of Professional Engineers and Land Surveyors (PELS)

Board of Examiners for Architects (BEA)

No Response Received

Department of Health (DOH)

SUMMARY

The Senate Judiciary Committee Substitute for Senate Bill 137 creates a new section of law establishing that a person who is qualified for an occupational or professional license remains qualified regardless of citizenship or immigration status.

It prohibits the adoption of administrative rule or agency procedure that conflicts with the policy, and states the policy is “affirmation of eligibility” pursuant to federal law that states, “A state may provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which such alien would otherwise be ineligible ... only through the enactment of a state law after August 22, 1996, which affirmatively provides for such eligibility.” [8 U.S.C. Code Section 1621 (d)]

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SB137, on the governor's call, has no appropriation. RLD suggests the state might generate revenue through licensing fees if undocumented immigrants are licensed or certified but does not estimate an amount.

RLD did not identify any issues with SB137 that would affect the license and certificate procedures of its boards and commissions or any concerns with additional agency responsibility or costs.

SIGNIFICANT ISSUES

AOC states New Mexico is among the states with the biggest share of “unauthorized” immigrant workforce (<https://bit.ly/2GHbmou>) and points out the Pew Commission reports unauthorized immigrant workers were 5.6 percent of the New Mexico workforce in 2014. How many New Mexico occupational or professional license holders are unlawfully present is unknown, as is how many applicants have been denied a license or certificate because of legal status.

From the AOC:

A survey conducted by the Center for American Progress found 91 percent of responding DACA recipients were currently employed. (<https://bit.ly/37QYmbH>) Before the repeal of DACA, New Mexico had more than 6,000 DACA recipients with more than 5,000 applications in process. According to Harvard research, nearly 41 percent of DACA recipients are enrolled in or have completed a college degree program. (<https://bit.ly/36Q6ZCa>) The U.S. Supreme Court agreed to review legal challenges to the DACA repeal with a decision expected in June 2020. Should the DACA repeal be upheld, thousands of educated members of the New Mexico workforce would then be ineligible to practice or receive professional licensure in the United States.

While the state might allow an unauthorized immigrant to obtain a license or certificate, federal law still makes it illegal for an employer to “knowingly” hire undocumented workers. The Society for Human Resource Managers notes employers are rarely prosecuted because of the difficulty in proving they “knowingly” hired an undocumented worker. About 20 states require some or all employers to use the U.S. Department of Homeland Security E-Verify employee eligibility database, but New Mexico is not among them.

Many New Mexico occupational licenses and certificates require background checks, the submission of fingerprints, or other verification steps. The elements of background checks vary but the conservative think-tank the Heritage Foundation suggested in 2013 an undocumented immigrant with no criminal history could easily pass a background check. Nevertheless, a person unlawfully in the country might be reluctant to submit to a background check.

According to the National Conference of State Legislatures, several states have recently reduced barriers to immigrants seeking professional licenses because of worker shortages and a desire to retain skilled immigrants and capitalize on underused talent that can generate economic activity.

AOC says, as of 2019, 14 states – California, Florida, Illinois, Michigan, Minnesota, Mississippi, Nebraska, New York, Nevada, South Dakota, Utah, West Virginia and Wyoming – have enacted laws allowing licenses for certain populations, including Deferred Action for Childhood Arrivals (DACA) recipients, legal immigrants, and unauthorized immigrants.

ADMINISTRATIVE IMPLICATIONS

RLD did not identify any issues with SB137 that would affect the license and certificate procedures of its boards and commissions. However, the Medical Board in its response to the original SB137 points out Section 61-6-11 NMSA 1978 specifically requires those seeking authority to practice medicine in New Mexico must be “in compliance with the United States immigration laws.” NMMB did not identify any costs associated with SB137 but reports it would have to adopt rule changes if SB137 becomes law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 270 from the 2017 legislative session would have barred the state from denying benefits to people based on immigration status, ethnicity, or religion unless required by other law. The bill died through inaction.

TECHNICAL ISSUES

It is unclear if the committee substitute for SB137 addresses concerns that the legislation could be in conflict with Section 61-6-11 NMSA 1978, concerning the requirements for practicing medicine in New Mexico that states applicants must be “in compliance with the United States immigration laws.” For the original SB137, NMMB recommended language specifying the policy only applied to DACA recipients.

OTHER SUBSTANTIVE ISSUES

NMAG notes current law requires occupational and professional **board** members to be citizens of the United States and residents of New Mexico.

HFG/rl/sb/rl