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## FISCAL IMPACT REPORT

SPONSOR Maestas LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 3/7/2023  
SHORT TITLE Authority to Convene Grand Juries BILL NUMBER Senate Bill 489  
ANALYST Gray

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	At least \$168	At least \$168	At least \$336	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

## SUMMARY

### Synopsis of Senate Bill 489

Senate Bill 489 contemplates permitting district attorneys and the attorney general to convene one or more grand jury panels at a time without regard to court terms.

The bill provides that a grand jury convened by a district attorney or the attorney general would be summoned, qualified, and composed the same as one convened by a district judge. The bill also provides that the district attorney or attorney general will determine the place where the hearings and deliberations will be conducted.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

SB489 does not provide where funding for additional grand juries will come from. It is assumed costs would be borne by the jury and witness fund in the Administrative Office of the Courts (AOC). It is difficult to estimate with precision how many additional grand juries will be

convened as a result of the bill. This analysis provides an “at-least” estimate by providing the estimated cost to convene one grand jury in each judicial district that would not have otherwise been convened except for the provisions of SB489. Assuming 20 jurors (12 jurors with eight alternates) report for five, eight hour days for one grand jury, the estimated minimum cost of SB489 is \$12 thousand per year per judicial district. The statewide minimum estimate is \$168 thousand.

The estimate assumes additional costs of 25 percent the cost of jurors to account for other costs associated with grand juries, such as interpreters, court monitors, and security.

This number could be significantly higher if district attorneys or the attorney general decide to pursue more than one grand jury per judicial district under the authority granted by SB489.

## SIGNIFICANT ISSUES

AOC analysis notes that SB489 may raise separation of powers issues as it would “permit the prosecution to usurp the court’s authority to convene, qualify, and assure that procedural due process is fulfilled.”

AOC analysis continues:

The U.S. Supreme Court has ruled that the grand jury’s role is to protect innocent citizens from overzealous prosecutions, *see United States v. Calandra*, 414 U.S. 338, 343 (1974).

The New Mexico Supreme Court has ruled that “the grand jury is not simply a tool of the prosecution,” *DeLeon v. Hartley*, 2014-NMSC-005, ¶8.

The judiciary is invested with oversight of grand jury proceedings by Article II, Section 14, of the state constitution, as well as sections 3 and 13 of Article VI, *see also DeLeon v. Hartley*, 2014-NMSC-005, and *Jones v. Murdoch*, 2009-NMSC-002.

AOC also notes that SB489 contemplates changing the balance of authority shared between the court and the prosecutor, writing:

The legislation fails to recognize the role of the court in assuring that compliance with Chapter 31 is fulfilled and the court’s role instructing, swearing in, and addressing challenges to the grand jury and in assuring that neutrality in the procedure is safeguarded. The proper role of the prosecution at a grand jury, rather, is as an aide to the grand jury. The prosecutor must at all times conduct themselves in a fair and impartial manner, and that impartiality will likely be impugned if they assume the role of calling, convening, and instructing the grand jury.

Such imbalance may impact the role of the grand jury as an independent body that determines probable cause that a crime has been committed and insulates a person from unfounded criminal charges. AOC asserts that the bill “by permitting the prosecution to convene, seat, and house the grand jury, removes that independence and could create the appearance of undue influence by the prosecution over the process.”

AOC also writes:

If passed, SB489 virtually guarantees additional litigation following any indictment returned by a prosecution-convened grand jury.

BG/ne