

LFC Requester:

Scott Sanchez 1065

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/19/2024

Bill No: HB 111

Sponsor: John Block, Harlan
 Vincent, and Stefani Lord
Short Title: Making an Appropriation
 for the Construction of a
 Border Barrier at the New
 Mexico-Mexico Border

Agency Name and Code Number: 305 – New Mexico
 Department of Justice
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill (“HB”) 111 seeks to appropriate \$1.5B from the general fund to the homeland security and emergency management department for the purpose of constructing a border barrier at the New Mexico-Mexico border in FYs 2025-28.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The construction of a border barrier does not fall neatly within the powers and duties of the department of homeland security and emergency management outlined in NMSA 1978, Section 9-28-5. It arguably falls under Section 9-28-2(A)(1) as a means of “consolidat[ing] and coordinat[ing] homeland security and emergency management functions to provide . . . prevention [and] protection [and prevent] acts of terrorism[.]” No law explicitly prohibits the department from constructing a border barrier, but it does not fall squarely within the ambit of the enabling statute for the department.

It is unclear whether there is any land currently available to New Mexico on which the barrier could be practically and legally constructed. To the extent that necessary land is privately owned, only the US Department of Immigration and Border Protection has the legal authority to condemn private property for the purposes of constructing a border barrier. Also, the U.S. Government has asserted the supremacy of federal law in connection with border barrier construction initiatives. In short, the federal government claims that its authority preempts state actions concerning border barrier construction. In apparent recognition of federal supremacy in this arena, HB 111 provides that “money shall not be expended unless the state of the New Mexico has entered into an agreement with the federal government to allow such a barrier”. In effect, this is a bill is an offer to contribute \$1.5B in the event that the federal government decides to construct a barrier.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HM 20 supports completion of a border barrier but does not make any substantive contributions towards that effort.

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS