

LFC Requester:	Scott Sanchez
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**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: 1/23/2024
Bill No: SB 145

Sponsor: Katy M. Duhigg; Gerald
Ortiz y Pino; and Bill
O’Neill

Short Title: Public Bodies & Federal
Immigration Violation

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

Senate Bill (“SB”) 145 would enact the Public Bodies and Federal Immigration Violation Act. This Act applies to all public bodies within the state of New Mexico, including entities or individuals acting on behalf of those public bodies, and makes it unlawful for public bodies to:

- 1) Enter or renew any agreement, including a contract, intergovernmental service agreement, memorandum of understanding, or any other agreement, to detain individuals for federal civil immigration violations;
- 2) Sell, trade, lease or otherwise dispose of any real or personal property belonging to the public body for the purpose establishing a facility or operation that detains or will detain individuals for federal civil immigration violations;
- 3) Use any funds or assets belonging to the public body to, among other things, pay any cost related to the sale, purchase, construction, development, ownership, management or operation of a facility that detains or will detain individuals for federal civil immigration violations;
- 4) Receive per diem per detainee payments or any other payment related to the detention of individuals for federal civil immigration violations;
- 5) Otherwise give any financial incentive or benefit for the purpose of facilitating the establishment or operation of a facility that detains or will detain individuals for federal civil immigration violations;
- 6) Impose or continue in effect any law, ordinance, policy or regulation that violates or conflicts with the provisions of the Act.

However, SB 145 allows a public body to receive or disburse any payments related to an agreement that is discussed in this section for the time period between exercising the termination provision and the date the termination becomes effective.

SB 145 would also require a public body:

- 7) Exercise, before May 14, 2024, the termination provision in any agreement that is used, in whole or in part, to detain individuals for federal civil immigration violations. If the agreement does not contain a termination provision that the public body can exercise by May 14, 2024, the public body shall exercise the termination provision as soon as possible within the terms of the agreement.

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

As the New Mexico Department of Justice (NMDOJ) noted when a similar bill was introduced last year, i.e., SB 172, 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act (INA)) authorizes the U.S. Department of Homeland Security (DHS) to enter into written agreements with the State, or any political subdivision of the State, regarding INA directives. However, nothing in 8 U.S.C. § 1357(g) shall be construed to require any State or political subdivision of the State to enter into a 287(g) agreement. *See* 8 U.S.C. § 1357(g)(9).

While SB 145 does differ from 2023's SB 172, it nonetheless implicates a similar issue. Basically, this bill may violate the Supremacy Clause. California attempted to enact a similar law prohibiting a "person" from operating a private detention facility within the state. *See* Cal. Penal Code § 9501. In *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 750 (9th Cir. 2022), the U.S. Court of Appeals for the 9th Circuit found that California's statute "would prevent ICE's contractors from continuing to run detention facilities, requiring ICE to entirely transform its approach to detention in the state or else abandon its California facilities." The statute was challenged for violating the intergovernmental immunity doctrine, and in 2022, the 9th Circuit held: (1) future injuries alleged by United States and operator were sufficient to satisfy injury-in-fact requirement for Article III standing; (2) California statute violated the supremacy clause; and (3) the statute was preempted under doctrine of obstacle preemption. *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022). While it is unclear and, possibly, unlikely that this Act would "prevent ICE's contractors from continuing to run detention facilities" in New Mexico, the possibility exists and thus opens the door to future litigation. In other words, if prohibition of State cooperation with ICE contractors precludes them from continuing to run detention facilities in New Mexico, then a court may overturn this Act pursuant to the Supremacy clause.

Furthermore, the analysis in *Geo Group* from the 9th Circuit is instructive here: the Supremacy Clause precludes states from dictating to the federal government who can perform federal work. A state may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority. *See Sperry v. State of Fla. ex rel. Florida Bar*, 373 U.S. 379, 385 (1963). Because the bill seeks to limit the State, albeit through its public bodies, from performing federal work by prohibiting its ability to enter into an agreement that supports the detention of those who violate federal immigration laws, it could be a violation of the Supremacy Clause and would need to be more closely examined.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

The New Mexico Department of Justice would likely be involved in any court challenge to this legislation, affecting the Department's resources and funds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The phrase "public body" is not defined in the Act, which could lead to confusion and, possibly, litigation on the meaning of this phrase and how far it may extend. For instance, would an entity that receives public funds be considered a "public body?" Or would a State political subdivision's public bodies be considered "public bodies" under this Act?

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None