

LFC Requester:	
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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

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 **Amendment**
Correction **Substitute**

Date January 28, 2026
Bill No: SB 136-280

Sponsor: George Muñoz and
Pete Campos
Short Title: Unlawful Use of an Unmanned
Aircraft

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

BILL SUMMARY

Synopsis: The bill proposes to add a new section to the criminal code, prohibiting the use of an unmanned aircraft (presumably, a drone) to take images of a person, private property or “critical infrastructure” property with the intent to conduct surveillance.

The proposed legislation would treat any infraction as a misdemeanor, unless the image captured:

- is used in commission of a felony or,
- consists of confidential information or information protected from disclosure by law;

in which case, the offense would be a fourth-degree felony.

The proposed law would also treat as a fourth-degree felony the interference with a critical infrastructure facility, wherein a drone causes disturbance to the facility or makes contact to the facility.

The proposed legislation would except from prosecution conduct by state, local, tribal or federal law enforcement; by consent of the owner or operator; by permitted functions of a community organization such as a homeowner association; for the purpose of research or other academic purpose; for the purpose of land use survey or other engineering purpose; and for collecting data relating to insurance.

Finally, the proposed legislation defines “critical infrastructure facility” and provides an apparent exhaustive list including communications facility, oil, gas, water and electric facilities, and airports, prisons and national guard facilities. The proposed legislation defines “image” to include sound and thermal mapping; and defines unmanned aircraft.

FISCAL IMPLICATIONS

It is difficult to predict how often prosecutors will pursue charges, insofar as no statistics exist to suggest how much the previously legal behavior presently occurs.

However, if significant prosecution from enactment results in a higher number of trials, Law

Offices of the Public Defender (hereinafter *LOPD*) may need to hire more trial attorneys to handle these additional trials and ensure compliance with constitutional mandates of effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.) While further assessment would be warranted after the implementation of the proposed penalty scheme, LOPD costs for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$292,080.16 annually in the Albuquerque/Santa Fe areas, and \$300,569.45 in outlying geographic areas.

A 2022 workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.” https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD’s workload crisis from spreading.

Additionally, courts, DAs, the NMDOJ, and NMCD could anticipate increased costs if more trials result from enactment.

SIGNIFICANT ISSUES

As written, the proposed legislation appears to narrowly define conduct by which a drone could “disturb” or interfere with private or critical infrastructure property. However, it is unclear whether the proposed element of “intent to surveil” could broadly encompass First Amendment-protected conduct.

For instance, is the immediate airspace around a facility akin to a public sidewalk? Should a citizen have a First Amendment right to observe or map data at a law enforcement or public utility facility for the purpose of bringing an environmental cause of action, for example? *See Pomonis v. Hotel, Restaurant & Bartenders Union, Local Union No. 716, A. F. of L.*, 56 N.M. 56, ¶ 21, 239 P.2d 1003. *Accord, Robinson v Hotel & Restaurant Employees*, (1922) 35 Idaho 418, 207 P 132 (injunction modified to permit picketers’ lawful activity on streets even though part of the property in center of street owned by private business); *Vonderschmitt v McGuire* (1935) 100 Ind App 632, 195 NE 585 (appellate court rejected trespass action by theatre owner for picketing in front of theatre).

To the extent the proposed legislation raises such questions, it might be better limited to a clear criminal intent or breach of privacy on private property.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Trespass onto private property is already punishable as a misdemeanor under NMSA 1978 Section 30-14-1. Voyeurism already punishes certain aspects of taking pictures or video without

knowledge or consent under NMSA 1978, Section 30-9-20 (defining a misdemeanor unless the victim is under 18, in which case it is a felony). Thus the proposed legislation seeks to punish some conduct already criminalized elsewhere, risking over-prosecution of an act (if a person is charged both under the new law and the existing law) as well as double jeopardy issues (if a person is convicted both of trespass or voyeurism *and* violation of the new law, based on the same conduct).

It is also unclear to this analyst whether, and to what extent the proscribed conduct would already give rise to a civil cause of action for invasion of privacy, trespass, or otherwise.

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS