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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/06  
 LAST UPDATED 2/15/06      HB 264/aHAFC

SPONSOR Swisstack

SHORT TITLE County Detention Facility Reform Act      SB \_\_\_\_\_

ANALYST Peery

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
NA	NA	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AG)  
 New Mexico Sentencing Commission (NMSC)  
 New Mexico Corrections Department (NMCD)  
 Association of Counties (AC)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriation and Finance Committee amendment to House Bill 264 deletes on page one, line 14 “; MAKING AN APPROPRIATION” and deletes on page four Section six in its entirety that deals with appropriation. The amendment also calls for on page two, line 17 and page three, line nine and 12 the deletion of “shall” to be replaced by “may” in regards to reimbursements to a county.

#### Synopsis of Bill

House Bill 264 appropriates \$25,000.0 from the general fund to the “County Detention Facility Reform Fund” for expenditure in fiscal year and subsequent years to carry out the provisions of the County Detention Facility Reform Act.

The proposed legislation creates a new “County Detention Facility Reform Fund” in the State Treasury, to be administered by the Department of Finance Administration (DFA). Money in the fund may not be used by DFA for administration of the fund. Money in the fund is to be used for

reimbursing counties for the incarceration of a state prisoner who: has violated his parole and is charged with a parole violation; while on parole is charged with a violation of local, state, tribal, federal or international law; is awaiting transportation and commitment to the Corrections Department following pronouncement of a judgment, sentence or order to confinement; is charged with a violation of his/her probation by the department or by the district court; is sentenced, ordered or removed by the district court to incarceration in a county detention facility; or is incarcerated on the basis of an arrest and hold order or a warrant issued by the Corrections Department. The proposed legislation defines a “state prisoner” as a person charged with or convicted of a violation of state law, with the exception of those individuals convicted of a misdemeanor.

NMCD states the proposed legislation sets the rate of reimbursement at the actual cost per day for housing each prisoner incarcerated in that county’s detention center, but it does not state what the actual cost is, or who will determine the actual cost. The proposed legislation requires DFA to reimburse the counties for the cost of providing ancillary services - such as medical, dental, mental health, vision care, prescription drugs and ambulatory/transportation services - to state prisoners housed in county facilities. The proposed legislation also states that no one county can be reimbursed more than 50 percent of the money in the fund.

### **FISCAL IMPLICATIONS**

The appropriation of \$25,000.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

NMSC reports that the legislature could choose to adopt the definition of “state prisoner” in this proposed legislation or could modify the definition to include fewer or more inmates. The definition will control whether costs continue to be borne by the counties or are passed to the state.

### **SIGNIFICANT ISSUES**

NMSC reports they conducted a study for the New Mexico Association of Counties that provides a count of individuals held on felony charges in six detention facilities in New Mexico on June 30, 2003 and estimates the annual cost of housing four categories of felony arrestees throughout the state. NMSC updated the cost estimates based on arrestees held on June 30, 2005. The report shows the estimated cost of housing arrestees held on felony charges in county detention facilities is \$25,308,662. This is \$308,662 higher than the appropriation in the proposed legislation.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD states they had previously suggested that the Local Government Division of DFA administer the fund. NMCD agrees that the fund would be best administered DFA.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The proposed legislation has a relationship to House Bill 426 and House Bill 414.

### **TECHNICAL ISSUES**

NMCD states the proposed legislation's definition of "state prisoner" is extremely broad and unusual. NMCD reports typically, a person would only become a state prisoner if he was imprisoned or sentenced to the custody of the department. NMCD reports the definition in the bill includes individuals, such as those placed on probation, that are simply not state prisoners and that would often never be incarcerated in a state prison. NMCD states under this broad definition of state prisoner, the department's exposure to liability could be increased. NMCD gives the following example, a state prisoner in a county facility is attacked by other inmates and seriously injured or killed there, the family of the injured or murdered inmate may very well attempt to sue the Corrections Department and claim that it is the department's fault that the inmate was injured or murdered. NMCD suggests the proposed legislation should be amended to remove the definition of state prisoner, to add language indicating it only deals with payment issues, and to clarify it does not make the State of New Mexico or the Corrections Department responsible for the care and safekeeping of inmates housed in various county facilities.

### **ALTERNATIVES**

The New Mexico Association of Counties reports in the 2004 legislative session, the Legislature gave counties increased taxing authority of a new 1/16<sup>th</sup> of countywide general purpose authority, and expanded 1/8<sup>th</sup> countywide for maintaining and constructing detention facilities as well as extraditing and transporting state prisoners. The New Mexico Association of Counties reports 18 counties have enacted this new authority and others are considering an increase in their local taxes to meet the escalating cost of prisoners.

RLP/nt:mt