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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/11

SPONSOR Martinez, R. LAST UPDATED _____ HB _____

SHORT TITLE Enforcement of Federal Immigration Laws SB 152

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI	NFI	R	General Fund
	NFI	NFI	NFI	NFI	R	Local Governments

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General Office (AGO)

SUMMARY

Synopsis:

Senate Bill 152 directs that no State or local law enforcement agency may use state or federal funds or resources to detect or apprehend anyone whose only violation of law is that they are a foreign citizen in the U.S. in violation of federal immigration laws. The bill provides an exception whenever an officer directly observes an illegal entry into the U.S. or if the officer is legally required to enforce Federal immigration law or if a Federal law enforcement officer requests assistance from the state or local officer.

FISCAL IMPLICATIONS

It is not clear either in the bill or in other portions of Chapter 29, NMSA 1978, what are the consequences if a state or local police officer enforces federal immigration law in violation of this section. The bill might have negative consequences for the state and local governments if illegal immigrants were allowed to sue the state or local government for a violation of civil rights. This is a very murky area. The table shows "NFI," despite this caution. Under ordinary circumstances, the bill would carry no fiscal impact.

SIGNIFICANT LEGAL ISSUES

The AGO notes the following legal issues:

1. The bill may merely confirm the constitutional limits on what State and local law enforcement officials may do in immigration matters, on the basis that the regulation of immigration issues is a matter that belongs exclusively in the province of the federal government.
2. Other significant issues raise policy as opposed to legal questions. For example, would the Bill unnecessarily impede State and local law enforcement from assisting federal authorities in addressing immigration violations? Or does the Bill set proper parameters so that state and local law enforcement officials can be trusted by communities and victims of crime to come forward with needed information regarding various crimes including Domestic Violence.

In addition to these issues identified by the AGO, is the issue identified in the Fiscal Implications section above.

3. What are the consequences if a state or local police officer enforces federal immigration law in violation of this section?

SIGNIFICANT ISSUES

The AGO notes the following question, "... does NM need a separate and newly updated law to authorize the receipt of Federal Law Enforcement Assistance grants?" Testimony from DPS should be requested in this regard.

The AGO also poses the question: "If State and local law enforcement officers were involved more in trying to enforce federal immigration laws, would that lead to an increase in civil liability for State and local governments, particularly to the extent there may not be sufficient training and expertise by State and local officers to enforce federal immigration laws?"

TECHNICAL ISSUES

The Bill amends a law in Section 29-1-10 NMSA 1978 that erroneously cites the 1965 federal law as Public Law 98-197; the correct citation should be to Public Law 89-197.

The 1965 federal law that is cited as the basis for the current statute -- Sec. 29-1-10 -- was repealed in 1968 by federal Public Law 90-351. Would it therefore be more appropriate to repeal the current Section 29-1-10 NMSA 1978 and enact a new, stand-alone law to state this bill's provisions, rather than amending a current law that contains an erroneous citation to federal law and that has already been repealed?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

No State law will address whether and to what extent State and local law enforcement officials may be involved in federal immigration law enforcement matters.