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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09

SPONSOR Campos LAST UPDATED _____ HB 531

SHORT TITLE Part-Time Officers in Criminal & Tort Acts SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------------|---------------|-------------------|----------------------|---------------|
| Total | | Indeterminate | Indeterminate | Indeterminate | Recurring | General |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Bill 531 adds language to the Criminal Procedure Act at 31-1-2 NMSA 1978 to include “certified part-time salaried” officer in the definition of “police officer, law enforcement officer, peace officer, and officer”. This bill also adds to the Tort Claims Act at 41-4-3 NMSA 1978 to include “certified part-time salaried police officer employed by a governmental entity” in the definition of “law enforcement officer”.

FISCAL IMPLICATIONS

The AODA notes that with respect to the Tort Claims Act, the inclusion of “certified part-time salaried police officer[s]” in the definition of “law enforcement officer” would waive immunity for said officers and for the governmental entity employing said officers “for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.” See § 41-4-12 and § 41-4-4 (A), NMSA 1978, of the Tort Claims Act. Whether this would increase the liability, or scope of

liability, of certified part-time salaried police officers, and the governmental entities employing said officers, depends on whether the courts would construe that “certified part-time salaried police officer[s]” are implicitly included in the current definition of “law enforcement officer[s].” In other words, it would depend on the significance a court would place on the modifier “full time” in the definition of “law enforcement officer” in Section 41-4-3, NMSA 1978, of the Tort Claims Act. The AODA is not aware of a court decision addressing this issue.)

If the courts were to determine that “certified part-time salaried police officer[s]” are not included in the current definition of “law enforcement officer[s],” the enactment of this bill would increase the liability, or the scope of liability, of certified part-time salaried police officers and the governmental entities that employ said officers. Continuing with this assumption, it is difficult to attach a dollar amount in terms of the potential increase in settlements, or awards, resulting from possible additional lawsuits, or from the potential increase in insurance premiums, if applicable, without a detailed statistical analysis.

With respect to the Criminal Procedure Act, the inclusion of “certified part-time salaried officer[s]” in the definition of “police officers, law enforcement officers, peace officers, and officers” might result in a cost savings to various police agencies by inducing such agencies to employ part-time officers on an as-needed basis and by increasing the pool of potential employees available to these agencies to recruit into service. Such cost savings would be dependent on whether there are police agencies in the State that are currently reluctant to hire part-time officers because they have a concern that part-time officers might not be implicitly included in the definition of “police officer, law enforcement officer, or officer” in the Criminal Procedure Act; and, therefore, it is difficult to estimate the amount of potential financial savings.

TECHNICAL ISSUES

The AGO notes that there could be inconsistencies in the use of the term police officer in other areas of the statutes that rely on the definition in 31-1-2 but may not want to include part-time service. The amended definition at Section 31-1-2 applies to the Criminal Procedure Act, which is Sections 31-1-1 to 31-3-9. A number of statutes outside that Act use the term “law enforcement officer” or “peace officer” to mean “full-time.” For example, as used in the Peace Officer’s Survivors Supplemental Benefits Act, the term “peace officer” means a “full-time” officer. See Section 29-4A-3. See also Section 29-7-10 (allowing the director of the law enforcement academy to waive the training program for applicants who are employed as full-time police officers and who meet certain other requirements). There are several other statutes that use the term “full-time” in describing a law enforcement officer. This change may necessitate careful combing of all statutory references to “peace officer” to determine if the part-time application is appropriate for that section.

MW/mt