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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/10
 LAST UPDATED 02/12/10 **HB** 185/aHJC

SPONSOR Rehm

SHORT TITLE Nonsalaried Officer Law Enforcement Powers **SB** _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General Office (AGO)
 General Services Department (GSD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The amendment makes the following changes that clarify the qualifications, required training and better define a “commissioned Nonsalaried Officer” than included in the original bill.

1. On page 1, line 17, after the semicolon, insert "REQUIRING NONSALARIED COMMISSIONED POLICE OFFICERS TO HAVE COMPLETED FOUR HUNDRED HOURS OF BASIC TRAINING;".

2. On page 1, between lines 20 and 21, insert the following new section:

"Section 1. Section 29-7-6 NMSA 1978 (being Laws 1993, Chapter 255, Section 6) is amended to read:

"29-7-6. QUALIFICATIONS FOR CERTIFICATION--COMMISSIONED NONSALARIED OFFICERS--TRAINING--"

A. An applicant for certification shall provide evidence satisfactory to the board that ~~he~~ the applicant:

(1) is a citizen of the United States and has reached the age of majority;

(2) holds a high school diploma or the equivalent;

(3) holds a valid driver's license;

(4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding ~~his~~ the application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(5) after examination by a licensed physician, is free of any physical condition that might adversely affect ~~his~~ the applicant's performance as a police officer or prohibit ~~him~~ the applicant from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(6) after examination by a certified psychologist, is free of any emotional or mental condition that might adversely affect ~~his~~ performance as a police officer or prohibit ~~him~~ the applicant from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(7) is of good moral character;

(8) has met any other requirements for certification prescribed by the board pursuant to regulations adopted by the board; and

(9) has previously been awarded a certificate of completion by the director attesting to the applicant's completion of an approved law enforcement training program.

B. A person employed as a salaried police officer by any law enforcement agency in this state shall forfeit ~~his~~ the person's position unless, no later than twelve months after beginning ~~his~~ employment as a police officer, the person satisfies the qualifications for certification set forth in Subsection A of this section and is awarded a certificate attesting to that fact.

C. A law enforcement agency shall not commission a person as a nonsalaried police officer unless that person has completed four hundred hours of basic law enforcement training."

3. Renumber the succeeding sections accordingly.

Also, the amendment requires a salaried officer to complete the defined training and satisfy the qualifications for law enforcement certification within 12 months of employment as a police officer. Furthermore, even a nonsalaried officer must complete 400 hours of basic law enforcement training before receiving a commission. However, the bill does not describe what constitutes basic law enforcement training, i.e., attending the law enforcement academy or ?

Synopsis of Original Bill

House Bill 185 expands the definitions of “law enforcement officer” in the Criminal Procedure Act and the Tort Claims Act to include commissioned non-salaried officers and allows non-salaried commissioned peace officers to make arrests for misdemeanor violations of the Motor Vehicle Code and to arrest without a warrant in certain circumstances.

Section 1 amends the definition of “police officer” as used in the Criminal Procedure Act in Section 31-1-2 NMSA 1978 to include a “commissioned nonsalaried” officer.

Section 2 amends Section 35-6-3 regarding magistrate costs, providing that no costs shall be collected from a “commissioned” county or state law enforcement officer filing a complaint. The section as now written states that no costs shall be collected from a “full time salaried county or state law enforcement officer filing a complaint.”

Section 4 amends Section 41-4-3 of the Tort Claims Act to define “law enforcement officer” to include “a police officer commissioned by a government entity.” Accordingly, a police officer commissioned by a government entity is now included in the definition of “public employee.”

Section 5 amends Section 66-8-124 NMSA 1978 to permit a uniformed “commissioned peace officer working under the supervision of a law enforcement agency” to arrest a person for violating the Motor Vehicle Code or other law relating to motor vehicles. These officers no longer must be “salaried.”

Section 6 amends Section 66-8-125 NMSA 1978 to permit “commissioned” deputies (who no longer need to be “salaried” as now written) to arrest without warrant in certain circumstances. “Commissioned” deputies (who no longer need to be salaried) may not make arrests for traffic violations if not in uniform.

FISCAL IMPLICATIONS

GSD notes that the bill includes commissioned officers who, unlike certified officers, may not have had any formal training which could be an issue in a suit for damages under the Tort Claims Act. Liability exposure for untrained commissioned police officers may thus be somewhat more than liability exposure for trained certified police officers.

However, it is difficult or impossible to quantify the potential liability in advance.

SIGNIFICANT ISSUES

GSD goes on to note that under the Tort Claims Act (TCA), commissioned (unpaid) police officers would currently be characterized as public employees under 41-4-3(F)(3) (“persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation”). This amendment to the TCA gives them the coverage accorded to police officers, consistent with expanding their authority under the other two statutes (the Criminal Procedures Act and the Motor Vehicle Code). These changes have to be made concurrently.

DPS adds the following:

The expansion of the definition of “law enforcement officer” in the Tort Claims Act could impact a governmental entity that commissions a non-certified law enforcement officer. A substantial number of tort claims and lawsuits against law enforcement agencies involve claims of negligent hiring, retention and supervision. Proof of certification and sufficient training mitigate against these claims. Without these safeguards, agencies utilizing these officer’s have increased exposure to non-defensible tort claims.

The term “law enforcement officer” is also defined in statutes other than those proposed to be amended by this bill. See for example: 66-107, 66-8-111.1, 66-7-207. See also 29-4A-3 (Peace Officer’s Survivors Supplemental Benefits Act).

New Mexico Supreme Court Rules pertaining to criminal procedure use the term “law enforcement officer” to mean a “salaried” officer. See Rule 5-207, 5-210, 5-211, 6-206, 6-208, 7-205, 7-206, 7-208, 8-205 and 8-207. Only the Supreme Court can change its rules.

TECHNICAL ISSUES

AODA notes:

It would be helpful to have a definition of "commissioned officer" included with the bill. It is not easily apparent what exactly a "commissioned officer" is, and how it differs from a "regular" police officer. After some research, a definition of "commissioned" was found in section 29-7-7(G). As used in that subsection, "commissioned means an employee of a law enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the court all violators within the state". Perhaps there are other definitions of the term, but they are not readily findable. Of course use of the term "employee" in this definition seems to be at odds with the intention of the bill.

Does the term "commissioned nonsalaried officer" leave room for someone with no law enforcement training to have the same powers as a trained law enforcement officer? It is unclear. It would appear that this bill would make clear that reserve officers would have the same powers as regular salaried law enforcement officers.

POSSIBLE QUESTIONS

Under what circumstances is a nonsalaried commissioned officer in uniform?

How is a nonsalaried commissioned officer an employee of a law enforcement agency?

MW/svb