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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11

SPONSOR Eichenberg LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Department Support for Attached Agencies SB 106

ANALYST Aledo

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Department of Finance and Administration (DFA)  
 New Mexico Corrections Department (NMCD)  
 Parole Board (PB)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 106 would require departments to which an agency is administratively attached to provide budgeting, recordkeeping and related administrative and clerical assistance and include the agency's budgetary requests in the departmental budget. The bill removes the Governor's Organized Crime Prevention Commission and the Public Defender Department as entities administratively attached to the New Mexico Correction Department, thereby making each of these stand-alone entities. The bill also deletes a reference to the Public Defender Department as "administratively attached to the criminal justice department". The PDD would be changed to an adjunct agency. The bill would continue to keep the parole board administratively attached to NMCD.

### FISCAL IMPLICATIONS

According to the Department of Administration and Finance, the Government Restructuring Taskforce (GRTF) analysis of this bill did not anticipate significant savings. The GRTF staff report indicated: "Theoretically, savings could accrue from the elimination of administrative-

type positions in the administratively attached agencies. Parent departments most likely could absorb the added workload. However, where workloads are substantial due to the number of vouchers, transactions, and contracts or the size of the agency, adding or transferring personnel to the department to cover these functions may be required. In this case, the savings would be offset.”

NMCD states that there is likely to be no fiscal impact to NMCD if the PDD becomes a separate agency. Conversely, there will be a minimal to moderate fiscal impact to NMCD as a result of NMCD having to provide budgeting, recordkeeping and related administrative and clerical assistance to the Parole Board. Under the current law, NMCD has the discretion to provide or not provide such assistance. If NMCD is mandated to provide administrative or clerical assistance to the Parole Board, NMCD may have to hire one or more additional clerical staff to perform these duties. However, since the Parole Board currently has its own staff to perform administrative and clerical tasks, personnel could be transferred to NMCD thus forgoing any net savings.

## **SIGNIFICANT ISSUES**

According to NMCD, the Public Defender Department has essentially acted as an adjunct agency for years, in that NMCD has not provided any budgeting, recordkeeping or related administrative and clerical assistance to PDD. Making the PDD an adjunct agency completely separate from NMCD is supported by NMCD. Since the PDD often represents current inmates and potential inmates in many of its criminal and habeas corpus cases and takes a legal position adverse to NMCD, having the PDD administratively attached to NMCD creates a conflict of interest or the appearance of a conflict of interest.

The Attorney General’s Office notes that by deleting the phrase, “as submitted and without changes,” the bill allows the department to revise or possibly veto portions of an agency’s budgetary requests. The bill is not clear on the extent to which a department may revise an agency’s budgetary requests or whether it may effectively deny an agency’s budgetary request. A department’s decision to make significant changes to an agency’s budgetary requests may affect the agency’s ability to perform its statutory duties.

NMCD also recognizes that giving NMCD the authority to modify the parole board’s budgetary requests before submitting them in the NMCD budget could cause conflicts between NMCD and the parole board.

According to the Parole Board, it was set up by statute to be an independent agency with the power to conduct hearings to determine possible parole release from prison and conduct related activities. Those related duties include, the ongoing supervisory authority over persons released on parole, determining the viability of proposed parole plans, deciding whether or not parolees are returned to prison if they violate parole conditions and in the case of sex offenders, deciding whether they will remain on extended periods of parole supervision. These duties at times conflict with the position of the Corrections Department which is the custodial agency for these clients. Compromising the independent status of the Parole Board could jeopardize the administration of law and could lead to technical difficulties and legal challenges.

**PERFORMANCE IMPLICATIONS**

The NMCD states that if the department has to use current staff to provide clerical and administrative assistance to the Parole Board, NMCD staff will have less time to work on NMCD matters. The NMCD's probation and parole division is already short staffed with 69 vacant positions that are unlikely to be filled.

**ALTERNATIVES**

NMCD recommends making the Parole Board an adjunct agency responsible for all of its own work.

**AMENDMENTS**

NMCD suggests amending the bill to make the parole board an adjunct or separate agency that is not administratively attached to NMCD.

AGO recommends adding language to Section 1 that provides guidance to departments and administratively attached agencies regarding a department's authority to alter, revise or deny an attached agency's budgetary requests.

MCA/bym