

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

01/30/12  
**ORIGINAL DATE** 02/06/12

**SPONSOR** Park **LAST UPDATED** 02/10/12 **HB** 169/aHLC

**SHORT TITLE** Peace Officer Grievances and Interrogations **SB** \_\_\_\_\_

**ANALYST** Sánchez/Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)

University of New Mexico (UNM)

### SUMMARY

#### Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment to HB 169 strikes the new provision requiring review and a determination by the AGO that administrative sanctions against an officer are appropriate prior to imposition of any sanction. It strikes the new provision prohibiting investigations of a claim of excessive force or brutality unless the claim is brought within fifteen days of the alleged incident and replaces it with a new section barring investigation by an officer's employer of an alleged excessive force incident unless the officer is given notice of the investigation within forty-five days of the date the employer knew or reasonably should have known of the alleged incident, and adds language clarifying that this notice provision applies only to investigations conducted pursuant to the Act being amended.

#### Synopsis of Original Bill

House Bill 169 amends Section 29-14-1 NMSA 1978, Peace Officer's Employer-Employee Relations Act. The bill removes the reference to peace officer and law enforcement and inserts instead "public safety". It further expands the definition of a public safety officer to include law enforcement, adult corrections, adult probation and parole, juvenile corrections, juvenile probation and parole, animal control and security officers. Adds a requirement that the Attorney General's Office (AGO) to review a copy of the transcript or tape and make a determination if

administrative sanctions against the officer are appropriate. The bill also prohibits an interrogator from making a false statement in the course of the interrogation and if such a statement is made the interrogator is subject to discipline by the interrogator's employer including termination.

The bill also prohibits retaliation against any employee/public safety officer for exercising his rights under the Act or the constitution and laws of New Mexico or the United States.

Finally, the bill prohibits employers from investigating complaints of brutality or excessive force made against the employee/public safety officer unless the complaint is brought within fifteen days after the alleged incident occurred. (Without such investigations, NMCD and other relevant agencies would then not be able to terminate or otherwise discipline those employees who have engaged in brutality or excessive force, according to NMCD.)

### **FISCAL IMPLICATIONS**

The exact costs of the bill to NMCD are unknown. However, NMCD comments that it is anticipated that it will substantially increase NMCD's litigation costs, as AFSCME, the likely force behind this bill, will argue alleged violations of the Act in every single employee disciplinary action and grievance in which it represents NMCD correctional and probation/parole officers. Further, by essentially imposing a fifteen day administrative "statute of limitation" on NMCD investigating excessive force claims made against its correctional officer and probation/parole officers, it will result in NMCD being forced to continue to employ public safety officers who otherwise would have had their misconduct investigated and then corrected via appropriate disciplinary action, up to and including dismissal. Unfortunately, this bill will likely encourage these officers to initiate and repeat their excessive force/misconduct, resulting in more lawsuits from inmates and other staff endangered and injured by the egregious misconduct of these public safety officers. This is likely to result in substantial costs to NMCD consisting of litigation (defense) costs and expenses, settlements, judgments, punitive damages, and serious injuries or even deaths of staff and inmates.

### **SIGNIFICANT ISSUES**

NMCD submits that requiring the attorney general's office to review and approve every proposed disciplinary action of NMCD or any other public employer employing public safety officers will be onerous, difficult and time consuming. It will also unduly and most likely illegally interferes with NMCD's and other public employers' rights and duties to discipline their staff and maintain order and morale.

At NMCD, proposed formal disciplinary actions of all NMCD employees (suspension, demotions and dismissals) go through a rigorous review and approval process involving the HR Bureau and the Office of General Counsel. Unfortunately, by allowing the attorney general, an elected official, to control which NMCD and other agency employees get disciplined, the bill is likely to politicize employee discipline—which is for the most part currently decided and resolved by classified HR and legal staff working in the various state agencies.

Allowing public safety officers to avoid personal responsibility or disciplinary

consequences for their excessive uses of force or brutality based on the technicality that the force was not reported within fifteen days is not considered good public policy. It seems unlikely that most citizens in New Mexico would want an NMCD correction officer who rapes or otherwise severely injures an inmate or other employee to avoid being investigated and appropriately disciplined or terminated simply because the complaint was not reported within fifteen days?

The bill overlooks the fact that some public safety officers accused of brutality or excessive force will attempt to hide, and in some cases will be successful in hiding, their misconduct beyond the fifteen day limitations period. They will attempt and will in some cases succeed in avoiding personal responsibility and disciplinary consequences by coercing or forcing the victim, other witnesses and employees into not reporting the misconduct. This would enable these officers to avoid investigation and discipline for what could be egregious and unconscionable acts of brutality or excessive force.

### **ADMINISTRATIVE IMPLICATIONS**

Low morale is likely to occur among employees who witness certain public safety officers avoid personal responsibility and disciplinary action for their misconduct just because it was not reported within fifteen days. This low morale will be multiplied when the public safety officers attempt to or successfully coerce other employees and inmates into not reporting their misconduct within the fifteen day statute of limitations. Accordingly, inmates and staff will have their personal safety jeopardized if public safety officers are allowed to hide their misconduct for fifteen days and thus avoid any negative administrative consequences. Prison safety and security for inmates and staff, and the safety and security of probation/parole officers and offenders on probation and parole, will be severely and permanently compromised by this fifteen day statute of limitations.

### **OTHER SUBSTANTIVE ISSUES**

NMCD submits the following:

According to NMCD, the bill would appear to violate the existing collective bargaining agreement (CBA) in place between AFSCME and the State, which states that each state agency's management, not AFSCME and not the attorney general, has the authority to discipline its own employees and to provide rules and regulations regarding the conduct of its employees.

It would also appear to violate that portion of the CBA which requires employers to provide safe and health working conditions. NMCD simply cannot provide safe and healthy working conditions if those conditions are predicated on attorney general involvement/approval or on its inevitable inability to comply with the unreasonable fifteen day statute of limitations.

The bill would also likely violate the Tort Claims Act, which waives NMCD's immunity from suit if it negligently operates or maintains one or more of its prisons or probation/parole offices. Allowing officers to engage in excessive force with little or no likelihood of resulting disciplinary action constitutes the negligent operation or maintenance of a prison or office, and is likely to result in expensive and time

consuming lawsuits, trials, settlements, and judgments.

**ALTERNATIVES**

Table the bill; or not pass the bill; veto the bill.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo; which is a bargained system in which AFSCME already has a collective bargaining agreement in place allowing it to file arbitrations and grievances regarding bargaining unit employee disciplines to which it has objections, and which already imposes a short time period on employers to impose discipline within 45 days of the date of knowledge of the alleged incident, and which already allows AFSCME to represent bargaining unit employees in meetings and hearings regarding bargaining unit employees' proposed and imposed disciplinary actions.

**AMENDMENTS**

At a minimum, delete the fifteen day administrative statute of limitations and the AG review/approval process from the bill.

ABS/svb:amm:lj