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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/13

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE School District Police Force SB 306

ANALYST Pahl

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)
 Albuquerque Public Schools (APS)
 Attorney General's Office (AGO)
 Children, Youth and Families Department (CYFD)
 New Mexico Public Schools Insurance Authority (NMPSIA)
 Public Defender Department (PDD)
 Public Education Department (PED)
 University of New Mexico (UNM)

SUMMARY

Synopsis of Bill

SB 306 would authorize local school boards to establish a police force with jurisdiction within the boundaries of the school district. School districts that choose to establish a police force would adopt policies and procedures for that force, including defining acts that pose a significant threat to school safety, and how different infractions would be treated by the district's police force.

SB 306 provides that districts with police forces will annually submit a report to the public education department that includes:

- The number and type of arrests and citations issued by the police force and number of referrals given to the Children, Youth and Families Department; and

- Demographic information on the age, race, gender and special education status of students arrested, cited or referred to the Children, Youth and Families Department.

Police officers employed by school districts will be New Mexico certified law enforcement officers, and can enforce all applicable laws within the school district. The police officers would have the powers of peace officers within the boundaries of the school district. The officers will be required to participate in ongoing specialized training that focuses on working appropriately and effectively with children and adolescents, including students with disabilities.

There is a sunset provision in the bill that would be effective July 1, 2017.

FISCAL IMPLICATIONS

SB306 gives districts an option to establish a police force and adopt policies and rules applicable to the force. Districts that were to establish a police force would incur costs associated with the establishment, maintenance and training of the force. Costs would vary by need and size of the district.

The NMPSIA states that if a school district's police force is armed, there will be a significant charge by the Excess Insurance Carrier estimated between \$250,000 and \$400,000 per district.

APS noted that a district that chooses to form a police force would gain access to new federal grant funding. Districts with their own police forces could apply for federal grants associated with law enforcement, particularly school security grants.

The Public Defender Department and Administrative Office of District Attorneys noted that passage of SB306 could create more legal cases that would impact their departments. This may require the departments to hire additional attorneys and investigators to investigate and litigate defenses to the increased number of charges brought.

APS obtained a legal opinion that states no new or additional liability would be created if a district that currently has a police presence in schools were to authorize their own police force. In addition to APS, several other school districts have a police presence, including: Los Lunas Public Schools, Rio Rancho Public Schools, Farmington Municipal Schools and Las Cruces Public Schools.

According to the NMPSIA, a school district that creates its own police force that previously did not have a police presence would experience insurance rate premium increases.

SIGNIFICANT ISSUES

Districts, at their discretion, currently may enter into an agreement with local, county, state police, or private entity for the assignment of a resource officer on a school campus. However, an established police force within the boundaries of a school district does not currently exist. For example, APS Police officers are commissioned by the Bernalillo County Sheriff's Department. According to APS, their police officers must follow the sheriff department's standard operating procedures, which are not tailored for work with children or adolescents.

AODA states that SB306 includes a sunset clause that the authority of a local school board to establish a police force and prescribe its policies and rules will expire July 1, 2017. Some school districts currently have law enforcement officers, who are employed by law enforcement agencies in their communities, assigned as school resource officers; presumably they would not be affected by this bill.

The University of New Mexico noted that SB306 would have no impact on university police departments.

ADMINISTRATIVE IMPLICATIONS

If passed, PED would need to amend rule (NMAC 6.11.2, Rights and Responsibilities of the Public Schools and Public School Students) to be in compliance with SB306. PED would also need to communicate changes to existing rule to all public schools, charter schools and state supported educational institutions. PED noted that these administrative changes could be done with existing fiscal resources.

According to PED, the department may need to modify its Student Teacher Accountability Report System (STARS) to collect new data and reports and comply with SB306. Currently, PED tracks disciplinary infractions and responses, through STARS, and modification to the system may be needed in order to be inclusive of all necessary infractions and responses.

The NMPSIA noted that significant staff time would be used for districts that create their own police force. NMPSIA estimates needing 100 hours helping to develop and review a district's new standard operating procedures and training documents. They estimate eight hours of staff time for an annual review of credentials.

TECHNICAL ISSUES

According to AODA the bill states that “disciplinary interactions between students and school police (shall) be based on the individual student and the particular circumstances of the student’s acts or omissions.” It is unclear what might be considered “disciplinary interactions,” or what authority a school police officer may have to impose discipline beyond an arrest and/or referral for possible criminal prosecution.

OTHER SUBSTANTIVE ISSUES

The Attorney General’s Office notes that the bill is unclear whether current laws that apply to other certified law enforcement officers would apply to school district police officers. For example, will they be permitted to pursue individuals outside the district boundaries? Will the school’s liability insurance protection follow them in that pursuit? Will the immunities afforded all other certified law enforcement officers apply to school district police officers? It may be advisable to clarify these questions by an explicit statement in the law.

AMENDMENTS

The NMPSIA noted that an amendment specifying the qualifications of the head of a school district’s police force would reduce the district’s exposure to risk. The NMPSIA states that having the police force led by a certified law enforcement officer whose license is in good

standing without any outstanding complaints to the law enforcement academy (the licensing authority) would make sense particularly in the situation where the police are dealing with children. The tort claims act requires the school district to provide insurance protection of law enforcement personnel where they have a police force and such must cover "negligent training and supervision". The NMPSIA states that in defending police misconduct cases, it is crucial that the leader of the police force be not only a certified police officer but have a proven track record indicating superior management and supervision skills. It would be very helpful also in defense of these claims if a defendant officer did not have pending against him or her charges involving misconduct as respects the schoolchildren. Therefore the NMPSIA suggests the bill should be amended to reflect those requirements.

The NMPSIA also suggests that, unlike members of other police forces which ordinarily remain on duty during investigation and resolution of complaints against them (except in cases of use of firearms against civilians), members of school police forces perhaps should be removed from their police duties pending the final outcome of a complaint of assault, battery or personal indiscretion involving schoolchildren.

QUESTIONS

The NMPSIA suggests that lawmakers consider whether charter schools should be included in this bill and allowed to create their own police force.

MMP/blm