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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2019

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 107

SHORT TITLE Reserve Police Officer License SB \_\_\_\_\_

ANALYST Edwards

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$750.0	\$750.0	\$1,500.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
Department of Public Safety (DPS)

#### Responses Not Received From

Administrative Office of the Courts (AOC)  
Taxation and Revenue Department (TRD)  
Department of Finance and Administration (DFA)  
Association of Counties  
Municipal League

### SUMMARY

#### Synopsis of Bill

House Bill 107 would enact the Reserve Police Officer Act and provide an option for local governments to commission reserve police officers. The Act authorizes governments to commission reserve police officers, with the powers of a police officer, when under supervision from a full-time salaried on-duty certified police officer, although only for the scope and duration of the reserve officers' specific assignments. Entities that commission reserve officers must submit quarterly reports to the Director of the Law Enforcement Academy on each reserve officer. The act does not affect a sheriff's power to issue special deputy commissions.

This bill offers reserve officers nearly all of the authority that standard police officers have while reducing the requirements compared to police officer requirements. Currently the mechanism for certifying officers so that they can be commissioned is through the New Mexico Law

Enforcement Academy, which includes the Law Enforcement Academy Board.

The bill defines the qualifications, fitness, training, and licensure requirements a candidate for reserve commission must possess.

The act also amends the following statutes:

- The Criminal Procedure Act by adding “commissioned reserve police officer” to the list of officers vested with the duty to maintain public peace.
- The statute governing Magistrate Courts (Sec. 35-6-3, et seq.) by including reserve officers among those exempt from paying costs in advance for filing a complaint in a criminal action.
- The Tort Claims Act by including commissioned reserve officers in the definition of “law enforcement officer.”
- The Motor Vehicle Code, in the sections limiting arrest for a misdemeanor motor vehicle violation to officers in uniform, or providing for arrest without a warrant in certain situations.

## **FISCAL IMPLICATIONS**

There is a significant fiscal impact on DPS as a result of this bill. DPS explains:

Implementing House Bill 107 will have a significant fiscal impact on the New Mexico Law Enforcement Academy. As there are currently no statutory regulations for Municipal or Sheriff’s Departments Reserve Officer program(s), the program in its entirety would need to be established and created. While DPS agrees that the absence of Reserve Officer Standards are problematic and DPS recognizes that some established standards and regulations are necessary, without the financial appropriation to enact House Bill 107, the Law Enforcement Academy would be very limited in its capacity to provide for the effective implementation of the elements of House Bill 107.

House Bill 107 requires the Law Enforcement Academy, in conjunction with the Law Enforcement Academy Board of Directors, to establish the three-tiered Reserve Officers License levels. Once these three separate levels of licensure are created, the training requirements for each would need to be established. Once the training requirements are established, then training curriculum would need to be created. Once the training curriculum is developed, instructor level courses would need to be created to meet these new requirements. Once established, a host of Regional Reserve Officer Basic Training Academies standards and regulations would need to be created. Once established, an unknown number of Regional Reserve Officer Basic Training Academies would need to be established. Once established, this would potentially substantially increase the required oversight of the Reserve Officers Basic Academies.

In total, successful implementation of House Bill 107 would require potentially up to 6 FTE positions, and potentially 3,000 or more information & technology licenses for our records management system, plus the expense of creating the three license levels within our records management system to manage the Reserve Police Officer Act.

DPS estimates the fiscal impact of implementing the bill would cost \$750 thousand per year not currently included in their budget.

## **SIGNIFICANT ISSUES**

DPS states:

If House Bill 107 is enacted, it creates an entirely new set of yet to be determined standards for new variable level licensures for Reserve Officers. As an example, House Bill 107 includes a level of Reserve Officer licensure which would allow the Reserve Officer to work independently with no more than 500 hours of training, when our current certified police officers are required to attend and complete a minimum of a 678 hour basic training academy to work independently. House Bill 107 also allows this same level of Reserve Officer to work independently while meeting 50 percent of the physical fitness levels required of our current certified police officers.

As there are currently no requirements for Reserve Officers to be reported to the Law Enforcement Academy, it will be difficult to establish the total number of Reserve Officers to which this bill would apply; therefore, it is difficult to do more than establish an estimated fiscal impact. Are there 20 Reserve Officers across the state, or 3,000? Without further research, the Department of Public Safety is unable to answer that question. Compounding the problem is that fact that the Law Enforcement Academy, would now be responsible for creating 3 different licensing levels for Reserved Officers, while there is only 1 level of Certification for certified police officers.

NMAG explains:

This bill will allow reserve police officers to obtain commissioned status without requiring them to complete the same training as full-time law-enforcement officers. This gap in standards and training may lead to underqualified people given full authority to act as a certified and commissioned police officer, potentially without the supervision of a full-time commissioned officer (See House Bill 107, Section 5, subsection B: One level shall require not more than five hundred total hours of training and provide that the reserve police officer is qualified to work independently without completing the training required for certified police officers.).

Another significant issue is the language used to exempt retired officers from any reserve officer training: “D. The director shall waive the law enforcement training required by the Reserve Police Officer Act for an applicant who: ...is a retired certified police officer.” This language provides an absolute that if a law enforcement officer retires, they are eligible to become a certified officer, even if that person retired years ago or under unfavorable circumstances. This may be improper because the issuance of certifications is delegated to the LEA board per NMSA §29-7-4.

Section 4 provides that reserve officers shall have the powers of a police officer when working with “supervision” from a full-time salaried on-duty certified police officer. The term “supervision” is subject to interpretation, as it is not clear what amount of direct supervision or physical or practical distance a reserve officer can have (eg: can a reserve officer go on patrol without a full-time officer, or what type of communication or direct

interaction is necessary?). Clarification could be delegated to the Law Enforcement Academy Board, and it could promulgate rules, but such delegation should be stated in statute if desired.

Section 5 of House Bill 107 directs the Law Enforcement Academy Board to establish different levels of licensure of reserve police officers, without indicating how many levels to create or any other clarification on the scope or limitation of each level. It may be helpful to have the identification of these levels established by statute and then allow the board to promulgate rules to further clarify and define each level of certification.

Section 5 also allows for a number of decisions to be made at the director's discretion, including allowing current reserve police officers to be exempted from training requirements. Without criteria to evaluate in making this determination, the director's decision could be challenged as arbitrary if not applied consistently case by case. The statute also does not include a process for current reserve officers to petition for such waiver from the director, nor does it indicate that the board should promulgate rules to supplement the process.

In-service training requirements for law enforcement are currently disjointed. Section 29-7-7.1 of the Law Enforcement Training Act provides for bi-annual training, or requirements for a 24 month period consistent with requirements set by the LEA Board. Other sections of the Act, including 29-7-7.3, 7.4, and 7.7, mandate annual training; which is similar to requirements of Section 5(H) of House Bill 107, which requires reserve officers to notify the LEA director annually of training completion. It would be practical to determine whether officers are to receive training annually, or every two years, and apply a consistent approach across all law enforcement certifications.

This act might lead to underperforming and/or undertrained reserve officers acting with the full authority of certified law enforcement. On the other hand, the proposal will likely assist potentially understaffed agencies fulfill their law-enforcement shortfalls.

This bill indicates that reserve officers should be provided a commission, but should not have to complete the physical-fitness standards indicated by NMAC 10.29.9.8.C. (See NMAC 10.29.9 – Public Safety and Law Enforcement – Law Enforcement Academy- Police Officer). This bill also states that commissioned reserve officers should not have to complete as many in-service training hours as certified law enforcement officers. (G. To maintain licensure, reserve police officers shall complete fewer hours of in-service law enforcement training courses prescribed by the board every two years than is required for certified police officers.) Currently, certified law enforcement officers are required to complete 40 hours of training every 24 months, which is set forth in NMSA §29-7-7.1.

An additional conflict exists with NMSA §29-7-4 Powers and Duties of the Board. (The board shall... G. issue, grant, deny, renew, suspend or revoke a: (1) peace officer's certification for any cause set forth in the provisions of the Law Enforcement Training Act) The LEA board is tasked with the issuance of certifications. This bill gives the LEA Director powers that should be delegated to the board, per the statute. The board is also responsible for planning and directing training programs for law enforcement.