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## FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 03/09/21 CS/CS/HB286/HCPAC  
 LAST UPDATED 03/11/21 HB S/HJCS/aHfI#1

SHORT TITLE Law Enforcement Licensure SB \_\_\_\_\_

ANALYST Rabin

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
(\$50.0)	up to (\$50.0)	up to (\$50.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$43.2	\$1,124.0	\$1,124.0	\$2,291.3	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with the Senate Judiciary Committee substitute for Senate Bill 375/aSFC  
 Relates to House Bill 61

### SOURCES OF INFORMATION

LFC Files

#### Responses to Received From

Office of Attorney General (NMAG)  
 Department of Finance and Administration (DFA)  
 Regulation and Licensing Department (RLD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HfI#1 Amendment

The House Floor #1 amendment to House Judiciary Committee substitute for House Consumer and Public Affairs Committee substitute for House Bill 286 (CS/CS/HB286/HCPACS/HJCS//aHfI#1) removes language repealing the Peace Officer's Employer-Employee Relations Act.

Synopsis of Original Bill

The House Judiciary Committee substitute for the House Consumer and Public Affairs Committee substitute for House Bill 286 (CS/CS/HB286/HCPACS/HJCS) moves the authority to suspend or revoke a law enforcement officer's or telecommunicator's certification and oversee completion of in-service training requirements from the Law Enforcement Academy Board (LEAB) to a new, independent Law Enforcement Certification Board (Certification Board). LEAB retains the authority to issue, grant, or deny an officer's or telecommunicator's *initial* certification. The Certification Board is also given the authority to reinstate or refuse to reinstate an officer's or telecommunicator's certification, and can further review denials of initial certification by LEAB.

The bill amends the membership of LEAB to include the attorney general, the director of the New Mexico Law Enforcement Academy (NMLEA), the directors of all satellite law enforcement academies, and seven governor appointees:

- One attorney currently employed in a district attorney's office;
- One attorney currently employed by the Public Defender Department;
- One certified police chief of a New Mexico Native American nation, tribe, or pueblo;
- Two members who have experience and specialize in providing adult education; and,
- Two citizen-at-large members, one of whom shall have experience as a behavioral health provider and neither of whom shall have served as a police officer or have familial or financial connections to law enforcement officers or agencies.

A new section of the Law Enforcement Training Act creates the Certification Board. The Certification Board is made up of nine members, of which no more than five shall be from the same political party, and must include

- A retired judge (who shall serve as chair);
- A retired municipal peace officer;
- A retired sheriff's deputy;
- A retired tribal law peace officer;
- An attorney in private practice who practices as a plaintiff's attorney in the area of civil rights;
- An attorney in private practice who represents public entities in civil rights claims; and,
- An attorney who has prosecuted and represented criminal defendants.

The bill also clarifies the NMLEA director shall be under the supervision and direction of the secretary of the Department of Public Safety (DPS) and repeals statute giving LEAB authority to remove the director.

The bill further:

- Abolishes the Public Safety Advisory Commission (which advises the DPS secretary and conducts NMSP officer disciplinary proceedings);
- Provides that an NMSP officer may appeal removal from office, demotion, or suspension of more than 30 days to the Certification Board as well as district court (appeals to district court are allowed under current law);
- Repeals the Peace Officer's Employer-Employee Relations Act (which prescribes certain rights for officers, particularly when under investigation by their employer); and,

- Increases the minimum balance in the peace officers' survivors fund from \$350 thousand to \$400 thousand. Notably, it does not alter survivor death benefits paid from this fund.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## FISCAL IMPLICATIONS

**Revenue Impact.** CS/CS/HB286/HCPACS/HJCS/aFL#1 raises the minimum balance that must be maintained in the peace officers' survivors fund from \$350 thousand to \$400 thousand. This balance is maintained via transfers from the law enforcement protection fund (LEPF). The LEPF intercepts general fund revenue and redirects it to distributions to local law enforcement agencies, NMLEA, and DPS, as well as to maintain the minimum balance in the peace officers' survivors fund. Remaining balances at the end of the fiscal year revert to the general fund, so any changes to the fund's revenues or distributions will impact the general fund. CS/CS/HB286/HCPACS/HJCS/aFl#1 would require the transfer of an additional \$50 thousand from the LEPF to the peace officers' survivors fund after the bill takes effect, considered a reduction in FY21 general fund revenue. After that point, transfers to the fund will only be necessary if its balance falls below \$400 thousand, which may not occur. As a result, the impact of this change on FY22 and future fiscal years is considered a recurring reduction in general fund revenue of *up to* \$50 thousand.

**Additional Operating Budget Impact.** CS/CS/HB286/HCPACS/HJCS/aFl#1 does not include an appropriation for the newly established Certification Board, but an estimate submitted by DPS in November 2020 stated the costs of personnel for a fully staffed law enforcement standards and training board would be \$1.1 million. Excluding positions related to curriculum development and instruction, this estimate includes \$824 thousand for staff related to the certification and misconduct duties that would be transferred to the Certification Board under this bill. LFC staff estimate an additional \$300 thousand will be needed for contractual services and other expenses, resulting in an additional operating budget impact of \$1.1 million annually for the operation of the Certification Board. Because the bill does not have an effective date and is therefore assumed to take effect on June 18, 2021, a prorated two-week cost is anticipated to impact FY21 with the entire cost impacting FY22 and future fiscal years.

## SIGNIFICANT ISSUES

Several significant issues in CS/CS/HB286/HCPACS/HJCS/aFl#1 are outlined in detail below, including

- The bill does not provide funding for the Certification Board, which will make it largely impossible for the board to function independently from DPS.
- LEAB currently has difficulties ensuring local law enforcement agencies comply with its reporting requirements, and the new Certification Board does not appear to have the ability to compel cooperation. Under the proposed bill, local law enforcement agencies face no consequences for failure to cooperate or report to LEAB or the Certification Board; however, the LEPF could be leveraged to incentivize timely and accurate reporting and cooperation.
- The bill separates law enforcement curriculum oversight and certification oversight responsibilities into two separate boards, which is not common practice.

- The timeline for establishing the reconstituted LEAB and the new Certification Board may not be practical.

***Certification Board Independence.*** Although LEAB is established as an independent entity, it does not have its own budget, and its staff are employees of NMLEA, part of DPS. As a result, the agency responsible for police officer oversight is functionally dependent on an agency that also includes the New Mexico State Police, a potential conflict of interest. It is unclear how the Certification Board can operate independently absent an appropriation to fund its activities separate from DPS. A 2005 survey conducted by the International Association of Directors of Law Enforcement Standards and Training found police officer standards and training boards operate as independent agencies in 19 states.

***Local Law Enforcement Agency Reporting Concerns.*** LEAB also faces issues ensuring law enforcement agencies fulfill their statutory obligations. For example, statute requires all police officers to complete biannual in-service training, and LEAB is responsible for gathering reports from agencies certifying the completion of these requirements. However, during the last biannual training cycle, only 47 percent of law enforcement agencies complied with reporting requirements, with over half of agencies' compliance with statutory training requirements unclear. The Certification Board would likely face similar issues ensuring compliance with reporting related to certification and misconduct.

Ensuring training requirements are met and that the Certification Board receives the information necessary to conduct disciplinary processes requires accurate and timely reporting from local law enforcement agencies, which LEAB's prior experience has shown may not be reliable. LFC has previously noted that making law enforcement agencies' distributions from the LEPF contingent on compliance with LEAB's directives would provide necessary leverage to ensure the board can successfully fulfill its mission. This could similarly apply to the Certification Board.

***Division of Duties Between Boards.*** The structure for law enforcement standards and training oversight under CS/CS/HB286/HCPACS/HJCS/aFI#1 differs significantly from those of other states. Generally, a single entity houses both standards and training oversight responsibility, but CS/CS/HB286/HCPACS/HJCS/aFI#1 would divide those duties between two distinct boards.

In a situation in which there are two boards, DPS believes the authority to issue, grant, or deny a law enforcement officer or telecommunicator's certification should fall under the Certification Board, not LEAB (which is primarily focused on training).

***Timeline.*** The short timeline for the change proposed in CS/CS/HB286/HCPACS/HJCS/aFI#1 may prove problematic. Because the bill does not include an effective date, it is assumed to take effect on June 18, 2021. Board members will need to be appointed, a director and staff hired, and rules and regulations developed and approved. This short window could lead to difficulties ensuring consistent oversight of law enforcement officers statewide. In its analysis of a bill that sought to make similar changes to LEAB and create the Certification Board (the Senate Judiciary Committee substitute for Senate Bill 375), DPS recommended the effective date of the provisions related to LEAB and the Certification Board be extended to January 1, 2022.

## **CONFLICT, RELATIONSHIP**

***Senate Bill 375.*** CS/CS/HB286/HCPACS/HJCS/aFI#1 conflicts with the Senate Judiciary

Committee substitute for Senate Bill 375 as amended by the Senate Finance Committee, which also creates a new Certification Board whose authority includes disciplining law enforcement officers (including license suspension or revocation) and denying applications for certification as well as reconstituting LEAB. While similar, there are technical and substantive differences between the bills that place them in conflict. Most significantly, the Certification Board proposed by SB375/SJCS/aSFC would be given the duty of issuing certifications, while CS/CS/HB286/HCPACS/HJCS/aHFI#1 maintains this duty with LEAB. Additionally, the changes proposed in SB375/SJCS/aSFC related to the creation of these boards would not take effect until January 1, 2022. Further, the membership of the Certification Board differs between the two bills, and significantly CS/CS/HB286/HCPACS/HJCS/aHFI#1 includes an attorney who has served as both a prosecutor and defense attorney, while SB375/SJCS/aSFC instead includes an attorney employed by the Public Defender Department.

SB375/SJCS/aSFC also makes changes to distributions from the LEPF, although those changes do not appear to directly conflict with the changes proposed by CS/CS/HB286/HCPACS/HJCS/aHFI#1. SB375/SJCS/aSFC increases survivors death benefits from the peace officers' survivors fund from \$250 thousand to \$400 thousand, but does not increase the minimum balance to be kept in the fund to pay these benefits (as a result, the LEPF can only be used to maintain a balance of \$350 thousand, lower than the amount of the benefit to a single officer's survivors). On the other hand, CS/CS/HB286/HCPACS/HJCS/aHFI#1 raises the minimum balances but does not increase the payments to survivors.

**Other Bills.** CS/CS/HB286/HCPACS/HJCS/aHFI#1 relates to House Bill 61, which establishes the Reserve Police Officer Act and empower LEAB to issue and deny applications for reserve police officers licenses and discipline licensees.

## TECHNICAL ISSUES

Office of Attorney General (NMAG) notes that the bill somewhat conflates *certificates of completion* of the Law Enforcement Academy with law enforcement *certifications*, noting that page 10, line 23 grants the new Certification Board authority to “reinstate a certificate of completion”. NMAG explains that certificates of completion are only one necessary qualification of certification, and recommends this be amended to provide the Certification Board the authority to reinstate law enforcement *certifications*.

NMAG adds that Subsection B of Section 3 (page 5, lines 1-3) is redundant in light of the existing and retained provisions in Section 29-7-4 NMSA 1978, which vests the same authority in LEAB.

NMAG notes that the bill's language referring to the authority of the Certification Board to “review a denial of a police officer's certification by the New Mexico law enforcement academy board” does not specify the precise authority of the Law Enforcement Certification Board to reverse that decision or uphold it. NMAG recommends amending the language on page 11, lines 14-15, to read: “review a denial of a police officer's certification by the New Mexico law enforcement academy board and issue a decision affirming or reversing the denial.”

DPS adds that Subsection C of Section 2 indicates that an NMSP officer who incurs an employment action can appeal to the Certification Board. Because the new Certification Board primarily deals with statewide officer certification issues, rather than individual agencies'

employment matters, the agency feels this change is inappropriate.

Regarding Subsection A of Section 4, DPS notes that with the NMLEA director now under the supervision and direction of the DPS secretary and no longer acting as the executive secretary to LEAB or carrying out its policies, it does not appear necessary for LEAB to approve or disapprove the director's appointment.

## OTHER SUBSTANTIVE ISSUES

***Police Uses of Force.*** New Mexico has the second highest per capita rate of people killed by police in the country over the past five years, according to two national databases. From 2016 to 2020, between 97 and 108 individuals were killed by police, an average rate of 9.3 to 10.3 per million residents per year, while the average national rate of individuals killed by police ranged from 3 to 3.3 per million residents per year. Comparatively, New York, with over nine times New Mexico's population, saw roughly the same number of people killed by police during this period (between 90 and 109 individuals, an average rate of 0.9 to 1.1 per million residents per year).<sup>1</sup> While increased research has clarified some of the causes of police violence, effective solutions remain elusive.

NMSP investigates all of its officers' uses of force and reports 195 uses of force in FY20, on par with the 194 reported for FY19, and six officer-involved shootings compared with 10 in FY19. Suspect injuries were reported in 41 percent of these cases, with the most common injury types reported as abrasions and scratches. Officers were reported to have been injured in 13.8 percent of incidents, and 16.4 percent of the incidents resulted in a suspect being charged with battery on a peace officer.

New Mexico law enforcement agencies reported 40 officer-involved shootings, half of which resulted in fatalities, and one fatality not involving a gun to the FBI's national use-of-force database in FY20. NMSP investigated 38 of the officer-involved shootings (including all six shootings involving NMSP officers) and the one officer-involved fatality that did not involve shooting. The nonshooting fatality was the result of a neck restraint by a Las Cruces Police Department officer. Five of the six state-police-officer-involved shootings resulted in at least one fatality, with one incident leading to two deaths after an officer shot at a vehicle during a pursuit and the vehicle subsequently entered into oncoming traffic.

APD use-of-force incidents increased in recent years, rising almost 50 percent from 404 in 2016 to 605 in 2019.

Although best practices for policing include increasing proactive interactions, focusing attention on serious offenders, and deploying more officers, these same practices may be more likely to lead to violent altercations between police and citizens. A 2015 analysis in the *American Journal of Criminal Justice* reviewed several studies of predictors of law enforcement officers' use-of-force decisions and found more serious offenses, suspect resistance, arrests, citizen conflicts,

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<sup>1</sup> Data on police killings sourced from the *Washington Post's* Fatal Force project, which only includes fatal police shootings (<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>), and Mapping Police Violence ([mappingpoliceviolence.org](http://mappingpoliceviolence.org)), which includes all police killings regardless of the cause of death. Population data to calculate rates of police killings sourced from the U.S. Census Bureau.

additional officers, and police-initiated encounters are more likely to result in the use of force. Notably, whether an offender was armed did not have a significant effect on officers' use-of-force decisions.

Minorities, males, and low-income suspects are also more likely to have force used against them. Officer race, education, and experience were not found to predict use of force, although male officers are more likely to use force than their female colleagues.

The relationship between violent crime and police-involved fatalities is unclear. Analysis of rates of violent crime and police-involved fatalities between 2015 and 2019 found a correlation between the two factors on the state level but no significant relationship among Albuquerque and comparably sized cities. Additionally, the correlation at the state level is considerably more moderate if New Mexico and Alaska (outliers in both factors) are excluded. Several other cities and states demonstrate these factors are not intrinsically linked.

Research suggests training policies regarding encounters with suspects are more likely to reduce rates of excessive force than policies regarding hiring practices of law enforcement officers. Common trainings aimed at addressing officer behavior include implicit bias training, de-escalation training, and crisis intervention training; evaluation of these programs' impact is limited, and initial research indicates they may not effectively alter long-term behavior without strong use-of-force policies and accountability. A new state law requires all law enforcement officers in New Mexico to wear body cameras and record much of their engagement with the public; however, research on the efficacy of body-worn cameras shows limited impact on officer and citizen behavior or citizens' views of police.

**LEAB Membership.** NMAG raises the following concerns regarding the proposed new LEAB membership:

Section 3 of the Judiciary Substitute amends Section 29-7-3 and provides composition requirements of the Law Enforcement Academy Board, including “the directors of all satellite law enforcement academies.” However, the number of academies active in the state changes depending on the needs of the state and the dynamics of the agencies of the region. The most recent academy opened is the Central New Mexico Community College academy, which was approved by the Board several years ago. As such, the changing number of academies must be evaluated in light of the number of members of the board. There may also be dispute on whether certain academies that are not active should be included in membership. This amendment to the composition of the Law Enforcement Academy Board could create ambiguity.