

LFC Requester:**Sunny Liu****AGENCY BILL ANALYSIS
2024 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:****Analysis.nmlegis.gov***{Analysis must be uploaded as a PDF}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original** **Amendment**
Correction **Substitute** **Date** JAN 19 2023**Bill No:** HB 157**Sponsor:** Martin R Zamora
Short Title: School Teachers On-Site Protection Act**Agency Name and Code Number:** 790-Department of Public Safety
Person Writing: Matthew Broom
Phone: 575-760-1485 **Email:** Matthew.broom@dps.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0.00	0.00	0.00	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0.0	1,875.1	1,534.6	3,409.7	Recurring

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0.0	1,875.1	1,534.6	3,409.7	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

HB 157 amends the Public School Code by creating a new act that requires the Department of Public Safety (DPS) to conduct school employee firearm training for employees already licensed to carry concealed firearms and to establish procedures for school employees to become specially licensed by the state and appointed by their superintendents to carry handguns on school premises. The bill adds that such school employees to exceptions in the Criminal Code to the prohibition against carrying a deadly weapon on school premises.

School Employee Firearm Training Program – DPS will be tasked with establishing and maintaining a school employee firearm training program open to any employee of a school district, charter school or private school who holds a license to carry a handgun issued under the Concealed Handgun Carry Act. The training shall be conducted by DPS staff, or a provider approved by DPS.

The school employee firearm training program shall include eighty hours of instruction designed to:

- Emphasize strategies to prevent school shootings and to secure safety of potential shooting victims.
- Educate trainees about legal issues relating to peace officer duties and use of force or deadly force in protecting others.
- Introduce trainees to effective law enforcement strategies and techniques.
- Improve trainees’ proficiency with handguns.
- Enable trainees to respond to an emergency requiring deadly force, such as active-shooter situations.

DPS must also:

- Collect identifying data from each employee who participates in the school employee training program identifying information that includes the person’s names and date of birth, the license number of the license issued to the person pursuant to the Concealed Handgun Carry Act and the address of the school district, charter school or private school that employs the person.
- Consult with a psychiatrist or psychologist to devise and administer an examination to trainees to determine psychological fitness to carry out marshal duties in an emergency shooting or active-shooter situation, and may license a trainee only if the exam indicates fitness.

- Charge trainees a reasonable fee
- Issue a school employee firearm license to a trainee if all criteria are met.
- Revoke a person's school employee firearm license if the person's license to carry a handgun pursuant to the Concealed Handgun Carry Act has been suspended or revoked. if a licensee's concealed carry permit is suspended or revoked
- Restore a revoked or suspended license if the concealed carry permit has been reinstated and the former licensee completes initial training, pays the fee, and demonstrates psychological fitness.
- DPS shall the identifying information for each school employee firearm license to the Secretary of DPS, school district (charter school or private school), local law enforcement and/or county sheriff.

SCHOOL EMPLOYEE APPOINTMENT AND HANDGUN CARRYING PROCEDURES –

School districts may appoint one or more school employees to carry handguns on each campus. The local board or governing body may reimburse an applicant's training fee. The district shall enact policies to provide for safe carrying of concealed firearms by school employee that require:

- appointed school employee may carry a concealed handgun on their person or possess the handgun on school premises in a locked and secured safe or other location; and
- handguns carried or possessed by a licensed and appointed school employee may be loaded only with frangible duty ammunition approved for that purpose by DPS.
- a school employee appointed to carry a firearm may carry concealed handguns on school premises only if they act in accordance with written school policies and may only do so at the site specified by the board or governing body.
- school employee may only use their authorized handguns under circumstances that would justify the use of force pursuant to the Criminal Code.

FISCAL IMPLICATIONS

In order to provide the services called for within HB 157 DPS would require significant appropriations in both personnel and infrastructure, to include recruiting and hiring eight new FTE including: four Law Enforcement Academy instructors; one lawyer; one Law Enforcement Academy Instructor Manager; one Law Clerk and one Administrative Assistant at an annual salary/benefit cost of \$950,170.

The instructors would require additional equipment to include firearms range gear, ballistic vests, eye and ear protection, target stands, targets and repair/replacement provisions and supplies. DPS estimates the cost for these items at approximately \$110,000 for both the DPS employees leading training and the students who participate in firearms training. This cost is difficult to estimate for the prospective student body based upon the undetermined number identified within the bill.

DPS will require the procurement of a computer-based firearms simulator, which will meet the requirements of the license renewal course (16 hours) described within the bill. DPS estimates this cost at approximately \$300,000 based upon today's technology and pricing. This is a one-time purchase and is not included in the FY 2025 need. NMLEA needs to purchase one van for use by this new Unit at a one-time cost of \$60,000 in FY 2024.

Software support to compile records, data scoring, certification and compliance must be purchased by DPS. The NMLEA uses the ACADIS platform to accomplish this tasking for law enforcement

officers. The cost estimate given the undetermined nature of students/marshals will require acquisition of a new administrative licensure for ACADIS to facilitate this task. The cost of this is approximately \$250,000 per year which includes access to a cloud-based database, administrator licenses for NMLEA staff, end-user licenses for schools, cloud storage, and support.

HB 157 requires DPS to provide frangible ammunition to its graduates. The cost of this given the undetermined number of students/Marshalls varies between \$0.62 and \$0.66 cents per round of ammunition. Multiple calibers (handgun) multiplied by the cost per round places the cost at approximately \$132.00 per person per instance. Given the existence of approximately 113 public schools in New Mexico the cost could be \$15,000. This figure is applicable if the person is only provided with the barest essentials of 200 rounds of ammunition. DPS urges providing more to encourage practice and proficiency. This will escalate the financial cost of ammunition.

DPS would also require the construction or lease of classroom space as the current campus is at maximum capacity. The undetermined nature of the student body would dictate the space need for instruction.

DPS will require a professional services contract with a psychologist to both develop and administer the psychological test described in the law. The current price for law enforcement psychology testing is approximately \$500 per individual tested. The cost to develop a stand-alone procedure for this bill, which deals with deadly use of force involving firearms in non-law enforcement occupations, would require significant development, research, and deliberation. The cost of this development is estimated by DPS to meet or exceed \$10,000 per development/update.

SIGNIFICANT ISSUES

The "New Mexico law enforcement academy" (NMLEA) is established to provide a planned program of basic law enforcement training and in-service law enforcement training for police officers only, and to furnish instruction and seminars to constantly upgrade law enforcement within the state. The training is extensive, and rigorous. Current law does not contemplate the NMLEA or DPS training or certifying other entities or persons. HB 157 as written would necessarily charge the NMLEA with the duty of administering training to non-law enforcement personnel who would be preparing specifically for the instance when the trained individual would use deadly force with firearms against persons engaged in criminal conduct (i.e., an "active shooter," generally a person engaging in aggravated assault or battery with a deadly weapon, shooting at an occupied dwelling, etc.). These encounters will occur at New Mexico schools occupied by children, staff, and visitors.

The NMLEA and training is governed by the Law Enforcement Training Act, where the term "police officer" is defined. "Police officer" means any commissioned employee of a law enforcement agency that is part of or administered by the state or any political subdivision of the state, and includes any employee of a missile range civilian police department who is a graduate of a recognized certified regional law enforcement training facility and who is currently certifiable by the academy, which employee is responsible for the prevention and detection of crime or the enforcement of the penal, or traffic or highway laws of this state. The term specifically includes deputy sheriffs. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act. As used in this subsection, "commissioned" means an employee of a law enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the court all violators within the state.

In order to be considered for law enforcement certification, applicants must be police officers by

statutory definition. Those applicants must meet well established qualifications during this application process, as follows:

29-7-6. Qualifications for certification.

A. An applicant for certification shall provide evidence satisfactory to the board that he:

- (1) is a citizen of the United States and has reached the age of majority;
- (2) holds a high school diploma or the equivalent;
- (3) holds a valid driver's license;
- (4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding his application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;
- (5) after examination by a licensed physician, is free of any physical condition that might adversely affect his performance as a police officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;
- (6) after examination by a certified psychologist, is free of any emotional or mental condition that might adversely affect his performance as a police officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;
- (7) is of good moral character;
- (8) has met any other requirements for certification prescribed by the board pursuant to regulations adopted by the board; and
- (9) has previously been awarded a certificate of completion by the director attesting to the applicant's completion of an approved law enforcement training program.

B. A person employed as a police officer by any law enforcement agency in this state shall forfeit his position unless, no later than twelve months after beginning his employment as a police officer, the person satisfies the qualifications for certification set forth in Subsection A of this section and is awarded a certificate attesting to that fact.

Curriculum development, validation and implementation will be required for HB 157 to be implemented. Based upon the absence of a standard to be measured against, this will require a professionally developed curriculum, which will then be required to be accredited to be taught by NMLEA certified instructors.

Of great concern to DPS is the substance of HB 157, in which non-certified persons are apparently established as quasi-law enforcement officials, encouraging the use of force or deadly force with handguns. There is an inherent danger to others, including school students, parents, visitors and staff, in encouraging unqualified individuals to act in what amounts to a law enforcement role. DPS also remains significantly concerned regarding the absence of other admission standards including drug testing, physical wellness, or mobility which may expose others, including the school marshal, to serious risk of harm.

PERFORMANCE IMPLICATIONS

SEE ABOVE

ADMINISTRATIVE IMPLICATIONS

Designing and implementing the program, as set forth above, would have significant administrative impact. In addition, DPS' Concealed Carry Unit expects to require two additional FTE positions: Management Analyst A and Management Analyst O in order to perform the additional tracking and processing this bill will entail.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Is essentially the same as HB 254 from the 2023 Legislative Session.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

DPS assumes either the individual applicant or their school district will pay for the psychological evaluation. The results of these evaluations would have to be reviewed and held confidential by DPS. DPS should not disclose these documents as part of the Inspection of Public Records Act (IPRA) as they are medical records. However, that could be disputed, as the confidentiality provision in may be considered ambiguous, and the school employees are not law enforcement officers nor are they the DPS' employees.

The other issue is that the identity of a concealed carry licensee is currently protected information that is not subject to IPRA. Those statutory protections are not harmonious with IPRA requests seeking a list of all individuals who have applied to work as appointed school employee, which is arguably not protected. In order to be considered as an applicant, a person must already have their concealed carry license. Releasing the names of applicants would necessarily reveal that licensee's identity. Under these circumstances, it would be appropriate to exempt applicant's names from disclosure under IPRA.

Overall, the confidentiality provision should be made clearer. It would be simplest to plainly state: "Information about applicants, trainees, and emergency tactical training and plans shall be exempt from inspection or release under the Inspection of Public Records Act."

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS