

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Taylor DATE TYPED: 02/28/03 HB 686

SHORT TITLE: Homeland Security Department Act SB _____

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
See Fiscal Narrative	\$250.0		\$0.1 Significant	Recurring	General Fund
			See Narrative		General/OSF/Federal

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Attorney General (AG)

Administrative Office of the Courts (AOC)

State Highway and Transportation Department (SHTD)

Department of Public Safety (DPS)

Department of Health (DOH)

Public Regulation Commission (PRC)

Department of Environment (NMED)

Report to the Legislative Council from the PRC Subcommittee In Response to SJM 41

SUMMARY

Synopsis of Bill

- House Bill 686 enacts the Homeland Security Department Act, creating the Department of Homeland Security, a cabinet level department in the executive branch.
- The bill delineates the powers and duties of the Secretary of Homeland Security, provides for the appointment of directors in each division and creates bureaus and chiefs of bureaus within divisions of the department.
- The bill provides the authority to create advisory committees that may furnish advice, gather information, make recommendations and perform such other functions and active

ties as instructed or delegated by the secretary, such committees being judged as necessary to fulfill the purposes of the Homeland Security Department.

- The bill provides that the Homeland Security Department is authorized to cooperate with the federal government with regard to homeland security, emergency preparedness, and emergency response programs in which financial or other participation by the federal government is authorized or mandated by the state or by federal laws or rules. The secretary is authorized to enter into agreements and fulfill the purposes of those agreements subject to appropriate funding. The governor or the secretary is authorized to designate the department or assign any organizational unit thereof to be the single point of contact with regard to Homeland Security emergency preparedness and/or emergency response programs relating to the federal government. It should be noted that this is the case whether or not a federal condition exists, which condition is not defined.
- The department is granted access to all records, data, and information of other state departments, agencies and institutions, including its own organizational units not specifically held confidential by law. It is assumed that law enforcement information will be protected by law enforcement exceptions to the Inspection of Public Records Act, and further, that criminal intelligence information may not be releasable under this section.
- The bill amends Section 8-8-9, removing the Fire Marshal Bureau from the Insurance Division of the Public Regulation Commission.
- The bill amends Section 9-19-4, involving the Department of Public Safety (DPS). The bill strikes the language “and emergency” from the Technical and Emergency Support Division of DPS.
- The bill amends Section 9-19-7, of the NMSA, involving organizational units of DPS, removing the emergency planning and coordination functions of the Technical and Emergency Support Division and the personnel of the Hazardous Materials Emergency Response Program from DPS.
- The bill amends Section 12-10-2, removing DPS from any involvement in the state Civil Emergency Preparedness Act.
- The bill amends Section 12-10-3, removing DPS and inserting the Homeland Security Department as the entity for directing and carrying out the state’s emergency response functions. The Secretary of DPS is removed as authorized representative of the governor, and is replaced with the Secretary of Homeland Security.
- The bill amends Section 12-10-4, giving the Secretary of Homeland Security the ability to exercise direction and control over any and all state forces and resources engaged in emergency operations or related civil emergency preparedness functions within the state.
- The bill amends Sections 12-10-5, 12-10-6, 12-10-7, 12-10-9, 12-10-10, 12-10-13 regarding local civil emergency preparedness, mutual aid agreements, the authority to make appropriations and accept aid, existing services and facilities to be used by agency, enforce

executive orders and rules respectively, in-state license holders, powers and duties, removing DPS in all cases and inserting the Secretary of Homeland Security.

- The bill transfers the State Fire Marshal Bureau and Firefighter Training Academy from the Public Regulation Commission (PRC) to the Department of Homeland Security and also transfers emergency preparedness and response functions from DPS to the Department of Homeland Security. The bill amends Section 74-4(B)-4, involving state responsibility for management of accidents, immunity from liability and cooperative agreements under the Emergency Management Act. This Act shall now fall within the purview of the Department of Homeland Security.
- The bill amends Section 74-4(B)-5, involving state police emergency response officers, procedures for notification, cooperation with other state agencies and local governments, making the Department of Homeland Security the coordinating agency for such incidents.
- The bill amends Section 74-4(B)-6, involving the emergency management task force, and its powers and duties, making the Secretary of Homeland Security or his designee the chairman. The Public Regulation Commission (PRC) and the Taxation and Revenue Department (TRD) are removed from participation on the task force.
- The bill amends Section 74-4(B)-6.1, involving hazardous materials, the emergency response administrator, and his/her duties, removing DPS and inserting the Secretary of Homeland Security. The bill creates the position of “hazardous materials emergency response administrator” in the Homeland Security Department, removing it from DPS and gives the authority for administering the Emergency Management Act to the Department of Homeland Security. The bill also amends Section 74-4(B)-8, involving the Hazardous Materials Safety Board, which will now fall under the authority of the Department of Homeland Security.
- The bill amends Section 74-4(B)-13, involving the Orphan Material Recovery Fund, removing DPS and inserting the Environment Department for purposes of administering and appropriating the Orphan Hazardous Materials Fund.
- The bill amends Section 74-4(B)-14, involving clean up of orphan hazardous materials, removing DPS and inserting the Environment Department as the agency responsible for clean up.
- The bill provides for the transfer of personnel, contractual obligations and property of Fire Marshal Bureau and the Firefighter Training Academy of the PRC to the Department of Homeland Security.
- The bill appropriates \$250,000 from the general fund to the Department of Homeland Security to pay expenses related to the creation of the department in fiscal year 2004.
- There is an emergency clause.

Significant Issues

In response to SJM 41, the PRC subcommittee reviewed the organization of the PRC during the interim and makes the following recommendations regarding the State Fire Marshal:

“The responsibilities of the State Fire Marshal and Fire Academy should be transferred to a department created to consolidate the fire and emergency response activities in the state. Local government fire representatives testified that there is a need to elevate and coordinate such functions to provide better services throughout the communities in New Mexico. They stated that such functions are not a priority and are not well served in the PRC. In the discussions of a possible transfer to the Department of Public Safety (DPS), they made compelling arguments that emergency response activities are significantly different from the law enforcement focus of the DPS. These functions should be included in the legislative debate on the creation of a new Homeland Security Department in New Mexico.”

Although the bill specifies powers and duties to be transferred to the Department of Homeland Security, with the exception of the transfer of the “hazardous materials emergency response coordinator,” it does not make specific provisions for transferring funding or positions from DPS to the new department. (SEE ALSO TECHNICAL ISSUES)

Pursuant to the Emergency Management Act, as amended, the Secretary of Homeland Security has final authority to administer the provisions of the Emergency Management Act, although the Chief of State Police retains the authority to designate “state police emergency response officers.” The bill provides that first responders, when they are law enforcement officers, shall notify these emergency response officers, who shall in turn notify the **state police emergency response center**. If the first responder has radio capability tied into the communications division of the General Services Department (GSD), the **emergency response center** is notified. The bill implies that the Department of Homeland Security is to develop a response center separate from that of State Police. In implementing the provisions of the bill, the state may encounter difficulties associated with decentralization of this sort. There is the potential for duplication of resources and capabilities.

DPS notes the apparent conflict between the roles of the State Police, as the statutorily designated emergency response officers, and the Department of Homeland Security as the final authority on the Emergency Management Act.

NMED notes that although the bill authorizes the new department to direct and coordinate the civil emergency preparedness activities of all state agencies, it is silent as to administrative transfer of NMED Office of Emergency Preparedness. NMED notes that the bill specifies that the two NMED representatives on the Emergency Management Task Force be from the Environmental Protection Division of the NMED, and that currently the members may be drawn from any subunit of the agency.

NMED notes the bill’s provision that the NMED Environmental Protection Division shall provide assistance to State Police Emergency Response Officers with accidents involving hazardous materials or substances, and the removal of language regarding NMED assistance with accidents involving radioactive materials.

NMED notes that the Orphan Material Recovery Fund, used to contract for the disposal of orphan hazardous materials, will augment the department's existing spill response capability through the Hazardous Waste Emergency Fund.

FISCAL IMPLICATIONS

The appropriation of \$250.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund. Funds from the existing programs and agencies will be transferred to the new department, but it is likely additional funding will also be required in the future.

Although the bill contains an emergency clause, the appropriation is for fiscal year 2004. As a result, the bill relies on appropriations contained in other legislation to fund operations in fiscal year 2003.

PRC indicates that it currently receives \$250.0 each year from fire funds that it applies toward administering three bureaus. If these funds are not appropriated to PRC in future years, it is unclear how PRC will continue to process collections for the fund.

DPS notes that there is a potential for duplication of state services in order to provide adequate resource management and critical incident mitigation, increasing the strain on civilian and commissioned personnel. The department indicates that its information technology infrastructure has exhibited failures in recent months, further noting that the department is stretching its resources to support it. DPS notes that the bill provides for sharing of information within legal parameters, but fails to address the manner in which information will be shared or how the current system will function with additional demands. DPS notes that in the absence of an appropriation, the department will be forced to reduce other services, affecting state and local law enforcement significantly.

CONFLICT, COMPANIONSHIP, RELATIONSHIP

Companion: Because the bill does not explicitly transfer funding and FTE from DPS to Homeland Security, it is necessary that companion language (in HB2 or elsewhere) make those provisions.

Relates to HB 231, SB 194, HB 253, SB 364, HB 254, HB 732, HJM 40, and SJM 30.

Conflicts with HB 652 (Transfer State Fire Marshal to DPS)

TECHNICAL ISSUES

Language that strikes "marshal" or some reference to the marshal and inserts "fire services division of the homeland security department" should be amended to read "the director of the fire services division of the homeland security department" in all cases where the activities of an individual and not a division are implied.

On page 44, line 23, strike "for coordination."

It is unclear why the secretary of DFA, rather than the Secretary of Homeland Security, shall re-

ceive appeals and review and certify determinations. The relevant portion of the bill follows:

"12-17-7. APPEAL AND REVIEW OF DETERMINATION.--The marshal shall promptly notify each incorporated city, town, village and county fire district affected of his determination of needs, and an incorporated city, town, village or county fire district may appeal from the determination of the marshal to the ~~[commission]~~ secretary of finance and administration, within ten days after the determination of needs. The ~~[commission]~~ secretary shall review the determination of the marshal in such informal and summary proceedings as ~~[it]~~ he deems proper and shall certify to the state treasurer annually, on or before the last day of June, the results of all appeals from the determinations of the marshal. The certification by the ~~[commission]~~ secretary, or by the marshal if no appeal is taken, shall be final and binding on all concerned and not subject to any further review."

DPS notes that in 2002, Section 12-10-13 was amended to allow DOH and DPS to issue credentials or authority to operate during an emergency to those individuals who hold a license, certificate or other permit issued by the State of New Mexico. DPS recommends this function be shared with rather than transferred to the Homeland Security Department.

DPS suggests that the responsibility for incidents and emergencies be clarified and that a threshold for declaring an event an incident or emergency be established.

DOH notes that the purpose of the Homeland Security Department as evidenced on pages 1 and 2 of the bill is narrowly focused on preparedness and response to terrorism. DOH recommends additional language regarding natural disasters, man-made disasters, weapons of mass destruction and other emergency situations that require a broadly coordinated emergency management structure.

DOH recommends striking, "the primary care and emergency medical services bureau of the public health division of the department of health for assistance with accidents involving casualties" (page 45, Lines 9 through 12) and inserting, "the department of health for assistance with response to public health emergencies or other threats to the health and safety of the public."

DOH recommends striking "the chief of the primary care and emergency medical services bureau or his designee" (page 47, Lines 6 and 7) and inserting "the secretary of the department of health or his designee;"

NMED recommends the following amendments:

p. 41, lines 10-11: delete "hazardous and radioactive materials bureau of the water and waste management division of the"; p. 45, lines 2-3: strike "environmental ~~[improvement]~~ protection division of the ~~[health and]~~"; p. 46, lines 20-21: strike "environmental ~~[improvement]~~ protection division", and insert in lieu of "department of environment" and p. 46, lines 24-25: strike "environmental ~~[improvement]~~ protection division", and insert in lieu of "department of environment"

OTHER SUBSTANTIVE ISSUES

DOH indicates that it currently has an active MOU with DPS to transfer \$60.0 of Centers for Disease Control (CDC) funds for the purpose of ensuring seamless coordination of emergency preparedness and response between the two agencies. This MOU was initiated by DOH and is

intended to fund one FTE to be housed at the State Emergency Operations Center. DOH notes that if the bill is enacted, these funds could be transferred to the Homeland Security Department to help ensure coordination between DOH and the new department.

JCF/njw:sb:yr