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FISCAL IMPACT REPORT

SPONSOR	<u>Varela</u>	ORIGINAL DATE	<u>1/28/2006</u>	LAST UPDATED	<u>2/13/2006</u>	HB	<u>594</u>
SHORT TITLE	<u>State Police Disciplinary & Appeals Process</u>					SB	<u></u>
						ANALYST	<u>Moser</u>

Companion to SB 547

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

HB 594 amends Section 29-2-11 NMSA 1978 relating to state police disciplinary and appeal proceedings in the following ways:

- Provides that a probationary officer not holding a permanent commission may be removed from office, demoted or suspended in accordance with New Mexico State Police rules.
- Removes the permitted Public Safety Advisory Commission review provision for officers suspended for less than 30 days for disciplinary reasons.
- Retains the requirement for written notice of charges to an officer removed, demoted or suspended for more than 30 days, but no longer requires that specific written charges be filed with the Commission.
- Permits an officer removed, demoted or suspended for more than 30 days to appeal the action to the Commission within 30 days of the date of receipt of written notification, and require the appeal process to be public and conducted in accordance with State Police rules.
- Provides for appeal to the district court of a decision of the Commission when the Commission finds that there is just cause for the removal, demotion or suspension of the officer for more than 30 days.

The Act contains an emergency clause.

FISCAL IMPLICATIONS

This bill will result in significant savings to the department. Current statute allows officers to appeal internally and then through the courts proposed disciplinary action prior to the action being

initiated. In such cases the department places the officer on paid administrative leave pending disposition of the appeal. This has resulted in a number of officers being paid to remain at home for as long as is required for their case to work through the legal system. In some cases this has been as long as two to three years. DPS indicates that this Bill would have a positive fiscal impact on the Department of Public Safety. Within the past three years, DPS has paid out salaries to officers who have been served with a Notice of Contemplated Action and are awaiting their termination proceedings. This Bill would allow the Department to process terminations of commissioned officers of the Department in a consistent manner.

SIGNIFICANT ISSUES

The Attorney General Office questions whether HB 594 raises any due process issues now that officer suspensions of less than 30 days in duration have no review, and if so, whether the state's interest in an immediate need to suspend outweighs any individual issue.

Analysis of this bill indicates that these concerns may be obviated by the department's internal rules governing state police officers. These rules establish procedures that would make this Bill compliant with the United States Supreme Court decision Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487(1985) requiring that a public employee receive notification of the allegations, the proposed action and be given the opportunity to respond **prior to** the disciplinary action being taken. This bill provides that the "...secretary shall provide written notification of the grounds supporting the action to the officer. The officer may then appeal the secretary's action to the commission within thirty days of receipt of the secretary's notification." The internal rules allow for the department to protect the "Loudermill" rights of the officer while making this process as expeditious as possible.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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ALTERNATIVES

The bill should be amended to allow officers the opportunity to respond to the secretary or designee either in writing, orally or both prior to the disciplinary action being completed. This change will result in only a minor extension of time prior to the imposition of the action.

GM/mt:yr