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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/11 54/aHHGAC/aHTRC/
 SPONSOR Varela LAST UPDATED 02/27/11 HB aHAFC/aHFl#1

SHORT TITLE Transfer Departments and Services to DPS SB _____

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$676.0)	(\$676.0)	(\$1,352.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Homeland Security and Emergency Management Department (HSEMD)
 Department of Information Technology (DoIT)
 Public Regulation Commission/Fire Marshall (PRC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill as amended by HHGAC, HTRC HAFC and HFL#1

The original House Bill 54 was the product of the Government Restructuring Task Force. In passage through the House, the bill has been amended by House Health and Government Affairs, House Taxation and Revenue, House Appropriations and Finance Committee and on the House Floor. After amendment, the bill proposes to merge the Department of Public Safety (DPS), Department of Homeland Security and Emergency Management (HSEMD), the E-911 program of the Department of Finance and Administration and the Fire Marshall's Office of the Public Regulation Commission. It would also eliminate the Crime Stoppers Advisory Council and the Intrastate Mutual Aid Committee, transferring the functions to the Department of Public Safety. The bill also provides a sunset review under the provisions of the Sunset Act for the Interoperability Planning Commission and the State Emergency Response Commission.

After merger, the DPS shall be a cabinet department and shall consist of, but not be limited to, eight program divisions, an administrative division and an information technology division as follows:

- A. the New Mexico state police division;

- B. the special investigations division;
- C. the training and recruiting division;
- D. the technical support division;
- E. the administrative services division;
- F. the motor transportation division;
- G. the information technology division;
- H. the homeland security and emergency management division;
- I. the fire marshal division; and
- J. the enhanced 911 division.”

The original proposals to abolish the DNA Identification System Oversight Committee and the Mounted Patrol Board of Directors were dropped. A small tax on “prepaid wireless communication services” was also dropped.

The bill requires the Department of Information Technology (DoIT) to provide all technical infrastructure needed for the development of a statewide enhanced 911 system, including next generation 911 technologies and emergency services internet protocol network.

FISCAL IMPLICATIONS

During the GRTF hearings, Legislative Finance Committee and Department of Finance and Administration staff developed a General Fund savings projection from this merger. The GRTF staff brief indicated the merger would eliminate 12 positions and save about \$895,800 General Fund. The details are shown in the table at the end of this review.

Subsequent analysis by DPS has reviewed and modified that initial estimate. DPS now expects that five exempt positions and four manager positions in administrative support and information systems can be eliminated due to duplicate positions and work already established in DPS. This will save the general fund \$676,079. Because of existing vacancies in the administrative services of both NMHSED and DPS, there would be no RIFS of administrative staff. The five exempt positions will be eliminated and the duties assigned to managers and staff from the DPS side of the merger.

DPS also notes that, “...the grants management function of NMHSED is very large and complex. The DPS ASD Grants Management Bureau is 100% dedicated to specific grants already managed by the Department (Byrne JAG, HIDTA, ARRA, etc.). These employees are paid for out of the grants that they are hired to manage and therefore cannot be utilized to manage the Homeland Security grants.”

HSEMD adds that, “...HSEMD handles over \$35 million per year from 13 diverse federal grant programs compared to the approximately \$20 million in federal law enforcement grants handled by DPS. HSEMD grant programs require flow-through funding to local governments requiring direct oversight and auditing for the duration of the grant performance period. The HSEMD grant management team is proactive and hands-on when working with local municipalities, allowing for a streamlined, efficient and effective grants management process. Homeland Security grant management has improved since 2007 after the formation of the Department based on audit reports.”

DPS notes that "...when Homeland Security was a division under DPS, the division was structured with its own administrative support staff for financial, purchasing, grants management and IT functions. As such, DPS was never funded for or contained the personnel to perform these functions in the DPS ASD and IT divisions."

DPS further notes that cost savings for supplies, in-state-travel and other general support costs are unknown, although some cost savings relating to the reduction in FTE can be assumed.

Fire Marshal Division:

The fiscal implications relating to the merger of the Fire Marshal's division should be minimal, assuming the location of the offices will not change or there is sufficient budget within the division to support a change of location if required.

The State Fire Marshal notes: "The Fire Marshal Division and its Fire Academy Bureau receive their budgets from the Fire Protection Fund. There would be no change in the budget funding source. There are no changes to the formula for distribution of the Fire Protection Fund or the Fire Protection Grant Fund to municipal fire departments and county fire districts. There would be no savings to the General Fund."

The State Fire Marshal further notes: "The Public Regulation Commission receives additional money from the Fire Protection Fund for administrative services provided on behalf of the Fire Marshal Division. The FY 11 amount is \$361.0 and the requested amount for FY 12 is \$426.9. The Fire Marshal is uncertain if DPS would request administrative funding from the Fire Protection Fund and if so, how much."

E-911 Division:

DPS's analysis indicates that the "five or six" staff members who would be transferred from LGD/DFA to DPS would become an office within the new Homeland Security and Emergency Management Division rather than forming a new division with only one or two staff members. This would leave the e-911 division budgeted, but unstaffed.

SIGNIFICANT ISSUES

HB 54 was proposed by the Government Restructuring Task Force (GRTF). The GRTF staff briefing supported the bill as follows:

"The January 14, 2010 report of the Committee on Government Efficiency indicates an unnecessary dual agency approach to statewide homeland security and public safety functions. The report proposed that the Homeland Security and Emergency Management Department should be merged into the Department of Public Safety. The draft legislation seeks to streamline related functions by transferring administration of the enhanced 911 service program to the newly aligned DPS Homeland Security and Emergency Management Division, and requires the Department of Information Technology to provide the infrastructure for enhanced 911 services. The [proposed] legislation additionally transfers the Fire Marshal Division of the Public Regulation Commission (PRC) to the Department of Public Safety."

Background: the New Mexico Office of Emergency Management was first created in 1959 as the Civil Emergency Preparedness Division (CEPD) of the Office of Military Affairs. The State Civil Emergency Preparedness Act redefined the purpose and function of the Division. In 1979, the Federal Emergency Management Agency (FEMA) and CEPD were reorganized to meet the

FEMA structural requirements. In 1987, the office was moved from Office of Military Affairs to DPS. In 1990, the name of the agency was changed to the Office of Emergency Management, DPS. In 2003, the governor created the Governor's Office of Homeland Security that worked in conjunction with the Office of Emergency Management. In 2007, Chapter 291 (House Bill 227) created the Homeland Security and Emergency Management Department. The law removed the Emergency Management and the Homeland Security Support Program from DPS and the Office of Homeland Security from the Governor's Office to create a separate Homeland Security and Emergency Management Department.

During the GRTF hearings, DPS offered the following comments on this proposal:

"Homeland Security and Emergency Management Department's mission is to respond to an emergency and to assess the magnitude of the incident and coordinate the response and recovery process."

"Transferring the Administration of E-911 Services to Homeland Security and Emergency Management appears logical. Currently, Homeland Security and Emergency Management are charged with interoperability of communications between emergency service agencies. This transfer would provide for a seamless process and would reduce the number of state agencies involved in the decision making process that exists today."

"Transferring the Fire Marshal's Division to DPS from the PRC is also very logical. As previously stated, the Department of Public Safety is the State's law enforcement agency, tasked with the investigation of criminal violations that occur within the State of New Mexico. The addition of the Fire Marshal Division would provide for an improved response to arson investigations statewide. Currently, the New Mexico State Police and Fire Marshal Division collaborate during these investigations and this will only enhance our ability to do so. Additionally, the Fire Marshal's Office has some regulatory responsibilities as does the Special Investigations Division of the Department of Public Safety. Further, the transfer of the Fire Marshal's Division to the DPS may lead to improved response to the citizens by enhancing collaboration with the DPS Forensic Bureau. Therefore, this proposed draft appears to attempt to move all law enforcement/safety related entities under the Department of Public Safety."

Enhanced 911 Division:

DPS notes that the bill creates a new enhanced 911 division. Currently, e-911 is a program in the special programs bureau of the Local Government Division of DFA. There would be as few as one E-911 coordinator transferred and, perhaps, an E-911 liaison to the county commissions. If, pursuant to the provisions of the bill, E-911 became a division of the new DPS, the coordinator would be promoted to division director position. The secretary of DPS is granted the authority to merge and create units within the Department, but is not given the authority to eliminate the E-911 division, which would be created in statute. This could be interpreted as requiring an additional cost of around \$90K to the general fund. However, the appropriation that would transfer from DFA/LGD would not be sufficient to bear this additional cost.

DPS's analysis, as noted in the fiscal section above, indicates (but does not explicitly state) that the one or two staff members who would be transferred from LGD/DFA to DPS would become an office within the new Homeland Security and Emergency Management Division rather than forming a new division with only one or two staff members. This would leave the e-911 division budgeted, but unstaffed. The transfer of function, appropriations and staff from DFA/LGD would be sufficient to operate an office, but not a division.

Representatives of local E-911 centers (public safety answering points or PSAPs) did not support the proposal to shift from the current interlocking system of local E-911 communications centers to a centralized statewide system led by DPS. They were particularly concerned about Section 65, offering the following comments:

"Currently PSAPs through the RFP process selected the provider for the pilot NG E-911 system. The contract is a service level contract that includes fiscal penalties if the provider does not maintain a 99.999 % availability. Can DoIT match this and will they pay fines to the E-911 fund as contracted today if the system fails? PSAPs have met with DoIT multiple times in the past year and clearly indicated a willingness to use the DoIT system if DoIT is competitive and can provide a guaranteed service level contract. PSAPs will object that they no longer have any voice in how E-911 system funding will be spent. Will DoIT provide them the same level of service as a private contractor at the same cost? How will cost be determined? Can DoIT bill at any rate they need to maintain statewide infrastructure? E-911 service is 24/7 x 365, not e-mail, fiscal that can be down without jeopardizing public safety. DoIT cannot provide uptime for their radio networks to PSAPs today. PSAPs are concerned that the existing statewide system will be compromised by this change in control. They are concerned that this change will divert funds from local PSAPs."

DFA notes the following relative to the E-911 changes:

"HB54 applies the E-911 surcharge on each active telephone number for an interconnected voice-over-internet protocol provider and on any other consumer purchase of communication services provided by a communication service provider and prepaid wireless communication services. The bill also expands possible uses of the Enhanced E-911 Fund to include providing for a statewide enhanced 911 system and for implementing next-generation-911 technology or an emergency services internet protocol network. HB54 also requires the E-911 program to work with the Department of Information Technology to provide a statewide enhanced 911 system that includes next-generation-911 technology and an emergency services internet protocol network. It requires local governing bodies that control a public safety answering point to connect to the statewide enhanced 911 system once the statewide enhanced 911 system is *fully* operational."

DoIT notes that the system will be rolled out in phases, and recommends deleting the word "fully" from the mandate. While DoIT should be in a coordinating role, it may be premature to assign full responsibility for the roll-out of next generation 911 technologies and emergency services internet protocol network to DoIT.

HSEMD notes that, "...a number of other agency and commission functions are transferred to DPS. DPS becomes the coordinating agency for the National Flood Insurance Program and oversees responsibilities of the Office of Mandatory Base Planning and Support. The HSEM Division assumes duties pursuant to the Intrastate Mutual Aid Act, Secs. 12-10B-1 through 12-10B-10, the Communications Interoperability Act, Secs. 12-10D-1 through 12-10D-6 and the Uniform Emergency Volunteer Health Volunteer Practitioner Act, Secs. 12-12A-1 through 12-12A-13. DPS will certify local crime stoppers programs, replacing the Crime Stoppers Advisory Committee. The Emergency Response Commission created by the Hazardous Chemicals Information Act, Sec. 74-4E-3, is terminated by the Sunset Act on July 1, 2015. [Note: this is a sunset review, so that the agency has the opportunity to prove that it is both necessary and efficient and should be retained in statute.]

PERFORMANCE IMPLICATIONS

DPS strongly supports this merger on efficiency grounds and on the grounds of improving services to the citizens:

The E-911 would best be suited under DPS as they administer and oversee E-911 funding and directly support dispatch services on a statewide level. DPS would be able to better coordinate the distribution of funding and to the various centers and provide the administration of funding. The E-911 system is a critical component of homeland security and emergency response and is a logical fit under DPS.

The State Fire Marshal's Office is responsible for fire related investigations. Staff of the office would have better access to criminal investigative support and crime laboratory support under DPS. There would be improved coordinated training regarding arson investigations and a more efficient and effective coordinated response to the public.

Homeland Security and DPS both respond to disasters and other incidents that require both law enforcement and resource incident management response. Both DPS and HS utilize the incident command structure and operate in coordination with each other during critical incidents. The sharing of essential information and resources would be better facilitated through the merger of DPS and HS.

Overall, this bill will create a more streamlined and effective agency.

The Fire Marshal has concerns, stated as follows:

“The Fire Protection Fund is funded from a surcharge on home and automobile insurance policies. The collection is deposited into the insurance suspense fund, to be transferred to the fire protection fund. The fire protection fund is managed by the Insurance Division of PRC. It is unclear within the bill if the fire protection fund would be managed by DPS or remains under the auspices of the Insurance Division.”

“Activity of the Fire Marshall has insurance implications through ISO ratings. These affect fire and property insurance rates, but these ratings are supervised and administered by a national organization and not by the NMPRC Division of Insurance and thus transfer of the Fire Marshall's office to DPS will not significantly interfere with or affect the DOI.”

ADMINISTRATIVE IMPLICATIONS

DPS has several administrative concerns that could be addressed by the secretary, but could also be resolved in statute. It is these types of issues that support the continuance of the GRTF effort for another year (HB 130, which passed the house on a vote of 67-0). GRTF could hear testimony from the managers of the merged agencies concerning further reforms that could enhance efficiency and minimize costs.

1. This bill creates a E911 “division” and provides for the 5-6 current positions to be transferred from DFA to DPS. This function and staff would be best placed within the new HS division.

2. It is unknown what position in the current E911 position group would assume the new duties on page 99, Section 65, of working with DOIT to provide the statewide system. If an appropriate position does not already exist a new position will need to be created to perform this function.
3. 29-12A-3A, Subsection 2 requires certification of local crime stoppers advisory councils before they can claim confidentiality of records. This certification will now be performed by DPS under this bill. Although it may not be a burdensome activity, the scope of the activity at this time is unknown, and therefore its impact on DPS.
4. The duties under 12-12A-4 would be assumed by the DPS Records Bureau. It is unknown what impact these additional duties may have on existing resources.

DFA notes that, “the tension between local PSAPs and the state Department of Information Technology suggests that this aspect of the legislation may require significant effort to change current legal relationships in provision of E-911 services statewide.”

DFA also note that, “It should be noted that the adjusted FY11 general fund appropriation to HSEMD is about \$2.7 million with federal funding of \$35.4 million. The majority of federal funds (some \$26 million) are passed though as grants to various state and local agencies to support homeland security-related initiatives.”

“The adjusted FY11 general fund appropriation to the Department of Public Safety is approximately \$88 million and federal funding of \$20.8 million, with some \$6 million being passed though as grants to various state and local agencies in support of various law enforcement initiatives. Considering that DPS has an FY11 FTE count of 1,259, contrasted with Homeland Security’s 66 FTE, it appears that the homeland security function could be absorbed back into DPS at the program level with the grants management function being assumed by existing DPS infrastructure.”

“Since the homeland security function is primarily directed to coordination and consultation – with no actual incident operational control – it would support the primary DPS mission to “...protect and secure the people of New Mexico in their lives, homes, and communities.” This realignment could not only streamline chain of command issues, but could potentially result in the reduction of 12 FTE – including five GOVEX positions – and save approximately \$779.8 thousand from the General Fund. It should be noted that the new program alignment will present a return to the original DPS organizational structure that existed prior to the elevation of homeland security responsibilities to cabinet-level status while maintaining the current level of service.”

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

HB54 is part of a large package of bills resulting from the 2010 Government Reorganization Task Force efforts. However, the provisions of the bills in package do not conflict.

The package consists of the following:

HB29 creates the Commerce Department from DWS, EDD and Tourism

HB54 transfers DHSEM and State Fire Marshal to DPS and eliminates some supporting boards and commissions.

HB66 transfers State Personnel and the purchasing division of GSD to DFA and adds an executive services division to provide budgeting and management support to smaller agencies.

HB80 merges Game and Fish with EMNRD

SB85 transfer regulatory authority over horse racing and pari-mutuel wagering to the Gaming Commission

SB106 requires department support for attached agencies

SB158 repeals a number of boards and commissions

SB162 consolidates health administration and finance agencies

In addition, there are a number of member bills that affect government organization:

HB84 merges EMNRD, Environment Department and Game and Fish

HB94 and SB15 create a unified Health Policy and Finance Department

HB95 creates a School Budget Division of the Education Department (LESC)

HB106 extends certain board and commission sunsets

HB107 merges the Naprapathic Board with the Medical Board

HB157 creates a Natural Resources and Environment Department

HB189 merges ALTS and HSD

SB131 creates an agency and legislative permanent committee to review and monitor capital outlay; and

HB130 extends the life of the GRTF for one year

TECHNICAL ISSUES

The Fire Marshal notes that the property owned by the Fire Marshal Division would transfer to DPS, however, there is no specific mention of the New Mexico Firefighters Training Academy in Socorro. The Academy is located on land leased from New Mexico Tech and the facility fiscal plant is listed as owned by the PRC, not the Fire Marshal Division.

POSSIBLE AMENDMENTS

1. Delete E-911 as a division of the new DPS and transfer the functions, appropriations and staff of the E-911 program to the Homeland Security and Emergency Management Division.
2. Provide for the transfer of the lease of land from New Mexico Tech and for the facility located on the leased land for the New Mexico Firefighters Training Academy in Socorro. The Academy is located on land leased from New Mexico Tech and the facility fiscal plant is listed as owned by the PRC, not the Fire Marshal Division.
3. Consider deleting the C. subsection in Section 65 (page 99), which will allow DoIT to continue operating in a consulting capacity, but would retain the responsibility of the county commissioners and the E-911 office to plan and deliver the next generation E-911 infrastructure and emergency services internet protocol.

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