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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/15

SPONSOR Stapleton LAST UPDATED \_\_\_\_\_ HB 381

SHORT TITLE Law Enforcement Academy Records SB \_\_\_\_\_

ANALYST Chenier

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

|              | FY15 | FY16    | FY17    | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|---------|---------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | \$287.6 | \$247.6 | \$535.2              | Recurring                    | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 381 would enact a new section of the Law Enforcement Training Act to require all law enforcement agencies statewide to submit disciplinary action or caution against a law enforcement officer to the New Mexico Law Enforcement Academy Board (LEAB); requires law enforcement agencies hiring previously employed officers to request disciplinary records from the board; requires record confidentiality; requires the board to adopt standard operating procedures for transmittal of records; and, states that neither the board nor the law enforcement agency shall be held liable for civil damages as a result of reporting or requesting records.

The bill would also require the LEAB to compile a database or retrieval system for the personnel files and disciplinary records of out-of-state applicants for police officer positions in New Mexico.

### FISCAL IMPLICATIONS

DPS provided the following:

The New Mexico Law Enforcement Academy (NMLEA) would require at least two or three individuals to administer documents submitted to NMLEA under this bill to include all disciplinary actions, cautions and related documents. Administrative requirements

would include receipt, process, filing, retrieval, copying and release of records, including responding to inevitable IPRA requests (see below) and discovery requests in litigation. As but one example of administrative burdens and costs imposed, since January 2013, over 1,100 officers have been hired in New Mexico. This averages to more than 550 files that would have to be copied and delivered to local law enforcement agencies per year. Therefore, the costs associated with this bill would not only include salaries and benefits, but the cost of office supplies, postage, and copies (cost of copies is per page printed on leased copiers). To handle the volumes of documentation, NMLEA would also need to store all documents electronically, which would require the purchase of computer servers, storage and software with associated annual maintenance.

NMLEA would have to hire an additional investigator/instructor to work with and assist those agencies that are attempting to hire officers from out-of-state, and work with the out-of-state agencies to receive personnel files and disciplinary reports. This individual would be required to review the files and establish disciplinary files within NMLEA.

For the new out-of-state officer that is hired with misconduct or a disciplinary action, the NMLEA would have to ensure that a permanent certification by waiver (CBW) file is developed for that individual and that the disciplinary file is kept as a completely different file.

Costs assumed:

- 3 administrative personnel at a cost of salaries & benefits of \$58.5K each;
- 1 investigator at a cost of salaries and benefits of \$67.2K;
- \$40,000 for a server and to configure a separate electronic disciplinary file management system using currently owned DPS software;
- \$5,000 in office supplies, paper, postage, copier charges, etc.

The cost analysis does not include the impact on local or non-DPS state police agencies. Undoubtedly, passing of this bill would increase the administrative costs associated with officer personnel file management for all law enforcement agencies statewide.

## **SIGNIFICANT ISSUES**

AGO provided the following:

Initially, every agency is required to submit disciplinary information to the Law Enforcement Academy Board. It should be noted that this information is treated, by statute and case law, as being highly confidential. It should be noted that the confidentiality provision of the proposed legislation may not relate to the initial release of disciplinary information to the Law Enforcement Academy Board.

Next, law enforcement agencies are required by the proposed legislation to request this information from the Law Enforcement Academy Board. As noted above, HB 381 provides that such information provided to the law enforcement agency is privileged. The proposed legislation does not define “disciplinary records” and otherwise does not define the scope of this privilege. It is for example unclear if this privilege would extend to requests made under the Inspection of Public Records Act, making “disciplinary records” held by the LEAB exempt from inspection under NMSA 1978, Section 14-2-1(A)(8). Last, the Law Enforcement Academy Board is required to maintain and create a process for adequate review and retrieval of this information.

DPS provided the following:

This bill would greatly expand the role of the NMLEA in police disciplinary actions in New Mexico. Currently, police agencies use a form called LEA-90 to forward their more serious disciplinary cases constituting grounds for denial, suspension, or revocation to the NMLEA. As such, the LEA-90 functions as a filtering system so that minor disciplinary actions stay within the agency and can be dealt with internally. However, under this bill, all disciplinary actions and cautionary letters would be forwarded to the NMLEA.

There are over five thousand (5,000) certified police officers in New Mexico and there is no reason for the NMLEA to be involved in minor disciplinary actions or cautions. For example, if an officer backs up a police vehicle and hits a pole the accident may result in a cautionary letter or letter of reprimand, not currently sent to NMLEA. Agencies statewide would have to report minor incidents and numerous other incidents requiring NMLEA to maintain files for all such incidents and disciplinary actions. Costs associated with this bill could be substantial for the NMLEA and for agencies throughout the state.

Furthermore, NMLEA would become more involved in the internal disciplinary process of every police agency in the state, triggering additional adverse consequences. Sometimes a caution is done but is later removed because of good behavior. With no sunset provision, if a caution is sent to the NMLEA, the caution would stay in the officer's file indefinitely. This could easily make police agencies reluctant to use caution as a tool in a system of progressive discipline or for training/retraining purposes. Even worse, a caution could be used for retaliatory or other inappropriate reasons not unfamiliar in some agencies subject to the pressures of small-town politics. One can envision without too much difficulty an employee running against an incumbent sheriff who then retaliates against his opponent with a caution. An injustice that previously could have been handled at the local level will be much more difficult to deal with if the caution also resides in a permanent state file maintained by the NMLEA.

If passed, the law would require local agencies to forward all disciplinary actions and cautions to the NMLEA. However, the State cannot require federal, tribal or out of state agencies to do the same. This has the practical effect of creating a two-tier disciplinary tracking system, one system for officers who serve their career entirely or primarily in New Mexico or with local agencies, and one for officers who spend a portion of their careers working out of state or for federal or other agencies not subject to the proposed reporting requirements. State and local officers would therefore be disproportionately affected, and in some instances, could be unfairly impacted or penalized in their professions.

The bill's inclusion of "caution" also creates inherent problems of implementation. What constitutes a cautionary personnel action varies from agency to agency. This variability will lead to reporting by some agencies but not by others, with consequent inequities for officers. Additionally, while the bill does provide for the board to develop regulations for reporting disciplinary actions, documentation/information provided will undoubtedly, for a variety of reasons, also vary from agency to agency and even from case to case. Sometimes, exceedingly sensitive records and information will be included, which records and information will then be the subject of IPRA requests, subpoenas, and discovery requests in litigation.