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FISCAL IMPACT REPORT

ORIGINAL DATE 3/6/15

SPONSOR HJC LAST UPDATED _____ HB 486/HJCS/aHJC

SHORT TITLE Law Enforcement Background Checks SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 381.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Judiciary Committee substitute for House Bill 486 clarifies that law enforcement agencies are presumed to be acting in good faith and are immune from civil or criminal liability absent a showing of bad faith or malicious purpose in transmitting disciplinary records.

Synopsis of HJC Substitute

House Judiciary Committee Substitute for House Bill 486 would require law enforcement agencies, seeking to hire police officers previously employed by a different law enforcement agency, to provide a copy of “all records concerning discipline, cautions, reprimands or similar records concerning the officer’s conduct...held by the prior agency.” The substitute requires law enforcement agencies, receiving requests for disciplinary records from other law enforcement agencies, to transmit records to the requesting agency. The substitute would require officers being hired to execute an appropriate waiver to be considered for employment at a new law enforcement agency. The substitute would also require the prior law enforcement agency to receive the waiver before providing disciplinary records to the hiring agency.

The disciplinary records provided by law enforcement agencies would be “privileged” and could not be ‘...disclosed to persons not directly involved in future employment decisions affecting the officers.’” The substitute also defines appropriate required waiver, law enforcement agency, and police officer.

FISCAL IMPLICATIONS

Law enforcement agencies, would bear the cost of transmitting files from agency to agency in the process of hiring officers.

SIGNIFICANT ISSUES

DPS provided the following:

The substitute places requirements on hiring agencies to seek information on applicants who were previously employed by another law enforcement agency. It is favorable as the information provided and received may become imperative in the decision making on hiring any particular applicant in a law enforcement position.

By requiring an appropriate waiver for those records, the applicant, the hiring agency and the former and or current agencies all have the same understanding of the hiring process and the obligations as it pertains to the hiring of law enforcement officers in the state of New Mexico. In addition, the hiring and former agencies have liability protection provided via the waiver.

Although the process of review of a police officer’s prior employment records currently exists, it is not a requirement. This substitute bill will require the exchange of information that perhaps was not exchanged in the past by some agencies or even sought out by the hiring agencies.

More important, the person being considered for employment with a new law enforcement agency in New Mexico will now have knowledge that they will be required to provide the appropriate required waiver in order to be considered for employment, as the hiring agency will be required to seek that applicant’s back ground information as it relates to their previous discipline history and or, similar records concerning their previous conduct while employed as a police officer.

AODA provided the following:

The bill states that the disciplinary records provided by a law enforcement agency are “privileged” and cannot be “disclosed to a person not directly involved in the future employment decision affecting the officer.” As drafted, the second phrase quoted above is so broad that it could encompass an applicant’s current and future supervisors, and other person having authority over the officer and could be construed as involving almost any decision besides whether the applicant should be hired at another law enforcement agency.

AGO stated that:

Out-of-state law enforcement agencies disciplinary records will not fall within the purview of this law. Therefore, there may be a discrepancy between the requirements of in-state applicants and out-of-state applicants. Further, as there is no timeline articulated for responses to disciplinary records requests, hiring timelines may be impacted.

EC/bb/aml