HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 286

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO LAW ENFORCEMENT; CHANGING THE ENTITY RESPONSIBLE
FOR POLICE OFFICER AND TELECOMMUNICATOR CERTIFICATION
SUSPENSIONS AND REVOCATIONS FROM THE NEW MEXICO LAW ENFORCEMENT
ACADEMY BOARD TO THE REGULATION AND LICENSING DEPARTMENT;
PROVIDING FOR APPLICATION OF PROVISIONS OF THE UNIFORM
 LICENSING ACT TO THE ISSUANCE, SUSPENSION OR REVOCATION OF
 POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION; CHANGING THE
 APPEAL PROCESS FOR DISCIPLINARY ACTIONS AGAINST NEW MEXICO
 STATE POLICE OFFICERS OR THE NEW MEXICO LAW ENFORCEMENT ACADEMY
 BOARD DIRECTOR; INCREASING THE LAW ENFORCEMENT PROTECTION FUND
 REQUIRED MINIMUM BALANCE; ELIMINATING THE PUBLIC SAFETY
 ADVISORY COMMISSION AND THE PEACE OFFICER'S EMPLOYER-EMPLOYEE
 RELATIONS ACT; REPEALING SECTION 9-19-11 NMSA 1978 (BEING LAWS
 1987, CHAPTER 254, SECTION 12, AS AMENDED) AND SECTIONS 29-14-1
 THROUGH 29-14-11 NMSA 1978 (BEING LAWS 1991, CHAPTER 117,
SECTIONS 1 THROUGH 11).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 29-2-1.1 NMSA 1978 (being Laws 1987, Chapter 254, Section 18, as amended) is amended to read:

"29-2-1.1. DEFINITIONS.--As used in Chapter 29 NMSA 1978:

A. "chief" or "chief of the state police" means the director of the New Mexico state police division of the department;

B. "commission" means the public safety advisory commission;

C. "department" means the department of public safety;

D. "member of the New Mexico state police" means a commissioned officer of the New Mexico state police, including an officer who is certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division;

E. "New Mexico law enforcement academy" or "academy" means a division of the department established pursuant to the Law Enforcement Training Act;

F. "New Mexico state police" means the New Mexico state police division of the department; and

G. "secretary" means the secretary of public safety."
SECTION 2. Section 29-2-11 NMSA 1978 (being Laws 1941, Chapter 147, Section 11, as amended by Laws 2006, Chapter 11, Section 1 and by Laws 2006, Chapter 12, Section 1) is amended to read:

"29-2-11. DISCIPLINARY PROCEEDINGS--APPEAL.--

A. A New Mexico state police officer holding a permanent commission shall not be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer except as provided in this section. A probationary officer not holding a permanent commission may be removed from office, demoted or suspended in accordance with New Mexico state police rules.

B. The secretary may suspend an officer for disciplinary reasons for not more than thirty days in accordance with New Mexico state police rules without further review or appeal.

C. In the event an officer is removed from office, demoted or suspended for a period of more than thirty days, the secretary shall provide written notification of the grounds supporting the action to the officer. The officer may appeal the secretary's action to the [commission within thirty days of the date of receipt of the secretary's written notification. The appeal process shall be public and conducted in accordance with New Mexico state police rules.
D. In the event the commission finds that there is just cause for the removal, demotion or suspension of the officer for a period in excess of thirty days, the officer may appeal the decision of the commission to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

SECTION 3. Section 29-7-4 NMSA 1978 (being Laws 1969, Chapter 264, Section 6, as amended) is amended to read:

"29-7-4. POWERS AND DUTIES OF BOARD.--The board shall:

A. approve or disapprove the appointment of the director by the secretary;

B. develop and implement a planned program of:
   (1) basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis; and
   (2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act, a portion of which may be conducted on a regional basis;

C. prescribe qualifications for instructors and prescribe courses of instruction for:
   (1) basic law enforcement training and in-service law enforcement training; and
   (2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act;
D. report annually to the governor;
E. in its discretion, accept donations, contributions, grants or gifts from whatever source for the benefit of the academy, which donations, contributions, grants or gifts are appropriated for the use of the academy;
F. adopt, publish and file, in accordance with the provisions of the State Rules Act, all regulations and rules concerning the operation of the academy and the implementation and enforcement of the provisions of the Law Enforcement Training Act and the Public Safety Telecommunicator Training Act;
G. issue, grant, deny or renew [suspend or revoke] a:
   (1) peace officer's certification for any cause set forth in the provisions of the Law Enforcement Training Act; and
   (2) telecommunicator's certification for any just cause set forth in the Public Safety Telecommunicator Training Act;
H. administer oaths, subpoena persons and take testimony on any matter within the board's jurisdiction; and
I. perform all other acts appropriate to the development and operation of the academy."

SECTION 4. Section 29-7-5.1 NMSA 1978 (being Laws 1979, Chapter 202, Section 45, as amended) is amended to read:
"29-7-5.1. REMOVAL OF DIRECTOR.--The director may be
removed by the board in accordance with the procedures provided
in Section 29-2-11 NMSA 1978 for removal of members of the New
Mexico state police holding permanent commissions. [In the
ease of removal proceedings for the director under that
section, "commission", as used in Subsections C and D of
Section 29-2-11 NMSA 1978, shall be construed to mean the New
Mexico law enforcement academy board.] The director may appeal
the board's action to the district court pursuant to the
provisions of Section 39-3-1.1 NMSA 1978."

SECTION 5. Section 29-7-7.1 NMSA 1978 (being Laws 1981,
Chapter 114, Section 7, as amended) is amended to read:

"29-7-7.1. IN-SERVICE LAW ENFORCEMENT TRAINING--
REQUIREMENTS--ELIGIBILITY.--

A. In-service law enforcement training consists of
at least forty hours of academic instruction, approved by the
board, for each certified police officer during each twenty-
four month period of employment or service with a political
subdivision. The first training course shall commence no later
than twelve months after graduation from an approved basic law
enforcement training program.

B. All certified police officers who are eligible
for in-service training shall, during each twenty-four month
period of employment, complete a minimum of forty hours of in-
service law enforcement training in courses approved by the
board. All certified police officers shall provide proof of completing in-service law enforcement training requirements to the director no later than March 1 of the year in which the requirements must be met. The director shall provide annual notice to all certified police officers regarding in-service law enforcement training requirements. Failure to complete in-service law enforcement training requirements may be grounds for suspension of a certified police officer's certification by the regulation and licensing department. A police officer's certification may be reinstated by the board, with approval by the regulation and licensing department, when the police officer presents the board with evidence of satisfying in-service law enforcement training requirements."

SECTION 6. Section 29-7-13 NMSA 1978 (being Laws 1993, Chapter 255, Section 10) is amended to read:

"29-7-13. REFUSAL, SUSPENSION OR REVOCATION OF CERTIFICATION.--

A. After consultation with the employing agency, the board may refuse to issue or renew or the regulation and licensing department may suspend or revoke a police officer's certification when the board or the regulation and licensing department determines that a person has:

(1) failed to satisfy the qualifications for certification, set forth in Section 29-7-6 NMSA 1978;

(2) committed acts that constitute dishonesty.
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or fraud;

(3) been convicted of, pled guilty to or
entered a plea of no contest to:

(a) any felony charge; or

(b) any violation of federal or state
law or a local ordinance relating to aggravated assault, theft,
driving while under the influence of intoxicating liquor or
drugs, controlled substances or any law or ordinance involving
moral turpitude; or

(4) knowingly made any false statement in

[his] the application for certification.

[B. The board shall develop, adopt and promulgate
administrative procedures for suspension or revocation of a
police officer's certification that include notice and an
opportunity for the affected police officer to be heard, as
well as procedures for review of the board's decision.]

B. Except as provided in Section 29-7-15 NMSA 1978,
the Uniform Licensing Act applies to the board when issuing or
renewing or refusing to issue or renew a police officer
certification or to the regulation and licensing department
when contemplating suspension or revocation of a police officer
certification."

SECTION 7. Section 29-7-15 NMSA 1978 (being Laws 2020
(1st S.S.), Chapter 7, Section 2) is amended to read:

"29-7-15. REVOKE POLICE OFFICER CERTIFICATION AFTER
CONVICTION OR MAKING CERTAIN PLEAS.--Notwithstanding any other provision of law, if any police officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force or a crime involving the failure to intervene in the use of unlawful force, the regulation and licensing department shall permanently revoke the police officer's certification. The board shall not, under any circumstance, reinstate the police officer's certification or grant new certification to the police officer unless the police officer is exonerated by a court or pardoned by the governor."

SECTION 8. Section 29-7C-9 NMSA 1978 (being Laws 2003, Chapter 320, Section 11) is amended to read:

"29-7C-9. REFUSAL, SUSPENSION OR REVOCATION OF CERTIFICATION.--

A. The board shall refuse to issue or the regulation and licensing department shall suspend or revoke a telecommunicator's certification, after consultation with his employing safety agency, if the board or regulation and licensing department determines that a person has:

1. failed to satisfy the qualifications for certification set forth in Section 29-7A-3 NMSA 1978;

2. committed acts that constitute dishonesty or fraud;
(3) been convicted of, pled guilty to or entered a plea of nolo contendere to a:

(a) felony charge; or

(b) violation of a federal or state law, a local ordinance relating to aggravated assault or theft or a law involving moral turpitude; or

(4) knowingly made a false statement on [his] the application.

B. The board shall develop, adopt and promulgate administrative procedures for suspension or revocation of a telecommunicator's certification that include:

(1) notice and opportunity for the affected telecommunicator to be heard; and

(2) procedures for review of the board's decision.

B. The Uniform Licensing Act applies to the board when issuing or refusing to issue a telecommunicator's certification or to the regulation and licensing department when contemplating suspension or revocation of a telecommunicator's certification."

SECTION 9. That version of Section 29-13-4 NMSA 1978 (being Laws 1993, Chapter 179, Section 6, as amended) that is to become effective July 1, 2022 is amended to read:

"29-13-4. DETERMINATION OF NEEDS AND RATE OF DISTRIBUTION.--
A. Annually on or before April 15, the division shall consider and determine the relative needs as requested by tribal, municipal, school district and university police departments, county sheriff's departments, the department of public safety and the academy for money in the fund in the succeeding fiscal year pursuant to the provisions of Subsections C and E of this section.

B. As necessary during the year, the division shall transfer an amount from the fund to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund that enables the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund to be maintained at a minimum balance of four hundred thousand dollars ($400,000).

C. The division shall determine the rate of distribution of money in the fund as follows:

(1) all municipal police, school district police and county sheriff's departments shall be entitled to a rate of distribution of forty-five thousand dollars ($45,000);

(2) university police departments shall be entitled to a rate of distribution of forty-five thousand dollars ($45,000);

(3) the academy shall be entitled to a rate of distribution of twenty-four thousand five hundred dollars
($24,500) to carry out the purposes of Section 29-7-7.7 NMSA 1978;

(4) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to one thousand dollars ($1,000) for each commissioned peace officer in the tribe. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal police departments that perform services in New Mexico. A tribal police department shall not be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations;

(5) municipal, school district and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to one thousand dollars ($1,000) for each police officer or sheriff's deputy employed full time by that department who has been certified by the academy, or by a regional law enforcement training facility in the state certified by the director of the academy, as a police officer or has been authorized to act as a New Mexico peace officer.
pursuant to the provisions of Section 29-1-11 NMSA 1978; and

(6) municipal police, sheriff's and school
district police departments that assign officers as school
resource officers shall be entitled to one thousand dollars
($1,000) for each assigned school resource officer's training
pursuant to Section [1 of this 2020 act] 29-7-14 NMSA 1978.

D. After distributions are determined in accordance
with Subsection A, Subsection B and Paragraphs (1), (2), (3)
and (6) of Subsection C of this section, if the balance in the
fund is insufficient to permit the total allocations provided
by Paragraphs (4) and (5) of Subsection C of this section, the
division shall reduce that allocation to the maximum amount
permitted by available money.

E. After all distributions have been made in
accordance with Subsections A through D of this section, and if
the balance in the fund is sufficient, the department of public
safety shall be entitled to a rate of distribution of not more
than two million dollars ($2,000,000).

SECTION 10. That version of Section 29-13-7 NMSA 1978
(being Laws 1983, Chapter 289, Section 7, as amended by Laws
2020, Chapter 54, Section 1 and by Laws 2020, Chapter 67,
Section 6) that is to become effective July 1, 2022 is amended
to read:

"29-13-7. EXPENDITURE LIMITATION--CONTROL."

A. Except as provided for the academy and the
department of public safety in Subsections B and C of this section, amounts distributed from the fund shall be expended only for the following:

(1) the repair and purchase of law enforcement apparatus and equipment, including the financing and refinancing thereof, that meet minimum nationally recognized standards;

(2) the purchase of law enforcement equipment, including protective vests, for police dogs;

(3) expenses associated with advanced law enforcement planning and training;

(4) maintaining the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund at a minimum amount of [three hundred fifty thousand dollars ($350,000)] four hundred thousand dollars ($400,000);

(5) complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs;

(6) no more than fifty percent of the replacement salaries of municipal and county law enforcement personnel of municipalities or counties participating in basic law enforcement training;

(7) a law enforcement officer retention payment in the amount of seven thousand five hundred dollars
($7,500); provided that:

(a) the distribution is requested by a municipality or county law enforcement agency that on January 1, 2018 had a staffing vacancy rate of at least ten percent to retain a law enforcement officer who is certified in accordance with the Law Enforcement Training Act and has at least twenty years of actual service credit earned under a municipal police member coverage plan as determined by the public employees retirement association;

(b) the municipality or county law enforcement agency provides seven thousand five hundred dollars ($7,500) in matching funds to the law enforcement officer; and

(c) the distribution and the matching funds paid to a law enforcement officer shall not constitute the officer's base salary or wages and shall not be considered to be salary or otherwise be used to determine a pension for the purposes of the Public Employees Retirement Act; and

(8) recruiting, providing bonuses for and training law enforcement officers engaged in community-oriented policing.

B. For the academy, amounts distributed from the fund shall be expended only for providing tourniquet and trauma kits and training on the use of tourniquet and trauma kits pursuant to Section 29-7-7.7 NMSA 1978.

C. The amount distributed to the department of
public safety:

(1) shall:

(a) be used only to offset overtime-related expenses incurred directly by the department of public safety from the special deployment of state police officers or other emergency assistance to counties or municipalities in response to critical circumstances as authorized by the governor; and

(b) not be expended to hire new personnel; and

(2) may be expended for costs, including travel, fuel, overtime, per diem and ammunition.

D. Amounts distributed from the fund shall be expended only pursuant to approved budgets and upon duly executed vouchers approved as required by law."

SECTION 11. Section 29-21-3 NMSA 1978 (being Laws 2009, Chapter 177, Section 3) is amended to read:

"29-21-3. POLICIES AND PROCEDURES--REQUIRED.--

A. A law enforcement agency shall:

(1) maintain written policies and procedures designed to eliminate practices by its law enforcement officers that violate the provisions of Section [2] of the Prohibition of Profiling Practices Act] 29-21-2 NMSA 1978; and

(2) provide training to its law enforcement officers, during orientation and at least once every two years,
that the law enforcement agency determines will assist its law
enforcement officers in adhering to the applicable provisions
of the Prohibition of Profiling Practices Act and to the law
enforcement agency's policies and procedures.

B. As part of a law enforcement agency's
administrative complaint procedures, the law enforcement agency
shall, at a minimum:

(1) investigate a complaint alleging its law
enforcement officer violated the provisions of Section [2 of

(2) take appropriate measures to discipline a
law enforcement officer, including facilitating mediation or
other restorative justice measures, when it is determined that
the law enforcement officer violated the provisions of Section
1978;

(3) provide appropriate forms for submitting
the complaint against its law enforcement officer;

(4) publish the policies and procedures
designed to eliminate practices that violate the provisions of
Section [2 of the Prohibition of Profiling Practices Act]
29-21-2 NMSA 1978; and

(5) submit a redacted copy of the complaint
and the disposition to the attorney general, which shall
disclose the nature and disposition of the complaint but shall

not disclose personal identifying information of a law
enforcement officer or complainant.

C. A law enforcement agency shall establish a time
frame within which a complaint alleging a violation of the
provisions of Section [2 of the Prohibition of Profiling
Practices Act] 29-21-2 NMSA 1978 may be made; provided that in
no event shall the time frame be less than ninety days or
exceed one hundred eighty days after the commission of the
alleged violation of the provisions of Section [2 of the
law enforcement agency shall allow a complaint alleging a
violation of the provisions of Section [2 of the Prohibition of
enforcement officer to be made:

(1) in person or in writing sent by mail,
facsimile or electronic mail and signed by the complainant; or
(2) by telephone, anonymously or by a third
party; provided that the law enforcement agency shall determine
the complaint to be valid before taking appropriate measures
pursuant to Paragraph (2) of Subsection B of this section [and
shall comply with the provisions of Section 29-14-4 NMSA
1978]."

SECTION 12. Section 61-1-2 NMSA 1978 (being Laws 1957,
Chapter 247, Section 2, as amended) is amended to read:

"61-1-2. DEFINITIONS.--As used in the Uniform Licensing
A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; [and]

(4) the New Mexico law enforcement academy board when administering police officer certification or telecommunicator certification;

(5) the regulation and licensing department when administering police officer certification or a telecommunicator certification; and

(6) any other state agency to which the Uniform Licensing Act is applied by law;

B. "applicant" means a person who has applied for a license; 

C. "license" means a certificate, permit or other authorization to engage in each of the professions and
occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow, for a stated period of time, the conduct authorized by the license, subject to conditions that are reasonably related to the grounds for suspension [and

F. "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requires the resources of the state]."

SECTION 13. REPEAL.--

A. Section 9-19-11 NMSA 1978 (being Laws 1987, Chapter 254, Section 12, as amended) is repealed.

B. Sections 29-14-1 through 29-14-11 NMSA 1978 (being Laws 1991, Chapter 117, Sections 1 through 11) are repealed.