

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 306

51st Legislature, 1st Session, 2013

Tracking Number: .191482.3

Short Title: School District Police Force

Sponsor(s): Senators Stephen P. Neville and Gerald Ortiz v Pino

Analyst: Kevin Force

Date: February 23, 2013

Bill Summary:

SB 306 creates a new section of the *Concealed Handgun Carry Act* authorizing local school boards to establish their own police force and adopt appropriate rules and policies for their administration.

Among its provisions, SB 306:

- allows local school boards to establish a police force and adopt applicable rules and policies, including:
 - defining acts that pose a threat to school safety substantial enough to warrant arrest;
 - defining minor acts of misconduct to be treated as disciplinary infractions;
 - noting when to report petty acts and misdemeanors to other law enforcement agencies, including such acts as:
 - disorderly conduct;
 - interference with the educational process;
 - simple assault or battery;
 - petty theft;
 - trespassing; and
 - petty vandalism;
 - requiring disciplinary interactions between students and school police to be “based on the individual students and the particular circumstances” surrounding the students’ infractions; and
- requires school districts to report annually to the Public Education Department (PED):
 - the number of arrests, citations, and referrals to the Children, Youth and Families Department (CYFD) made by the district police for any alleged delinquent acts on school property;
 - the offenses leading to arrests, citations, and referrals to CYFD;
 - statistics regarding an offending student’s age, race, gender, and any special education eligibility category;

- permits the superintendent of a school district, under authority granted by the local school board, to employ and assign duties to school police officers;
- requires school police officers to:
 - be certified New Mexico law enforcement officers;
 - have the powers of peace officers within school district boundaries;
 - carry their commissions from the school board while on duty; and
 - participate in special training on dealing with children and adolescents;
- allows school police officers to:
 - enforce all applicable laws on school district property;
 - enforce all applicable laws within school district boundaries, as commissioned by the appropriate county sheriff; and
 - arrest violators of the law, providing that no arrest is valid unless the officer is wearing a distinctive badge and uniform issued by the school board;
- requires school districts that establish a police force under the provisions of this bill to report to the appropriate interim legislative committee on their operations within one year of establishing the police force, and each year thereafter upon request by the committee chair;
- defines local school board as “the policy-setting body of a public school district”; and
- provides for a sunset date of July 1, 2017, for the provisions of the bill.

Fiscal Impact:

SB 306 does not contain an appropriation.

Fiscal Issues:

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC):

- Districts that establish a police force would incur costs associated with the establishment, maintenance and training of the force, which would vary by size and need of the district.
- The New Mexico Public Schools Insurance Authority (NMPSIA) notes that:
 - if a school district police force is armed, there will be an additional charge of \$250,000 to \$400,000 by the Excess Insurance Carrier;
 - a school district that creates its own police force that previously did not have a police presence would experience increases to its insurance premiums;
 - an estimated 100 staff hours would be required to help develop and review a district’s new standard operating procedures and training documents; and
 - an estimated eight hours of staff time would be required for the annual review of credentials.
- Albuquerque Public Schools (APS) indicates:
 - that a district that chooses to form a police force would be eligible for federal grants associated with law enforcement, particularly school security grants; and

- a legal opinion acquired by the district suggests that there would be no additional liability for a school that already has a police presence in schools if it were to create its own police force.
- School districts that already have a police presence include:
 - Los Lunas Public Schools;
 - Rio Rancho Public Schools;
 - Farmington Municipal Schools; and
 - Las Cruces Public Schools.

PED notes SB 306 would necessitate several actions on the part of the department, all of which can be accomplished with existing resources, including:

- changes to department administrative rule;
- creation of appropriate methods to collect the new data and reports; and
- communication with school districts over the new reporting requirements and changes to administrative rule.

Both PED and the Attorney General’s Office (AGO) point out that the main fiscal responsibility for school districts’ police forces lies with the individual school districts, varying by the size of the particular district, and its needs.

According to the Administrative Office of the District Attorney (AODA):

- the creation of a new group of law enforcement officers may have some fiscal impact beyond initial hiring for such things as training, equipment, and supplies;
- the number of cases in the criminal justice system may increase as a result of these provisions; and
- there may be a slight impact on the district attorneys’ offices if the creation of the new police force gives rise to more criminal cases to be adjudicated.

The Public Defender’s Department (PDD) notes that while SB 306 is unlikely to generate fiscal implications to the PDD, there may be a rise in the number of cases brought forth under these provisions, requiring additional investigator and attorney full-time equivalents (FTE).

Substantive Issues:

According to the FIR, APS indicates that their police officers must follow the Bernalillo County Sheriff Department’s standard operating procedures, which are not tailored for work with children or adolescents.

According to PED:

- Districts now may enter into an agreement with local, county, state police, or private entity for the assignment of a single resource officer on a school campus, but there is no provision for an established police force within the boundaries of a school district;
- SB 306 would require certain reports to PED and the appropriate interim committee;
- the Student Teacher Accountability Reporting System (STARS) may require some modifications, because:

- currently, PED tracks disciplinary infractions through STARS, within which are multiple infraction codes and descriptions as part of required reporting to the US Department of Education;
 - more infraction codes and descriptions may be needed in order to be inclusive of all possible violations; and
 - modifications to current STARS codes may be needed so that districts can report to PED infractions that were referred to CYFD; and
- school districts that choose to establish a police force should align rules and policies applicable to the district police forces to the requirements of the existing Safe Schools Plan.¹

According to the AGO, it is uncertain whether current laws applicable to other law enforcement officers would apply to school district police officers, and that a more explicit statement in law may be needed to forestall these questions, which include whether:

- school police officers be permitted to pursue individuals beyond school boundaries;
- school insurance follows officers who engage in pursuit beyond school grounds; and
- immunities afforded other law enforcement officers be applicable to school police officers.

According to the AODA:

- The establishment of a new police force could affect the potential liability for school districts.
- Some parameters for district policies and rules applicable to the proposed school police department are set forth in the bill but it is unclear if those would be mandatory, including:
 - “defining petty acts of misconduct that should be treated as disciplinary infractions”; and
 - “when to report petty acts of misconduct and misdemeanors to other law enforcement agencies.”
- While disciplinary interactions between students and school police shall be based on the individual student and the particular circumstances of the student’s acts or omissions, it is unclear what might be considered “disciplinary interactions,” or what authority a school police officer may have to impose discipline beyond an arrest or referral for possible criminal prosecution.
- Arresting students, especially for non-violent conduct, is a very sensitive area.
- Some school districts currently have law enforcement officers, employed by law enforcement agencies in their communities, and assigned as school resource officers, who presumably would be unaffected by these provisions.
- APS currently has its own cadre of police officers and it is unknown if they might be affected by this bill.

¹ See <http://ped.state.nm.us/sfsb/tools>.

According to NMPSIA:

- It appears that SB 306 would only authorize school districts to establish their own police force, but not charter schools, which experience many of the same security problems as other schools.
- School districts' duty to report student arrests and citations may run afoul of privacy provisions in such laws as the *Arrest Records Information Act* and the *Children's Code*.
- In municipal police departments, police officers ordinarily are employed by the chief who must be a certified law enforcement officer, and that it may be more appropriate for districts to hire a police chief, who would then have authority to employ officers, and the responsibility to manage them.
- Potential liability may be lessened by employing certified law enforcement officers whose credentials are in good standing.
- The *Tort Claims Act* requires the school districts that employ a police force to provide insurance protection for law enforcement personnel including "negligence training and supervision."

Background:

Although school safety is always a major concern for policymakers, recently, many jurisdictions have begun examining the efficacy of a variety of school safety related procedures and interventions, including;²

- the impact of school design on health and safety;
- hiring full-time school resource officers at charter schools, despite expense;
- installing gun safes in high schools and middle schools;
- using state funding to pay for school security personnel;
- using retired police officers to provide schools with security;
- consideration of federal legislation to strengthen and expand the existing COPS Secure Our Schools grants programs;³
- allowing teachers and other school staff to carry firearms;
- establishment of school safety task forces to examine safety issues and make policy recommendations; and
- reporting school safety data to parents;

According to a report by the Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory:⁴

- reactive approaches, especially ones that rely heavily on purely disciplinary measures, are decidedly disadvantageous where school safety matters are concerned;
- schools may be civilly liable for failure to protect students; and

² See The School Safety Law Blog, at: <http://schoolsafetylawblog.com>.

³ See, <http://www.cops.usdoj.gov/Default.asp?Item=2623>

⁴ *Effective Strategies for Creating Safer Schools and Communities: School Policies and Legal Issues Supporting Safe Schools*, Hutton and Bailey, The Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory, (with support from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, September 2007.

- technology increases the ability of school officials to monitor the activity of the student population through advanced camera and recording systems, although privacy considerations must also be addressed.

Committee Referrals:

SEC/SJC/SFC

Related Bills:

SB 230 *School Employee Concealed Handguns*

*HB 197 *School Security and Parent Identification*