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FISCAL IMPACT REPORT

SPONSOR Ruiloba ORIGINAL DATE 2/27/2017
LAST UPDATED _____ HB 419
SHORT TITLE Corrections Officers' Employee Relations SB _____
ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	Potentially Substantial	Potentially Substantial	Potentially Substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 419 would enact a new section of law, the "Corrections' Officers Employer-Employee Relations Act." The act prescribes certain rights for officers, particularly when they are under investigation by their employer. The act only applies to administrative actions, not criminal investigations except as provided in Section 8 of this bill. The bill defines correctional officers as adult corrections officers, adult probation and parole officers, juvenile corrections officers, and juvenile probation and parole officers.

The bill establishes requirements to be followed when an officer is under investigation, including rules for recording interrogations; polygraph testing; producing documents, witnesses, or evidence; disclosure of financial records; and inclusion of material in personnel records.

HB 419 states a corrections officer shall not be subjected to any retaliation by the officer's employer due to the officer's lawful exercise of the officer's rights under the Corrections Officers' Employer-Employee Relations Act.

FISCAL IMPLICATIONS

NMCD states the bill will likely result in substantial litigation and arbitration costs. The bill will also increase administrative costs by requiring that all interviews with corrections officers be

quickly transcribed at NMCD's expense and by requiring that the chief administrative officer perform numerous duties during the course of investigations which are normally performed by NMCD investigators.

SIGNIFICANT ISSUES

NMCD submits the following detailed analysis of the bill:

The bill prohibits offensive language and illegal coercion by NMCD's investigators, but does not define those terms. This may adversely impact investigations or subsequent disciplinary actions arising out of the investigation by setting up claims that the NMCD investigator used "offensive language" and/or "illegal coercion" in every investigation. Further, the bill prohibits retaliation against corrections officers for exercising their rights under the Act, and may similarly adversely impact investigations and disciplinary actions arising out of any investigations. The bill does not impose any requirements or thresholds that must be met by the officer before he or she can claim retaliation.

The bill also interferes with NMCD investigators' discretion and authority to investigate an officer in the manner most likely to reasonably and legally result in the discovery of the truth—and in some cases the truth can be better ascertained by conducting interrogations or interviews at a different site, without having to notify the officer's commanding officer of the pending investigation, etc.

By requiring the officer's chief administrator to perform functions or duties falling within the expertise and training of NMCD's investigators (such as requiring the administrator to advise the officer of the reasons for ordering the polygraph), the bill would impede the ability of NMCD investigators to perform their duties promptly, efficiently, and as they see fit based on their experience, expertise, and training.

Additionally, many of the provisions in the bill (such as length of interrogation sessions, use of polygraph examinations, etc.), are already covered in NMCD's policies and procedures, and the Collective Bargaining Agreement in place between the union and the State already requires the NMCD and other agencies to bargain to impasse before changing any policy provision directly impacting working conditions. While NMCD policies can be changed as needed via negotiation or bargaining to impasse, this law if passed would be much more difficult to change in the future.

The bill's requirements regarding placement of materials into an officer's personnel file interferes with the State Personnel Office's authority to promulgate regulations related to this issue, and may result in giving officers disparate treatment versus other classified state employees.

PERFORMANCE IMPLICATIONS

NMCD explains the passage of this bill could result in less secure prisons if the law impedes the department's ability to properly investigate matters of conduct.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMCD states if the bill does not pass, the state will continue to operate with a “bargained system in which the American Federation of State, County and Municipal Employees (AFSCME) already has a collective bargaining agreement in place allowing it to participate in arbitrations or other administrative hearings regarding bargaining unit employee disciplines to which it has objections, and which already allows AFSCME to represent bargaining unit employees in meetings and hearings regarding bargaining unit employees’ proposed and imposed disciplinary actions.”

TR/sb