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## FISCAL IMPACT REPORT

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Armstrong, G. ORIGINAL DATE 1/24/2019  
 LAST UPDATED 2/25/19 HB 154/aHJC  
 SHORT TITLE Law Enforcement Protection Fund Distribution SB \_\_\_\_\_  
 ANALYST Edwards

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	At least (\$15,800.0)*	At least (\$15,800.0)*	Recurring	General Fund
	About \$10,400.0*	About \$10,400.0*	Recurring	Law Enforcement Protection Fund
	At least \$5,400.0*	At least \$5,400.0*	Recurring	Beneficiaries of Law Enforcement Protection Fund Distributions

(Parenthesis ( ) Indicate Revenue Decreases)

**\*Under current law, as of January 1, 2020, virtually no revenue will flow into the Law Enforcement Protection Fund. However, this was not reflected in the December 2018 consensus revenue estimate, against which FIRs are scored (see Fiscal Implications).**

Relates to: HB162 (reinstates the existing distributions to the law enforcement protection fund and the fire protection fund)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 New Mexico State University (NMSU)  
 New Mexico Institute of Mining and Technology (NMTech)  
 Office of the Superintendent of Insurance (OSI)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee (HJC) amendment to House Bill 154 increases the distribution to university police departments from \$25 thousand to \$50 thousand to match the distribution given to county and municipal police departments.

Synopsis of Original Bill

House Bill 154 proposes to amend the Law Enforcement Protection Fund (LEPF) Act to: 1) remove the annual reversion requirement from the LEPF to the state general fund; 2) increase the base distribution for municipal police and county sheriff departments to a uniform annual rate of \$50,000; 3) increase the base distribution for university police departments to an annual rate of \$25,000; 4) increase the distribution to the state police academy to an annual rate of \$50,000; 5) increase the per commissioned peace officer distribution for tribal police departments to \$1,000 per officer; and 6) increase the per certified officer distribution for municipal, county and university police departments to \$1,000 per officer.

House Bill 154 makes the LEPF nonreverting as of April 5<sup>th</sup>, 2019. All other provisions of the bill become effective on January 1<sup>st</sup>, 2020.

**FISCAL IMPLICATIONS**

Under current law, as of January 1, 2020, virtually no revenue will flow into the law enforcement protection fund. Chapter 57 of Laws 2018 (HB 223) removed “taxes” from the distribution to the fund of 10 percent “of all the money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business...” (Section 29-13-3 NMSA 1978). (*See below for additional information on the current distributions.*) This change, effective January 1, 2020, leaves only the distribution of 10 percent of fees, licenses, and penalties, which is likely to be little more than 1 percent of current distributions to the fund.

However, this was not reflected in the December 2018 consensus revenue estimate because the fiscal analysis for HB223 did not reflect this change, but the economists involved in the revenue forecasts recently became aware of this issue. Since FIRs are scored against the most recent revenue estimate, this is temporarily scored assuming existing distributions continue, but the scoring will be updated when the mid-session revenue update is released.

House Bill 154 proposes to increase distributions from the LEPF by \$5.2 million and makes the LEPF a nonreverting fund. As amended by HJC, the distributions from the LEPF will be \$5.4 million per year.

**Nonreverting Language.** Reversions from the LEPF to the general fund are significant. Between FY08 and FY18, the LEPF collected a total \$160.2 million dollars, an average \$14.6 million per year. In the same time period, the LEPF reverted \$104.1 million to the general fund, an average \$9.5 million per year. However, between FY16 and FY18, reversions averaged \$15.8 million. The nonreverting language contained in this bill means that \$10.6 million would remain in the LEPF instead of reverting to the general fund, the difference between the average FY16-FY18 reversions of \$15.8 million minus the \$5.2 million in allocations in this bill.

<b>Historical Reversions from the LEPF</b>	
<b>Fiscal Year</b>	<b>Reversions</b>
FY08	\$ 6,699,093
FY09	\$ 6,792,078
FY10	\$ 9,768,300
FY11	\$ 9,089,342
FY12	\$ 8,290,814
FY13	\$ 4,497,661
FY14	\$ 3,936,257
FY15	\$ 7,646,944
FY16	\$ 15,277,162
FY17	\$ 18,382,622
FY18	\$ 13,704,521
<b>Total Reversions:</b>	<b>\$ 104,084,794</b>

Source: audit reports

With the HJC amendment, \$10.4 million of remaining LEPF balances will not revert to the general fund.

In FY18, without reversions from the LEPF to the general fund, \$13.7 million would have been unavailable for appropriation needs. DFA analysis of House Bill 154 states “the reversions from LEPF to the state general fund in the past three years have been significant and contributed towards balancing the general fund budget when revenues generated by the oil and gas industry dramatically declined.”

The LEPF is funded from 10 percent of all money received for fees, licenses, penalties, and taxes from life, general casualty, and title insurance business pursuant to the New Mexico Insurance Code. The nature of the insurance business means revenue received will fluctuate from year to year depending on the volume of related insurance business activity. DFA states “because changes in the insurance industry can make it difficult to make accurate annual revenue projections for the LEPF, Section 29-13-4.D NMSA 1978 does allow the DFA Local Government Division to proportionately reduce authorized allocations insofar as is necessary to avoid a negative fund balance.”

***Increased Base Allocations.*** House Bill 154 proposes increased allocation amounts:

- The bill proposes to remove population formulas from base allocations to municipal police and county sheriff departments; instead, all entities would receive a base \$50 thousand allocation. Currently, these allocations are based on population:
  - Class 1 entities with population up to 20 thousand receive \$20 thousand
  - Class 2 entities with population from 20,001 to 160 thousand receive \$30 thousand
  - Class 3 entities with population from 160,001 to 1.28 million receive \$40 thousand
- The base distribution for university police departments would increase from \$17 thousand to \$25 thousand.
- The annual distribution to the state police academy would increase from \$24.5 thousand to \$50 thousand.
- The per commissioned peace officer distribution to tribal police departments would increase from \$600 per officer to \$1,000 per officer.
- The per certified officer distribution to municipal, county and university police departments would increase from \$600 per officer to \$1,000 per officer.

The HJC amendment increases the base distribution for university police departments to \$50 thousand.

Both LFC and DFA analysis show that if the distribution amounts contained in House Bill 154 would have been in place for the FY19 distribution, a total increase of \$5.2 million would have been distributed as follows:

- County sheriff departments increase of \$1,384,400 (from \$1.4 million to \$2.8 million)
- Municipal police departments increase of \$3,688,000 (from \$3.2 million to \$6.9 million)
- University police departments increase of \$82,400 (from \$153.6 thousand to \$236 thousand)
- Tribal police departments increase of \$36,800 (from \$55.2 thousand to \$92 thousand)
- State police academy increase of \$25,500 (from \$24.5 thousand to \$50 thousand)

With the HJC amendment, allocations to university police departments in FY19 would have increased \$232.4 thousand (from \$153.6 thousand to \$386 thousand).

LFC analysis shows in most years between FY08 and FY19, the fund would have been able to handle an increased base allocation of \$50 thousand per municipal, county and university police agency in addition to \$1,000 per-officer for municipalities, counties, universities, and tribes. However, in FY13 the fund would have been short \$714.4 thousand and in FY14 the fund would have been short \$1.3 million dollars. Including the HJC amendment, the increased base allocation and per-officer funding would have doubled allocations from the fund and reduced reversions to the general fund by an average \$5.4 million per fiscal year. 29-13-4 (D) NMSA 1978 provides that, should the amount of funds in the LEPF be insufficient to cover total allocations, the Department of Finance and Administration shall reduce the allocations to the maximum amount permitted by available funds.

*Other considerations.* Section 29-13-4.B NMSA 1978 requires that transfers to the peace officers' survivors fund be made out of LEPF balances as necessary to maintain a minimum \$350,000 balance in the peace officers' survivors fund. It is difficult to project the transfer amount needed for a given fiscal year. For example, in FY17, \$1,000,000 was transferred from LEPF to the peace officers' survivors fund. When a law enforcement officer is killed in the line of duty, the officer's family receives a \$350,000 payment. Any additional requirements on the LEPF could impact the ability to support the survivors' fund.

In FY19, LEPF made allocations to all 33 county sheriffs, almost 94 municipal police departments around the state, ten tribal police departments, and six university police departments.

Currently, by statute (29-13-7 NMSA 1978), the funds allocated to police departments are allowed to be spent on:

- The repair and purchase of law enforcement apparatus and equipment, including the financing and refinancing thereof, that meet minimum nationally recognized standards;
- the purchase of law enforcement equipment, including protective vests, for police dogs;
- Expenses associated with advanced law enforcement planning and training;
- Maintaining the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund at a minimum amount of \$350 thousand;
- Complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs;
- No more than 50 percent of the replacement salaries of law enforcement personnel participating in basic law enforcement training;
- Contingent upon the availability of funding and until June 30, 2021, a law enforcement officer retention payment in the amount of \$7.5 thousand; provided that:
  - 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;
  - the municipality or county law enforcement agency provides \$7.5 thousand in matching funds to the law enforcement officer; and
  - 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.

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

## SIGNIFICANT ISSUES

NM Tech provides the following analysis:

The bill would increase funding for all municipal, county, university, and tribal police departments through both an increase to base funding, as well as an increase to “per officer” funding. However, the base funding for municipal and county departments would increase to \$50 thousand per agency, while the base funding for university police departments would only increase to \$25 thousand. This inequity in base funding does not appear to have a rational basis.

There are seven university police departments who employ 111 certified police officers and handle law enforcement services for 65,324 students. University police departments are larger than many of the small municipal police departments, with increased equipment and training costs that match the agency size. However, based on the proposed base funding, the university police departments (University of New Mexico (UNM) with 55 officers, New Mexico State University (NMSU) with 21 officers, NM Tech with 10 officers, Eastern New Mexico University (ENMU) with 9 officers, New Mexico Highlands University with 7 officers, New Mexico Military Institute with 5 officers, and Western New Mexico with 4 officers) would only receive base funding of \$25 thousand each, while a large number of smaller agencies (19 municipalities do not even directly employ police officers but receive LEPF funding, another 7 municipalities only employ 1 officer each, 7 employ only 2 officers each, and 7 employ only 3 officers each) would receive base funding of \$50 thousand each.

The university police departments directly serve citizens who pay for insurance policies, just like the municipal and county agencies. At NMSU, companies like Barnes & Noble, Panda Express, Sodexo, General Dynamics, and Burrell College of Osteopathic Medicine all hold significant insurance policies, and the NMSU Police Department provides all of the law enforcement services for their locations on our campus. This includes vandalism, shoplifting, embezzlement, and crimes of violence. In addition, all vehicle crashes (to include fatalities) that take place on the NMSU campus are handled by the NMSU Police Department. In addition, many students who live on campus purchase renter’s insurance, and any crimes that need investigation related to insured losses are handled by the university police. Further, students who live off campus with their parents but experience a loss of insured property on campus (e.g., theft of a laptop or bicycle) frequently file insurance claims against their parent’s homeowner’s policy. Finally, some university police provide direct assistance in policing to other law enforcement agencies outside the campus, whether that is the NMSU Police Department’s explosive detection canines helping search a threatened location in the city or county, or it is the Eastern New Mexico Police Department handling calls for the county sheriff’s department during the nighttime hours.

The additional \$17 thousand necessary to bring the base funding for university police to the same level as the municipal agencies would make a significant difference for those agencies in the equipment and training that could be made available to the university police officers, which would thereby improve their ability to prevent insured losses, as well as investigate and resolve insured losses. This has a direct impact on insurance rates for all taxpayers in the region, not just those on the campus.

It is recommended the bill be amended on Page 4, Line 14, by striking the wording “twenty-five thousand dollars (\$25,000) each” and inserting “fifty thousand dollars (\$50,000) each” to provide the same level of base funding to university police agencies as is provided to municipal agencies. At New Mexico State University, this increased funding would allow the police department to meet the increased costs associated with maintaining body cameras, fund replacement of a patrol vehicle every other year, and cover training expenses associated with legislative mandates.

NM Tech states the increase in the distributions to university police departments and the per officer distribution increase would be financially beneficial to the New Mexico Tech Police Department. These funds are used to augment the department’s operating budget, which is funded by state appropriations, for items such as advanced training, law enforcement apparatus (vehicles and equipment) and other required operational supplies.

The Office of the Superintendent of Insurance states:

The profound impact that the increase in the distribution of this fund will have on law enforcement departments across the State will make a significant impact and allow Departments to provide better community services, education and officer safety in their respective communities.

One concern OSI has is that under the proposed legislation university police departments would receive a lesser funding distribution (\$25,000) than municipalities with smaller populations and police forces. In fact, there are municipalities with no police force at all who would still receive the proposed \$50,000 distribution as opposed to university police who would receive a \$25,000 distribution.

University police are responsible for responding to all police related calls on their campus, including a large volume of insurance related matters. This involves completing police reports that will be used by

- students living on campus who are making an insurance claim against their renters insurance
- drivers who are filing an insurance claim for vehicle accidents that occur on a university campus
- vehicle owners filing insurance claims for auto theft or burglary (New Mexico ranks first in the nation for auto theft on college campuses)

University police also investigate cases of possible insurance fraud and respond to insurance related calls involving corporate entities with large corporate insurance policies who are located on University campuses.

Because the Law Enforcement Protection Fund is funded by a percentage of insurance related collections (fees, licenses, penalties taxes, etc.) and university police are responsible for handling and responding to all insurance related calls on their campuses; the OSI recommends equalizing the distribution of funds from the Law Enforcement Protection Fund between municipalities and university police.

**ADMINISTRATIVE IMPLICATIONS**

DFA explains if House Bill 154 is enacted, the DFA Local Government Division will be required to update the LEPF Rule, 2.110.3 New Mexico Administrative Code, to include the higher distribution amounts contained in this bill.

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