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FISCAL IMPACT REPORT

ORIGINAL DATE 3/11/19

SPONSOR Rue **LAST UPDATED** _____ **HB** _____

SHORT TITLE Release of Peace Officer Statements **SB** 646

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Bill 154, Senate Bill 201, Senate Bill 259, Senate Bill 397, Senate Bill 514, House Bill 614.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 646 amends the Peace Officer’s Employer-Employee Relations Act, Section 29-14-3 NMSA 1978, to include a definition for “compelled statement”. Senate Bill 646 defines “compelled statement” as a statement made by an officer to their employer when the officer is under threat of dismissal from employment or any other employment sanction.

Senate Bill 646 also amends Section 29-14-6 NMSA 1978 requiring a court order be issued against the employer before it may release the compelled statement.

FISCAL IMPLICATIONS

The AOC explains:

There will be a minimal administrative cost for statewide update, distribution and

documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

There is currently no process through which a peace officer's employer could request such an order to compel the statement of an officer. Therefore, such a process would have to be adopted by the courts, to comply with this new provision. Developing a process will take judicial and clerical time, which would have a fiscal impact. Furthermore, such a request would require a hearing before the court, in order for the court to make a proper ruling on the request without engaging in ex-parte communications. There could be a substantial fiscal impact on the courts, depending on the number of such requests received to compel statements, and the time it takes to properly process and dispose of the requests.

SIGNIFICANT ISSUES

NMAG explains “on its face, Senate Bill 646 appears to carve out an exception to the Inspection of Public Records Act (“IPRA”), NMSA 1978, Section 14-2-1 to 14-2-12 by protecting compelled statements made pursuant to Peace Officer's Employer-Employee Relations Act from being subject to disclosure pursuant to IPRA. However, the Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. The Fifth Amendment allows witnesses to insist on an immunity agreement before being compelled to give testimony in noncriminal cases to safeguard the core constitution right protected by the Self Incrimination Clause. Governments may penalize public employees and government contractors, with loss of their jobs or government contracts, to induce them to respond to inquiries without violating the Fifth Amendment so long as answers elicited and their fruits are immunized from use in any criminal case against them. See *Chavez v. Martinez*, 123 S.Ct 1994 (2003)

AOC states “the bill does not specify which court would have jurisdiction to enter such orders. Section 35-3-3(C)(2) NSMA 1978 says that magistrate courts do not have jurisdiction in a civil action “against public officers for misconduct in office.” This limitation on jurisdiction may or may not apply to a request under the new provision proposed by this bill. In order to avoid jurisdictional confusion, it may be best to specify which court has the jurisdiction to enter an order compelling a peace officer's statement under this provision. Failure to provide for clear jurisdiction could lead to lengthy and costly litigation to resolve the question.”

DPS analysis says:

An officer may be required by a public employer, which is conducting an internal administrative investigation into workplace misconduct or other wrongdoing, to give a compelled statement. Neither the statement nor any evidence derived from the statement, may be used against the employee compelled to give the statement, in a criminal proceeding against the employee. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The proposed amendments to § § 29-14-3 and 29-14-6 make clear that an officer compelled statement is not subject to production under the New Mexico Inspection of Public Records Act or a subpoena, unless a court specifically orders its production. The amendments are in line with the constitutional restrictions on use of the statement.

These amendments comport with current DPS practice which is not to produce a compelled statement, unless ordered to do so by a court.

TECHNICAL ISSUES

NMAG points out the following:

There are a number of other statutes that, like Senate Bill 646 would create a new exception to the Inspection of Public Records - Senate Bill 154 proposes to create a new Public Property Disposition Act, specifically providing in part that documents related to the "proposed disposition of the tangible personal property sought to be disposed of" are subject to IPRA disclosure; Senate Bill 201 proposes to create a new "Firearm Transfer Act" and exempt any records created pursuant to that Act from IPRA disclosure. Senate Bill 259 would allow public bodies to deny inspection of public records that reveal the identity of an applicant for government employment; Senate Bill 397 proposes to amend the New Mexico Lottery Act to exempt "names, addresses and other personal identifying information of lottery winners" from IPRA disclosure; Senate Bill 514 proposes to exempt "outstanding warrants of a state agency or local public body that have not been cleared by the agency's or public body's fiscal agent bank" from inspection as public records; and House Bill 614 proposes to exempt certain records of the Public School Insurance Authority.

TE/sb