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FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/21
 SPONSOR SJC LAST UPDATED 03/07/21 HB _____
 SHORT TITLE Officer Training & Certification SB 375/SJCS/aSFC
 ANALYST Rabin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
NFI	NFI	(\$6,000.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DPS – Certification Board & Database	NFI	\$762.0 to \$812.0	\$1,154.0 to \$1,161.5	\$1,916.0 to \$1,973.5	Recurring	General Fund
DPS – Survivors Benefits¹	NFI	\$25.0	\$50.0	\$50.0	Recurring	General Fund
UNM - HSC	NFI	\$125.0	\$250.0	\$375.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 286
 Relates to Appropriation in the General Appropriation Act of 2021

SOURCES OF INFORMATION

LFC Files

Responses to SB375 as Amended by SFC Received From
 Department of Health (DOH)
 Office of Attorney General (NMAG)
 University of New Mexico Health Sciences Center (UNM-HSC)

¹ While peace officers' survivors death benefits are funded from the peace officers' survivors fund, the fund's minimum balance is insufficient to cover the entirety of the benefits provided for in this bill. As a result, the difference is considered as additional operating budget impact to DPS.

Responses to SJC Substitute to SB375 Received From
Department of Finance and Administration (DFA)
Department of Public Safety (DPS)

Responses to Introduced Bill Received From
Central New Mexico Community College (CNM)
Municipal League

No Response Received
Public Regulation Commission (PRC)²
Department of Homeland Security and Emergency Management (DHSEM)¹

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 375 makes the following changes:

- Adds a new section to the bill to increase benefits for peace officers' survivors from \$250 thousand to \$400 thousand;
- Delays the deadline for the Department of Public Safety (DPS) to create the required database from December 31, 2021, to June 30, 2022;
- Explicitly adds the newly created Law Enforcement Certification Board to the DPS Act;
- Delays the effective date of the bill's provisions from July 1, 2021, to January 1, 2022, (excluding the section related to the law enforcement protection fund transfer, which still takes effect on July 1, 2022); and,
- Makes other minor, technical modifications.

Notably, adding the Certification Board to the DPS Act rather than the Law Enforcement Training Act ensures the board will not receive any part of the \$6 million law enforcement protection fund (LEPF) distribution provided for in this bill, leaving the board entirely unfunded.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 375 adds a \$6 million distribution from the LEPF to DPS beginning in FY23 for the purpose of implementing the Law Enforcement Training Act.

The bill amends provisions of the Law Enforcement Training Act to redefine the role and composition of the Law Enforcement Academy Board (LEAB) and implement new basic and in-service training requirements for law enforcement officers. The bill removes oversight of officer certification and misconduct duties from LEAB and places them in a new, independent Certification Board. The bill amends the membership of LEAB to include the attorney general,

² The State Fire Marshal's Office is currently part of PRC but will transfer to DHSEM beginning in FY22. Analysis of the impact of the bill on firefighter training and the office is necessary and should be conducted by one of these two agencies.

the director of the New Mexico Law Enforcement Academy (NMLEA), the directors of all satellite law enforcement academies, and seven governor appointees:

- One attorney currently employed in a district attorney's office;
- One attorney currently employed by the Public Defender Department (PDD);
- One certified police chief of a New Mexico Native American nation, tribe, or pueblo;
- Two members who have experience and specialize in providing adult education; and,
- Two citizen-at-large members, one of whom shall have experience as a behavioral health provider and neither of whom shall have served as a police officer or have familial or financial connections to law enforcement officers or agencies.

The bill also clarifies the NMLEA director shall be under the supervision and direction of the DPS secretary.

Additionally, SB375/SJCS adds a new section of law to the Law Enforcement Training Act stating the curriculum of basic law enforcement training and in-service training for certified police officers shall include crisis management and intervention, dealing with individuals who are experiencing mental health issues, methods of de-escalation, peer-to-peer intervention, stress management, racial sensitivity, reality-based situational training, and use of force that eliminates vascular neck restraints (choke holds).

A new section of law (whose place in statute is not specified but which is not explicitly added to the Law Enforcement Training Act) creates the new Certification Board, established as an independent board but administratively attached to DPS. The Certification Board would be authorized to oversee officer certification and misconduct previously vested in LEAB. The Certification Board is made up of nine members, of which no more than five shall be from the same political party, and must include

- A retired judge (who shall serve as chair);
- A municipal peace officer;
- A sheriff;
- A tribal law peace officer;
- An attorney in private practice who practices as a plaintiff's attorney in the area of civil rights or who represents criminal defendants;
- An attorney in private practice who represents public entities in civil rights claims; and,
- An attorney employed by PDD.

The bill also amends the Department of Public Safety Act to mandate DPS create a database to coordinate the sharing of information among state, local, and federal law enforcement agencies concerning instances of excessive use of force related to law enforcement matters, which shall be operational by December 31, 2021. The department shall make specific information available to law enforcement agencies on demonstrated particularized need but notably does not require agencies to request this information or consult the database prior to hiring an officer. DPS is also required to make aggregated and anonymized data available to the public regularly and periodically.

Additionally, SB375/SJCS amends sections of statute related to emergency medical services (EMS) personnel and firefighters to mandate their training also include crisis management and intervention, dealing with individuals who are experiencing mental health issues, methods of de-escalation, peer-to-peer intervention, stress management, and racial sensitivity.

The transfer of an additional \$6 million from the LEPF to DPS under this bill is effective July 1, 2022. The rest of the bill’s provisions are effective July 1, 2021.

FISCAL IMPLICATIONS

Fiscal implications of SB375/SJCS are outlined in detail below, including

- Transferring an additional \$6 million from the LEPF will result in a \$6 million reduction in revenue to the general fund;
- NMLEA’s uses of LEPF revenue are restricted to tourniquet and trauma kits and relevant training, significantly constraining the uses of the \$6 million transfer, which may not be the intention of the bill;
- The bill does not provide funding for the newly created Certification Board or the database it requires DPS to create, resulting in an estimated additional operating budget impact of \$762 thousand to \$812 thousand in FY22 and \$1.2 million in FY23 and future fiscal years. The intention of the bill may be to allow the \$6 million transfer from the LEPF to be used for these purposes, but as written, this is not allowable;
- Funding in the peace officers’ survivors fund is insufficient to pay the entirety of the expanded death benefits provided for in this bill, resulting in an additional operating budget impact to DPS of \$50 thousand per year; and,
- The requirements for EMS training program oversight will result in an additional operating budget to the University of New Mexico’s Health Sciences Center (UNM-HSC) of \$250 thousand per year.

Law Enforcement Protection Fund. The LEPF intercepts general fund revenue and redirects it to distributions to local law enforcement agencies, NMLEA, and DPS. Remaining balances at the end of the fiscal year revert to the general fund, so any changes to the fund's revenues or distributions will impact the general fund. SB375/SJCS will transfer an additional \$6 million from the LEPF to DPS on a recurring basis beginning in FY23 and is, therefore, considered a recurring reduction in general fund revenue.

Section 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 (DFA) shall reduce the allocations to tribal police departments and some allocations to local law

enforcement agencies to the maximum amount permitted by available funds. The distribution of \$6 million added by SB375/SJCS would not be subject to similar reductions and could result in reduced funding to other beneficiaries. In combination with changes to LEPF distributions under Laws 2020, Chapter 67, (House Bill 184) which also take effect in FY23, LFC staff project SB375/SJCS will result in distributions from the LEPF totaling \$19.3 million in FY23, \$19.4 million in FY24, and almost \$19.5 million in FY25 (for more details, see Attachment 1).

Historical LEPF Revenues and Reversions
(in thousands)

Fiscal Year	Revenue	Reversion
FY10	\$ 15,573.1	\$ 9,768.3
FY11	\$ 14,544.7	\$ 9,089.3
FY12	\$ 13,471.4	\$ 8,290.8
FY13	\$ 9,846.0	\$ 4,497.7
FY14	\$ 9,012.1	\$ 3,936.3
FY15	\$ 13,229.0	\$ 7,646.9
FY16	\$ 21,053.6	\$ 15,277.2
FY17	\$ 19,382.6	\$ 18,382.6
FY18	\$ 19,425.9	\$ 13,704.5
FY19	\$ 17,202.0	\$ 11,967.1
FY20	\$ 19,894.3	\$ 14,761.8
Total:	\$ 172,377.2	\$ 117,065.0

Source: DFA, DFA audits, LFC files

However, LEPF revenue is volatile and, historically, the fund would not always have been able to handle these increased distributions, resulting in decreased allocations. 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. LFC analysis of LEPF revenue since FY10 shows the fund would have been unable to sustain anticipated FY23 expenditures in FY10 through FY15 or FY19.

Constraints on LEPF Uses. NMAG notes uses of the LEPF are restricted under current law, and NMLEA is constrained to use funds for tourniquet and trauma kits and for training on the use of such kits. As a result, NMAG raises concerns the \$6 million transfer from the LEPF for purposes of carrying out the Law Enforcement Training Act would not be able to be used for anything other than tourniquet and trauma kits and relevant training. Such a restriction may not be the intention of SB375/SJCS, and for purposes of the analysis of additional operating budget impacts, it is assumed that the \$6 million transfer can cover any additional requirements under the Law Enforcement Training Act created by this bill. However, if the relevant LEPF statute is not amended, the additional requirements under the act created by this bill will result in additional operating budget impacts to DPS beyond those outlined below.

Operational Cost Impacts to DPS. SB375/SJCS does not provide funding for the newly established Certification Board or the database it requires DPS to create; however, this may not be the intention of the bill and may instead be a consequence of how it is drafted. The provisions requiring DPS to create a database concerning instances of excessive use of force related to law enforcement matters (Section 10) and creating the new Certification Board (Section 11) are explicitly added to the Department of Public Safety Act, and as a result, the LEPF transfer is not authorized to cover those expenditures. The primary function of the \$6 million transfer is to support the reconstituted LEAB, the additional training requirements for law enforcement officers imposed by the bill, and the existing provisions of the act, but not the database or the Certification Board.

DPS did not submit estimated operational budget impacts as part of its analysis, but an estimate submitted by the agency in November 2020 stated the costs of personnel for a fully staffed law enforcement standards and training board would be \$1.1 million. Excluding positions related to curriculum development and instruction, this estimate includes \$824 thousand for staff related to the certification and misconduct duties that would be transferred to the Certification Board under this bill. LFC staff estimate an additional \$300 thousand will be needed for contractual services and other expenses, resulting in an additional operating budget impact of \$1.1 million annually for the operation of the Certification Board. The SFC amendment extends the effective date of this provision to January 1, 2022, so it is anticipated that half of this cost will impact FY22 with the entire cost impacting FY23 and future fiscal years.

The House Appropriations and Finance Committee Substitute for House Bill 2 includes \$350 thousand in dedicated funding for the operations of LEAB. However, if the Certification Board is established as a separate entity, it would not have access to these funds.

DPS estimates the initial cost to create the database described in Section 9 will be between \$200 thousand and \$250 thousand, with an ongoing maintenance cost equal to 15 percent of the initial

cost (\$30 thousand to \$37.5 thousand annually). The database must be established by the end of FY22, and this analysis anticipates the initial cost impact in FY22. Ongoing maintenance costs will be realized in FY23 and future fiscal years. This results in an additional operating budget impact of \$200 thousand to \$250 thousand in FY22 and \$30 thousand to \$37.5 thousand in FY23 and future fiscal years for the creation and maintenance of the database.

Between the operations of the Certification Board and the costs related to the creation and maintenance of the database, the total additional operating budget impact of SB375/SJCS to DPS is estimated to be \$762 thousand to \$812 thousand in FY22 and \$1.2 million in FY23 and future fiscal years.³

Peace Officers' Survivors Fund. This bill increases peace officers' survivor death benefits from \$250 thousand to \$400 thousand for each officer killed in the line of duty. These benefits are paid out of the peace officers' survivors fund; however, current statute only requires that fund maintain a minimum balance of \$350 thousand, funded out of the LEPF. Statute does not allow the LEPF to be used to transfer funds to increase the balance in the peace officers' survivors fund above that minimum, and no other source of revenue is identified for the peace officers' survivors fund. As a result, any time an officer is killed in the line of duty, the fund will have \$50 thousand less than is required to pay the relevant death benefits. Because DPS will be required to pay the entire \$400 thousand benefit, this is considered as additional operating budget impact to the agency.

Between 2015 and 2019, five New Mexico police officers were killed in the line of duty, according to [the FBI's 2019 report on law enforcement officers killed and assaulted](#). Assuming an average of one officer killed per year in future fiscal years, this analysis estimates an additional operating budget of \$50 thousand per year. The SFC amendment makes the effective date of this provision to January 1, 2022, so it is anticipated that half of this cost will impact FY22 with the entire cost impacting FY23 and future fiscal years.

Operational Cost Impacts to UNM-HSC. UNM-HSC reports it would require an additional 3 FTE on an ongoing basis to oversee and administer the oversight of other EMS training programs. UNM-HSC estimates this would result in a recurring cost of \$250 thousand per year. The SFC amendment extends the effective date of the provision that creates this new duty for UNM-HSC (Section 2) to January 1, 2022, so it is anticipated half of this cost will impact FY22, with the entire cost impacting FY23 and future fiscal years.

SIGNIFICANT ISSUES

Several significant issues in SB375/SJCS are outlined in detail below, including

- The bill does not provide funding for the Certification Board, which will make it largely impossible for the board to function independently from DPS.
- LEAB currently has difficulties ensuring local law enforcement agencies comply with its reporting requirements, and the new Certification Board does not appear to have the ability to compel cooperation. Under the proposed bill, local law enforcement agencies face no consequences for failure to cooperate or report to LEAB or the Certification

³ The ranges for database costs explained above are not significant enough to effect the amount for FY23 when rounded to the nearest hundred thousand.

Board; however, the LEPF could be leveraged to incentivize timely and accurate reporting and cooperation.

- The bill separates law enforcement curriculum oversight and certification oversight responsibilities into two separate boards, which is not common practice.
- The bill does not provide the Certification Board with rulemaking authority.
- The bill appears to assume UNM’s EMS academy has authority and oversight responsibilities over other EMS academies’ curriculums it does not currently have, does not seek, and does not feel it has the resources to carry out.

Certification Board Independence. Although LEAB is established as an independent entity, it does not have its own budget, and its staff are employees of NMLEA, part of DPS. As a result, the agency responsible for police officer oversight is functionally dependent on an agency that also includes the New Mexico State Police, a potential conflict of interest. It is unclear how the Certification Board can operate independently absent an appropriation to fund its activities separate from DPS. A 2005 survey conducted by the International Association of Directors of Law Enforcement Standards and Training found police officer standards and training boards operate as independent agencies in 19 states.

Local Law Enforcement Agency Reporting Concerns. LEAB also faces issues ensuring law enforcement agencies fulfill their statutory obligations. For example, statute requires all police officers to complete biannual in-service training, and LEAB is responsible for gathering reports from agencies certifying the completion of these requirements. However, during the last biannual training cycle, only 47 percent of law enforcement agencies complied with reporting requirements, with over half of agencies’ compliance with statutory training requirements unclear. The Certification Board would likely face similar issues ensuring compliance with reporting related to certification and misconduct.

DPS notes LEAB currently uses a database to track law enforcement officers and telecommunicators. Instances of excessive use of force related to law enforcement matters are coordinated and shared as requested, but information is only accurate if an agency has properly reported under the current regulations (Subsection E of 10.29.1.11 NMAC). LEAB also tracks disciplinary actions (suspensions, voluntary relinquishments, revocations) taken against law enforcement officers and telecommunicators. However, the agency notes separation actions (resignation, retirement, termination) are only as accurate as the information the reporting agency provides.

Ensuring training requirements are met and that DPS and the Certification Board receive the information necessary to update the database and conduct disciplinary processes requires accurate and timely reporting from local law enforcement agencies, which LEAB’s prior experience has shown may not be reliable. LFC has previously noted that making law enforcement agencies’ distributions from the LEPF contingent on compliance with LEAB’s directives would provide necessary leverage to ensure the board can successfully fulfill its mission. This could similarly apply to the Certification Board.

Creation of Two Boards for Law Enforcement Standards and Training. The structure for law enforcement standards and training oversight under SB375/SJCS differs significantly from those of other states. Generally, a single entity houses both standards and training oversight responsibility, but SB375/SJCS would divide those duties between two distinct boards.

Rulemaking Authority. NMAG expresses concerns SB375/SJCS does not provide rulemaking authority to the Certification Board to enable it to adopt rules and procedures to govern the review and issuance of certifications, investigation of misconduct, initiation of disciplinary proceedings, or other rules that should be adopted and placed in the New Mexico Administrative Code.

EMS Training. UNM’s Health Sciences Center notes the following issues:

- Section 2 of SB375/SJCS amends Section 24-10B-12 NMSA 1978 Academy Duties, which speaks directly to the charge of the UNM EMS Academy. The UNM EMS Academy does not have the authority (nor would the EMS Academy seek the authority) to “ensure that medical services training programs approved by the state” include the training items outlined in Section 2 F. 1-6.
- There is a clear conflict because UNM EMS Academy is one of the six approved institutions, thus it cannot oversee the others (NMSU, CNM, SFCC, and NMSU Doña Ana). SB375/SJCS would make it law for EMS Academy to oversee those external institutions’ curriculum.

ADMINISTRATIVE IMPLICATIONS

NMAG reports it provides general counsel representation to many state boards and commissions, including LEAB. SB375/SJCS would create a new Certification Board that may require legal counsel and resources from NMAG. NMAG’s Litigation Division provides civil administrative prosecution for licensing boards and commissions, as will be the case under the new Certification Board, as proposed.

CONFLICT, RELATIONSHIP

SB375/SJCS conflicts with House Bill 286, which moves law enforcement certification duties to the Regulation and Licensing Department.

SB375/SJCS relates to a \$350 thousand recurring general fund appropriation to fund the operations and activities of LEAB in the General Appropriation Act of 2021 (HB2/HAFCS). Under the changes proposed by SB375/SJCS, this appropriation would not be available to fund the operations or activities of the newly created Certification Board.

TECHNICAL ISSUES

NMAG highlights the following technical issues:

- SB375/SJCS amends Section 29-7-5 NMSA 1978 to state that the NMLEA director shall be under the supervision and direction of the DPS secretary, but does not amend Section 29-7-5.1 NMSA 1978, which states that the director can only be removed by the LEAB;
- Uses of the LEPF are restricted under current law, and the academy is constrained to use funds for tourniquet and trauma kits and training on their use (Section 29-13-7(B) NMSA 1978). As a result, the \$6 million transfer from the LEPF for purposes of carrying out the Law Enforcement Training Act would not be able to be used for anything other than tourniquet and trauma kits and relevant training;
- Subsection B of Section 10 provides that the new database for tracking “shall account for instances where a law enforcement officer resigns or retires while under active

investigation,” but also mandates information in the database be limited only to “instances in which law enforcement officers were afforded due process.” In addition to “due process” being a subjective term in the context of internal affairs investigations, there will be further confusion as to how to ensure compliance with this provision when an investigation is never completed or even conducted and the officer resigns or retires without further questioning by the referring agency;

- Subsection D of Section 10 provides that the DPS secretary “shall regularly and periodically make available to the public aggregated and anonymized data from the database.” However, without an exception to IPRA provided by statute, the totality of the information in the database would be available to public inspection at any time. Additionally, terms such as “regularly and periodically” are subject to diverse interpretations and it would be prudent to provide more clear minimum requirements or consider additional details to be provided in rules;
- The definition of “law enforcement agency” in Subsection E of Section 10 is narrow and does not include reference to many state agencies or other law enforcement agencies that are not state police, county sheriffs’ offices, or municipal police departments. However, Section 10’s definition of “law enforcement officer” may include some of these other law enforcement officers with a definition that includes “motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes”;
- The bill conflicts with Section 29-7-13 NMSA 1978, which is not repealed in SB375/SJCS and addresses the discipline of law enforcement officers by the Law Enforcement Academy Board;
- The bill conflicts with nearly the entirety of the Public Safety Telecommunicator Training Act (Sections 29-7C-1 to 9 NMSA 1978), which governs the certification of telecommunicators and contains numerous references to the certification process under LEAB, which are not amended by SB375/SJCS.

NMAG also notes that tribal law enforcement is not addressed by this bill.

Section 11 includes almost duplicative language in Paragraph 1 of Subsection C and in Subsection F. Both provide for the Certification Board to issue certificates of completion to graduates of a basic law enforcement and telecommunicator training programs, but there are several differences in language that do not appear intentional and change the meaning of the provisions. Most substantively, Subsection C provides the Certification Board *may* offer certifications to graduates who meet the qualifications for certification, while Subsection F states it *shall* issue certifications in such cases. Both provisions are copied in full below with the conflicting language underlined:

Section 11, Subsection C, Paragraph 1:

C. The law enforcement certification board may:

(1) issue a certificate of completion to any person who:

(a) graduates from an approved basic law enforcement training program and who satisfies the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or

(b) graduates from an approved basic telecommunicator training program and who satisfies the qualification for certification as set forth in the Public Safety Telecommunicator Training Act;

Section 11, Subsection F:

F. The law enforcement certification board shall issue a certificate of completion and certification to:

- (1) graduates from an approved basic law enforcement training program who satisfy the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or
- (2) graduates from an approved basic telecommunicator training program who satisfy the qualifications for certification as set forth in the Public Safety Telecommunicator Training Act.

NMAG suggests one of these provisions be deleted. NMAG also notes Paragraph 1 of Subsection C conflates certification of completion of the basic law enforcement academy with law enforcement certification.

OTHER SUBSTANTIVE ISSUES

Police Uses of Force. New Mexico has the second highest per capita rate of people killed by police in the country over the past five years, according to two national databases. From 2016 to 2020, between 97 and 108 individuals were killed by police, an average rate of 9.3 to 10.3 per million residents per year, while the average national rate of individuals killed by police ranged from 3 to 3.3 per million residents per year. Comparatively, New York, with over nine times New Mexico's population, saw roughly the same number of people killed by police during this period (between 90 and 109 individuals, an average rate of 0.9 to 1.1 per million residents per year).⁴ While increased research has clarified some of the causes of police violence, effective solutions remain elusive.

NMSP investigates all of its officers' uses of force and reports 195 uses of force in FY20, on par with the 194 reported for FY19, and six officer-involved shootings compared with 10 in FY19. Suspect injuries were reported in 41 percent of these cases, with the most common injury types reported as abrasions and scratches. Officers were reported to have been injured in 13.8 percent of incidents, and 16.4 percent of the incidents resulted in a suspect being charged with battery on a peace officer.

New Mexico law enforcement agencies reported 40 officer-involved shootings, half of which resulted in fatalities, and one fatality not involving a gun to the FBI's national use-of-force database in FY20. NMSP investigated 38 of the officer-involved shootings (including all six shootings involving NMSP officers) and the one officer-involved fatality that did not involve shooting. The nonshooting fatality was the result of a neck restraint by a Las Cruces Police Department officer. Five of the six state-police-officer-involved shootings resulted in at least one fatality, with one incident leading to two deaths after an officer shot at a vehicle during a pursuit and the vehicle subsequently entered into oncoming traffic.

APD use-of-force incidents increased in recent years, rising almost 50 percent from 404 in 2016

⁴ Data on police killings sourced from the *Washington Post's* Fatal Force project, which only includes fatal police shootings (<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>), and Mapping Police Violence (mappingpoliceviolence.org), which includes all police killings regardless of the cause of death. Population data to calculate rates of police killings sourced from the U.S. Census Bureau.

to 605 in 2019.

Although best practices for policing include increasing proactive interactions, focusing attention on serious offenders, and deploying more officers, these same practices may be more likely to lead to violent altercations between police and citizens. A 2015 analysis in the *American Journal of Criminal Justice* reviewed several studies of predictors of law enforcement officers' use-of-force decisions and found more serious offenses, suspect resistance, arrests, citizen conflicts, additional officers, and police-initiated encounters are more likely to result in the use of force. Notably, whether an offender was armed did not have a significant effect on officers' use-of-force decisions.

Minorities, males, and low-income suspects are also more likely to have force used against them. Officer race, education, and experience were not found to predict use of force, although male officers are more likely to use force than their female colleagues.

The relationship between violent crime and police-involved fatalities is unclear. Analysis of rates of violent crime and police-involved fatalities between 2015 and 2019 found a correlation between the two factors on the state level but no significant relationship among Albuquerque and comparably sized cities. Additionally, the correlation at the state level is considerably more moderate if New Mexico and Alaska (outliers in both factors) are excluded. Several other cities and states demonstrate these factors are not intrinsically linked.

Research suggests training policies regarding encounters with suspects are more likely to reduce rates of excessive force than policies regarding hiring practices of law enforcement officers. Common trainings aimed at addressing officer behavior include implicit bias training, de-escalation training, and crisis intervention training; evaluation of these programs' impact is limited, and initial research indicates they may not effectively alter long-term behavior without strong use-of-force policies and accountability. A new state law requires all law enforcement officers in New Mexico to wear body cameras and record much of their engagement with the public; however, research on the efficacy of body-worn cameras shows limited impact on officer and citizen behavior or citizens' views of police.

LEAB Membership. NMAG notes the following with regard to the proposed new LEAB membership under SB375/SJCS:

Section 3 [*Section 4 as amended*] of SB 375 amends Section 29-7-3, and provides composition requirements of the Law Enforcement Academy Board, including “the directors of all the satellite law enforcement academies.” The number of academies active in the state changes depending on the needs of the state and the dynamics of the agencies of the region. The most recent academy opened is the Central New Mexico Community College academy, which was approved by the Board several years ago. As such, the changing number of academies must be evaluated in light of the number of members of the board. There may also be dispute on whether certain academies that are not active should be included in membership. Other membership provisions may lead to dispute, including whether attorney members need to hold an active law license, and what constitutes “providing adult education” for two of the membership. Finally, it is required that one of the board's public members have experience as a behavioral health provider who cannot have financial connection to a police officer. The lack

of clarity in both requisites could create confusion and conflict if not further clarified.

Municipal League. The Municipal League offers the following input regarding the introduced bill:

Public safety reform as outlined in SB375 reflects a twenty-first century approach to policing and first responding in our state. This bill embraces modern ideas by frontloading justice, working to prevent victimhood and investing directly in New Mexico's first responder community. By emphasizing concepts such as competency, transparency, and accountability, SB375 affixes actual solutions to many of the issues purportedly, and unsuccessfully, addressed by other pieces of legislation this year.

Local governments, and especially law enforcement, have requested that these changes be made to the law for some time, and with increasing intensity since speaking with the Civil Rights Commission late last year. Viewing the solutions actually recommended by the commission, local law enforcement have been ever more vocal about the need to extend a more robust suite of educational resources to its statewide personnel.

For example, the backlog at the state's decertification body makes it near-impossible to remove the type of law enforcement officer who subjects the public to risk. SB375 helps solve the backlog problem while offering solutions to what ails the law enforcement community: by helping hire the most-qualified applicants, creating the best policies, providing for the best training, and holding bad actors accountable.

Insurers have engaged in some of these efforts already, but cannot go the process alone. NMSIF includes some preventive care for its law enforcement insureds. The thought process here is straightforward: investment on the front end will save money, but it'll also save lives. Across the board, better-trained and equipped law enforcement make better decisions. And preventive care is the superior means to achieve risk management goals that all stakeholders share.

SB375 solves a behavioral defect with behavioral solutions, embracing the intellectual requirement that the problem be resolved by changing the behavior that creates victims rather than ensuring that ever-larger payments are executed on the back end, years after an improper encounter, and years too late for those affected by the initial harm.

ALTERNATIVES

The following changes could resolve some of the most significant issues outlined in this analysis:

- Amend Section 7 of the bill to provide for the distribution of \$1.2 million from the LEPF to the Certification Board to carry out its duties and functions as outlined in Section 10;
- Amend Section 29-13-7 NMSA 1978 to permit expenditures of LEPF distributions by NMLEA and LEAB to carry out all the provisions of the Law Enforcement Training Act (not just those related to tourniquets and trauma kits);

- Amend Section 29-13-7 NMSA 1978 to permit expenditures of LEPF distributions by the Certification Board to carry out the provisions of Section 10 of this bill;
- Amend Section 7 of this bill to make LEPF distributions to local law enforcement agencies contingent on their compliance and cooperation with Certification Board reporting requirements, investigations, and other rules; and,
- Extend the effective date of the provisions of this bill related to the reconstitution of the LEAB and the creation of the new Certification Board to provide adequate time for these boards to be established and staffed.

NMAG suggests a complete repeal and replacement of certain sections of the Law Enforcement Training Act may be a desirable alternative to SB375/SJCS.

DPS suggests renaming the reconstituted LEAB to the “New Mexico Law Enforcement Standards and Training Council” to prevent confusion regarding the role of the reconstituted LEAB compared with the role of the existing LEAB under current law.

DPS also suggests adding wording similar to Subsection E of Section 10 to Section 3 to create consistency between in the management of the reconstituted LEAB and the new Certification Board. Specifically, the agency suggests allowing both boards to appoint a chief executive officer who can employ staff.

DPS suggests adding “telecommunicators” to Paragraph 2 of Subsection C of Section 10.

DFA suggests the following amendments:

It is recommended to include a PSAP Director or representative of the 911 community in the composition of the Law Enforcement Academy Board and Law Enforcement Certification Board to ensure adequate representation in the development of telecommunicator training standards and certification decisions. The Chair of the New Mexico Counties 911 Director Affiliate supports the suggestion to ensure 911 representation on the Board as most 911 dispatch centers are independent from police departments or Sheriff’s offices and should be treated as such.

It is also recommended to consider the E-911 Bureau of the Local Government Division have representation on the Law Enforcement Academy Board as the E-911 Program requires compliance with the Public Safety Telecommunicator Act and includes telecommunicator training as an eligible expense. Additionally, the transition from Enhanced 911 to Next Generation 911 will potentially influence telecommunicator training requirements.

In its analysis of the introduced bill, the Department of Health (DOH) notes, “SB375 does not include mention of and appears to supersede the statutory responsibility of the Joint Organization on EMS Education committee. Current statute requires the Joint Organization on EMS Education to develop ‘minimum curricula content for approved emergency medical services training programs’ and to establish ‘minimum standards for approved emergency medical services training programs’ (24-10B-7B-1 NMSA).” As an alternative, DOH suggests:

Current administrative rules such as 24-10B-7B-1 NMSA can be amended to

include the need for the Joint Organization on EMS Education to determine how much of this important proposed content is already taught in the programs, determine the amount of time necessary to provide adequate education on these topics, and also determine the amount of the proposed content is already covered in current curricula. National standards for these subjects can also be examined and integrated by the Joint Organization on EMS Education.

DOH provided the following recommended language to amend the bill if such an alternative is desired:

The DOH proposes the following language to replace proposed Sections 1 and 2 of SB375CS, beginning at page 1, line 17:

SECTION 1. [NEW MATERIAL] EDUCATION FOR EMERGENCY MEDICAL SERVICE PROVIDERS --The New Mexico Department of Health Emergency Medical Systems Bureau shall develop administrative rule that requires the Joint Organization on Education to develop and maintain curricula on crisis management and intervention, dealing with individuals who are experiencing mental health issues, methods of de-escalation, peer-to-peer intervention, stress management, and cultural humility. Curricula will be developed for all levels of EMT and Paramedic licensure courses and continuing education.

Attachments

1. Law Enforcement Protection Fund Projected Revenues & Expenditures

ER/al/rl/al/rl

Law Enforcement Protection Fund Projected Revenues & Expenditures
FY21 to FY25

	BUDGETED	PROJECTED	PROJECTED	PROJECTED	PROJECTED
	FY21	FY22	FY23	FY24	FY25
BEGINNING BALANCE	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
REVENUE					
Fees, Licenses, Penalties, and Taxes	\$ 20,124,643	\$ 20,899,893	\$ 21,707,023	\$ 22,531,890	\$ 23,388,102
TOTAL REVENUE	\$ 20,124,643	\$ 20,899,893	\$ 21,707,023	\$ 22,531,890	\$ 23,388,102
EXPENDITURES					
Base Distribution	\$ 5,811,495	\$ 5,811,495	\$ 5,811,495	\$ 5,811,495	\$ 5,811,495
Expected Distribution as result of 2020 HB184	\$ -	\$ -	\$ 7,490,000	\$ 7,563,000	\$ 7,636,000
Expected Distribution as result of proposed 2021 SB375	\$ -	\$ -	\$ 6,000,000	\$ 6,000,000	\$ 6,000,000
TOTAL EXPENDITURES	\$ 5,811,495	\$ 5,811,495	\$ 19,301,495	\$ 19,374,495	\$ 19,447,495
ENDING BALANCE	\$ 14,413,148	\$ 15,188,398	\$ 2,505,528	\$ 3,257,395	\$ 4,040,606
General Fund Reversion Amount	\$ 14,313,148	\$ 15,088,398	\$ 2,405,528	\$ 3,157,395	\$ 3,940,606

Source: SHARE, DFA website

Note: LEPF revenues are ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business (except for money received from health insurance) collected by the New Mexico Public Regulation Commission. Balances in excess of \$100 thousand revert to the general fund at the end of the fiscal year.