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FISCAL IMPACT REPORT

SPONSOR Dixon/Figueroa/
Matthews/Lane/
Crowder ORIGINAL DATE 1/21/2022 LAST UPDATED 2/8/2022 HB 86/aHAFC

SHORT TITLE Law Enforcement Retention Fund SB _____

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0 ¹	\$2,397.3	\$3,687.3	\$6,084.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 84
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
Attorney General's Office (NMAG)
Municipal League (ML)
Department of Public Safety (DPS)

No Response Received

New Mexico Counties

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 86 provides that law enforcement officers will receive their retention differential payments upon reaching years of service of four, nine, 14, and 19 years from the anniversary of the officer's hire date with their current agency, provided that they remain employed with that agency for one additional year.

The HAFC amendment further provides that if the balance in the law enforcement retention fund

¹ Funding for the first year of this program is covered by an appropriation in the General Appropriation Act.

is not sufficient to provide total disbursements, allocations shall be reduced to the maximum amount permitted by available funds.

Finally, the HAFC amendment changes the definition of law enforcement agency to include any agency of the state or local government that employs certified law enforcement officers.

Synopsis of Original Bill

House Bill 86 creates the law enforcement retention fund to provide one-time retention differential payments to law enforcement officers equivalent to 5 percent of their annual salary on five-year intervals (at five, 10, 15, and 20 years of service). The funds are distributed by the Department of Public Safety (DPS) to the New Mexico State Police (NMSP), municipal police departments, county sheriff's offices, tribal police departments, and university police departments. Law enforcement agencies may only use these distributions to provide these payments, and any unexpended funds at the end of the fiscal year revert to the law enforcement retention fund.

Law enforcement agencies are required to report relevant information used to calculate the amount of their disbursements and evaluate the program's efficacy at improving officer retention. DPS may waive reporting requirements for certain agencies if necessary (such decisions must be explained in writing), and HB86 allows the law enforcement retention fund to be used to support reporting compliance. DPS is required to provide monthly reports on fund balance and expenditure and an annual report evaluating the program's efficacy in law enforcement retention.

Distributions from the law enforcement retention fund include the amount of employer tax liabilities. The retention differential payments are not considered salary for the purpose of calculating retirement benefits.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Although the title of this bill states it is making an appropriation, it does not make a separate appropriation, and it is assumed this section of the bill refers to the statement that money in the law enforcement retention fund is appropriated to DPS on page 2, lines 2-3.

The total cost to administer law enforcement retention differentials over a five-year period is estimated to be \$17.3 million, an average of about \$3.5 million per year. Assumptions and data underlying these calculations, as well as estimated distributions to different law enforcement agencies, are outlined in Attachment 1.

HB86 states the law enforcement protection fund may be used to support administrative processes and reporting compliance related to the fund. DPS estimates a recurring cost of \$219.1 thousand for three positions to do this work, as well as a \$22.9 thousand nonrecurring cost in FY23 for needed equipment and furniture.

The General Appropriation Act (GAA) includes a one-time special appropriation of \$5 million

from the general fund to the Department of Finance and Administration to deposit in the law enforcement retention fund, contingent on the enactment of legislation creating the fund. These funds would be sufficient to cover one year of these payments, but would not fully cover the second year (an estimated \$1.9 million in additional funds would be required to fully fund the second year of the program, excluding costs to DPS). Although HB86 does not specify future appropriations, establishing a new program could create an expectation that the program will continue in future fiscal years. The cost not covered by the appropriation in the GAA is therefore scored as recurring additional operating budget impact to the general fund.

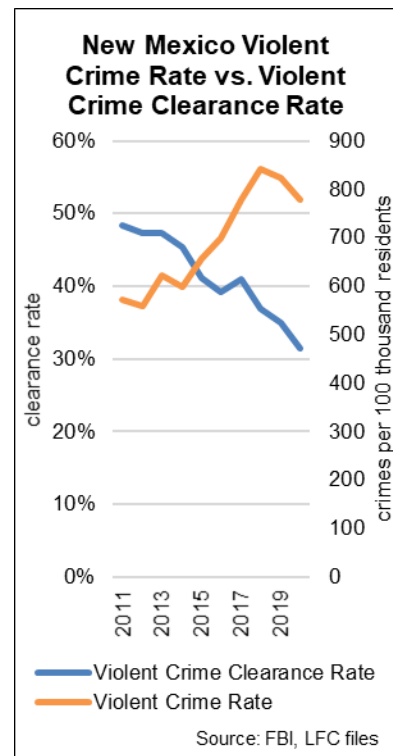
The GAA also includes a recurring appropriation of \$520.2 thousand from other state funds to DPS to account for the estimated distribution from the law enforcement retention fund for retention differential payments to state police officers. This appropriation is also contingent on the fund’s creation.

Based on the timeline for local law enforcement agencies to provide DPS with the information required to determine their disbursements from the fund, it is assumed these disbursements will be made at or near the beginning of each fiscal year, starting in FY23. Because the GAA contains funding to support the entire first year of the program and part of the second, there is no additional operating budget impact estimated for FY23, and the impact for FY24 is calculated as the additional funding required to fully fund the second year of the program. The additional operating budget for FY25 reflects the full yearly cost of the program, which would be the ongoing yearly cost of the program.

SIGNIFICANT ISSUES

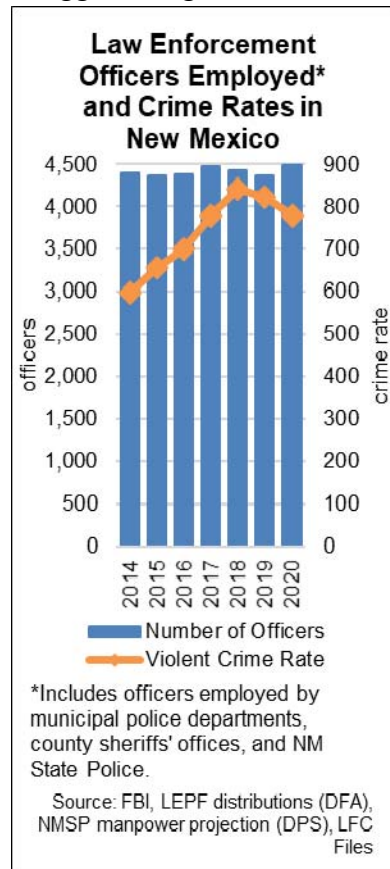
Law Enforcement Recruitment and Retention. Research shows the certainty of punishment is a significantly more effective deterrent to criminal behavior than the severity of punishment, with severity of punishment having no impact on crime reduction beyond the certainty of being caught. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.

Certainty of apprehension is a particularly powerful deterrent to crime, but falling violent crime case clearance rates—the rate at which crimes are closed, generally by arrest—at New Mexico’s law enforcement agencies suggest the state is failing to create such a deterrent. Between 2014 and 2020, the state’s violent crime rate rose 30 percent, while the number of cases cleared fell 13 percent. Between 2014 and 2020, the Albuquerque Police Department reported a 167 percent rise in homicides and a 42 percent reduction in cases cleared.



Research suggests increasing the number of law enforcement officers and allocating officers in a manner that heightens the perceived risk of apprehension helps deter crime, but New Mexico has

struggled to grow its law enforcement workforce over the past 10 years. Between FY12 and



FY21, the number of certified law enforcement officers employed by municipal police departments, county sheriffs' offices, and state police grew just 1.8 percent, and the during the crime increase between 2014 and 2018, number of law enforcement officers remained relatively stagnant (increasing just 0.4 percent). In 2020, law enforcement agencies nationwide employed an average of 2.4 officers per 1,000 residents, while New Mexico employed 2.2 officers per 1,000 residents at the beginning of 2021. To reach the national rate, the state would need to add 408 more officers, more than it has employed at any point in recent history.

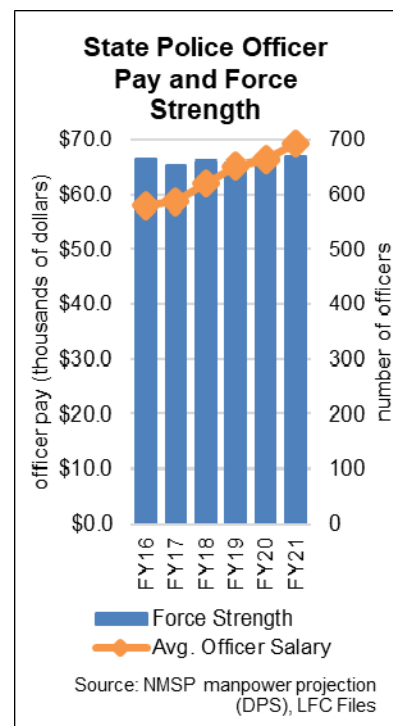
Incremental increases in law enforcement officer pay do not appear to significantly improve recruitment and retention. Despite millions of dollars of general fund investment in officer pay, NMSP has been unable to significantly grow its force and projects workforce reductions over the current year. Between FY16 and FY21, the state invested \$12.4 million in salary increases, growing the average state officer's annual salary by 19 percent. NMSP's force strength increased just 0.5 percent over the same period. Notably, the consumer price index increased 13 percent over this period, substantially reducing the practical impact of the compensation increases.

State police averaged a force of 668 officers in FY21, an 8.7 percent overall vacancy rate and a 7.1 percent vacancy rate among positions supported by the general fund. DPS's most recent state police force strength projection anticipates an average of 636 commissioned officers will be employed in FY22.

Investing in recruitment and retention of high-quality law enforcement officers is an important component of protecting and improving public safety. The GAA includes \$4.7 million for targeted state police officer compensation increases in addition to a 7 percent compensation package for all state employees. The recommendation further adds \$520.2 thousand in other revenues for law enforcement retention differentials from the law enforcement retention fund contingent on the creation of the fund.

Diversifying the officer workforce may reduce victimization among underrepresented groups and reduce uses of force. Recent studies have shown that increasing Black and female representation among officers led to increased reporting and reduced victimization among those groups. Female officers are also significantly less likely to use force than their male counterparts.

Creating a larger, more diverse workforce requires careful and



deliberate investment. Expenditures aimed at improving officer compensation should be significant enough among lower ranks to increase recruitment and should include retention incentives and incentives for agencies to expand recruitment efforts among underrepresented communities. If state funding is provided to local law enforcement agencies to support such efforts, agencies should be required to report on impacts of that funding.

The Municipal League notes that “HB86 could be a useful tool to help municipal police departments, which struggle with high vacancy rates, recruit, and retain officers, and likely save money. For example, a 2019 [report](#) by the National Police Foundation found that for the City of Santa Fe, hiring and training a new cadet costs almost \$50 thousand. Spending 5 percent of an officer’s salary every five years is a modest cost compared to the cost of losing and replacing officers.”

Constitutional Issues. In its analysis of the introduced bill, the Attorney General’s Office (NMAG) raised concerns regarding the constitutionality of the payments proposed by HB86 and potential violations of the anti-donation clause. However, NMAG believes these issues are resolved by the HAFC amendment, which expressly conditions retention differential disbursements on officers’ future service to their employers. As a result, NMAG states the state appears to receive consideration for the payments. NMAG adds that each law enforcement agency will need to develop policies to ensure the repayment of prorated portions of disbursements in the event that officers leave the agency prior to the expiration of the additional year, but does not think this requires an amendment to the bill.

PERFORMANCE IMPLICATIONS

To the extent HB86 is effective at improving law enforcement officer retention and increasing force strength, the bill may improve DPS’s performance on metrics related to officer vacancy rates and turnover, as well as improvement on metrics related to proactive law enforcement operations and arrests, which are impacted by force strength.

ADMINISTRATIVE IMPLICATIONS

Administering the law enforcement retention fund will create some additional workload for DPS. HB86 allows the fund to be used to support additional costs related to its administration, which should provide DPS with the necessary resources to support this workload. Because no analysis from DPS was available at the time of this writing, this analysis estimates a \$100 thousand annual cost for administration and supporting law enforcement agencies’ compliance with reporting requirements.

RELATIONSHIP

Relates to House Bill 84, which would expand the allowable uses of crime reduction grants, including allowing grants to be used for the purpose of recruiting and retaining law enforcement officers.

TECHNICAL ISSUES

NMAG notes that the phrase “a program” on page 5, line 10, is confusing because it is not clear what program DPS is required to evaluate. If the intent is to require DPS to evaluate the

effectiveness of the law enforcement retention fund in achieving greater law enforcement retention, NMAG suggests the phrase “a program” be replaced with “the fund.”

AMENDMENTS

The Municipal League suggests a mechanism for directing recurring funding to the fund be considered.

DPS suggests it would be valuable to extend the retention differential beyond the 20-year period included in the bill, to encourage officers with over 20 years of service to keep working after they become eligible for retirement.

Attachments

1. Estimated Costs to Provide Retention Differentials Under HB86

ER/rl/acv/rl

Estimated Costs to Provide Retention Differentials under HB86

Employing Agency	Number of FTE (Filled)	Average Salary (Filled Positions)	Employer Tax Contribution	Est. Payment per Officer	Est. Total Payment (over 5 years)	Est. Annual Payment
New Mexico State Police ¹	647	\$70,315.59	1.45%	\$3,566.76	\$2,307,692.64	\$461,538.53
County Sheriffs' Offices ^{2,3}	1,306	\$70,315.59	1.45%	\$3,566.76	\$4,658,186.37	\$931,637.27
Municipal Police Departments ^{2,3}	2,540	\$70,315.59	1.45%	\$3,566.76	\$9,059,566.14	\$1,811,913.23
Tribal Police Departments ^{2,3}	91	\$70,315.59	1.45%	\$3,566.76	\$324,575.01	\$64,915.00
University Police Departments ^{2,3}	91	\$70,315.59	1.45%	\$3,566.76	\$324,575.01	\$64,915.00
Attorney General's Office ⁴	33	\$73,862.18	7.65%	\$3,975.63	\$131,195.85	\$26,239.17
Livestock Board ⁴	49	\$38,908.29	7.65%	\$2,094.24	\$102,617.69	\$20,523.54
Department of Game and Fish ⁴	126	\$46,561.23	7.65%	\$2,506.16	\$315,775.93	\$63,155.19
Energy, Minerals and Natural Resources Department ⁵	43	\$50,150.00	7.65%	\$2,699.32	\$116,070.92	\$23,214.18
Estimated Total	4,926	\$69,243.30		\$3,520.15	\$17,340,255.56	\$3,468,051.11

1. FTE and salary information based on the agency's FY23 budget request (August 2021); excludes state police recruits.
2. FTE information based on FY21 law enforcement protection fund (LEPF) distributions.
3. State police average salary is used to estimate the average salaries for officers employed by county sheriffs' offices, municipal police departments, tribal police departments, and university police departments, because detailed salary information for those agencies is not available at this time.
4. FTE and salary information based on the agency's FY23 budget request (August 2021).
5. FTE and salary information provided by the agency on 2/6/2022 and 2/7/2022.

Source: State agency FY23 budget requests (BFM), Department of Finance and Administration (LEPF distributions), agency analysis for HB86