

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>SIRC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/6/23</u>
SHORT TITLE <u>Tribal & Pueblo Law Enforcement</u>	BILL <u>CS/Senate Bill</u>
	NUMBER <u>33/SIRCS</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0.0	\$360.0	\$360.0	\$720.0	Recurring	General Fund
Total						

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Department of Public Safety (DPS)
Indian Affairs Department (IAD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SIRC Substitute for Senate Bill 33

The Senate Indian, Rural and Cultural Affairs Committee substitute for Senate Bill 33 (SB33/SIRCS) amends existing law to require the New Mexico State Police to authorize, subject to a commissioning agreement, commissioned tribal, pueblo, federal Bureau of Indian Affairs (BIA) police, and law enforcement officers who are certified by the New Mexico Law Enforcement Academy (NMLEA) or an academy-approved training program to enforce state laws within the exterior boundaries of the tribal or pueblo officer's reservation as a peace officer.

SB33/SIRCS clarifies that a citation issued by tribal or pueblo police officers pursuant to state law shall be cited into a state magistrate court. Tribal or pueblo civil citations issued to a non-Indian and tribal citations issued to Indians shall be cited into tribal courts. SB33/SIRCS extends a commissioned tribal or pueblo police officer's authority beyond the exterior boundaries of the officer's reservation to allow the officer to transport a person who has been arrested for a state law violation to an off-reservation detention facility or to the custody of a state or local law enforcement agency. Additionally, the substitute bill updates references to U.S. custom and border protection and U.S. immigration and customs enforcement, and revises the definition of

“police officer” in the Law Enforcement Training Act to include a state-commissioned employee of a police department of an Indian nation, tribe or pueblo.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

As DPS explains, NMLEA’s responsibilities for all certified law enforcement officers, a number that would grow under SB33/SIRCS in the state require it use a sophisticated software platform that communicates with all New Mexico law enforcement agencies as to their commissioned, certified employees, their licensing status, and their compliance with in-service and annual training requirements, including firearms qualifications. DPS reports the software infrastructure upgrades, which would be required to accommodate the additional licensees, data, and functionality, will exceed current contemplated budget for equipment and software. Accordingly, one compliance officer at a pay range 55 will be needed to oversee this officer group at a cost \$64.1 thousand per year. DPS would also need to procure a software module, licenses, cloud storage, and annual maintenance at \$250 thousand per year, hearing officer and transcription service costs of \$20 thousand per year, and \$25.9 thousand for supplies, in-state travel, education and other operating costs. DPS estimates the total annual costs under SB33/SIRCS are \$360 thousand per year.

SIGNIFICANT ISSUES

IAD advises that cross-commission communication in relation to emergency responses has the potential for unintended consequences, such as arresting non-Indians on tribal lands. In its analysis, IAD cites to a Southwest Law Clinic 2020 memo, which comments:

Cooperation between tribal, state, and local governments can take many forms and should reflect the needs of the involved parties. When there is a question as to which law enforcement agency has jurisdiction in a criminal matter, the wheels of justice are slowed. Moving forward, governments seeking cross-commissioning agreements should weigh the costs of not appropriately addressing jurisdictional gaps against the costs of creating agreements that recognize the sovereignty of tribes.

IAD concludes that failure to enact this bill will serve as a continued barrier with both streamlining and improving cross-commissioning.

NMAG notes SB33/SIRCS does not address its application to officers already commissioned under existing law, and questions whether existing commissions would be revoked immediately. It raises a similar issue under the existing provision that allows sheriffs to appoint tribal and federal law enforcement officers as deputy sheriffs, questioning the continued authority of officers who are currently deputized. See Section 29-1-11(G), NMSA 1978.

DPS raises issues as to a number of provisions in SB33/SIRCS:

Required Commissions. Section B of SB 33/cs, Section 29-1-11 (B) is amended to require (“shall”) the Chief of the NMSP to issue commissions to tribal or pueblo police officers “within thirty days of the officer meeting the requirements for a state law enforcement commission.” DPS points out that the term “state law enforcement commission” is never defined. DPS believes that either “state law enforcement commission” needs to be defined as:

a commission issued by the chief of the New Mexico state police to a law enforcement officer commissioned by a tribe or pueblo and certified by the New Mexico law enforcement academy [‘NMLEA’] or a basic law enforcement training program approved by the [NMLEA] who has completed all other requirements for commissioning set forth in an agreement between the Chief and the tribe and which authorizes the officer to act as New Mexico peace officers, and have all the powers of New Mexico peace officers to enforce state laws, including the power to make arrests for violation of state laws.

Further, DPS does not believe the chief should be automatically required to issue a commission to an officer commissioned by a tribe or pueblo and certified by the NMLEA or a program approved by it. Rather, DPS contends the Chief needs to retain discretion to deny a commission to an otherwise qualified officer if the Chief believes grounds exist for denying the officer a commission. For example, a certified and tribal or pueblo commissioned officer could be facing pending criminal or disciplinary proceedings or have a drug or alcohol impairment, not yet addressed by the NMLEA or the employer, upon which basis the Chief may choose not to issue a commission as a peace officer to enforce state laws in New Mexico. DPS proposes an amendment to address this issue in the Amendments section below.

Power to Suspend or Revoke. DPS next comments on Section C (3), which currently provides that once issued by the Chief, the authority to suspend or revoke a commission is solely within the chief’s discretion. SB 33/cs amends that language to allow suspension or revocation for the same reasons any other New Mexico law enforcement officer’s commission would be suspended or revoked. DPS asserts:

there is no one-size-fits-all list of reasons why a New Mexico law enforcement officer’s “commission” would be suspended or revoked. For example, New Mexico State Police officers may have their employment and thereby their “commission” suspended or revoked for reasons set forth in Section 29-2-11. Other law enforcement agencies will have their own guidelines for suspending or revoking the employment and thereby the commissions of their law enforcement employees. The Chief of the NMSP has absolutely no authority over a tribal or pueblo officer or an employee of the BIA commissioned in accordance with Section 29-1-11 other than the ability to suspend or revoke the commission. To expect the Chief to engage in a full blown disciplinary process, akin to Section 29-2-11 with a non-employee and have to prove that the officer engaged in prohibited conduct (e.g. “incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer”) before being able to suspend or revoke that officer’s commission to function as a peace officer to enforce state laws is not realistic. The commission authority bestowed by the Chief under Section 29-1-11, to a tribal, pueblo or BIA officer should remain a privilege and not turned into a property right in either the tribe or the non-employee tribal or pueblo officer. Therefore, DPS believes that Section C. (3) of SB 33/cs should remain the same as it currently exists in Section 29-1-11 C.

Cross-Commissioning Agreements. DPS recommends several modifications to and additions to the terms of these agreements as described in Section C. First, DPS believes that Section C (4) should be modified to apply when “in the opinion of the chief”, there is a material breach of a commissioning agreement. Additionally, DPS suggests these provisions should be included in the statutory conditions:

- (9) the commission issued to any tribal or pueblo officer by the chief shall automatically terminate upon the termination of the officer’s employment with the tribe or pueblo by whom the officer was employed at the time the commission was issued;
- (10) the commission issued to any tribal or pueblo officer by the chief shall automatically be suspended upon the occurrence of any of the following:
 - (a) the officer’s transfer or reassignment out of the area which is coextensive with the exterior boundaries of the tribe or pueblo’s reservation or pueblo;
 - (b) the officer’s arrest, indictment on a charge or conviction of a felony;
 - (c) the finding by a licensed physician or certified psychologist that the officer is not free from a physical, emotional or mental condition which may adversely affect the officer’s performance as a peace officer .
- (11) the tribe or pueblo will notify the chief of the New Mexico state police of the existence of any grounds, including but not limited to those in (9) and (10) above for the termination or suspension of an officer’s commission no later than three business days after the tribe or pueblo learns of the grounds;
- (12) the chief of the New Mexico state police will provide written notice to the tribe or pueblo of the denial, suspension or termination of a commission and shall state the reason therefor. The decision of the chief to deny, suspend or terminate the commission, whether temporarily, indefinitely or permanently is final and not subject to appeal; and
- (13) any other provision or condition deemed necessary by the chief to implement the cross-commissioning agreement.

ADMINISTRATIVE IMPLICATIONS

DPS notes that in order to properly determine eligibility under SB 33/cs, the Certification Board will need to have all data (for each licensee) related to certification / basic training status and completion, evidence of completion of in service and annual training including firearms qualification. At present those items are not required to be reported to the NMLEA for either tribal or federal police officers, and are not searchable relative to compliance, or noncompliance with same.

TECHNICAL ISSUES

Page 1, line 14: the phrase “LIMITING STATE AND LOCAL LIABILITY” continues to appear in the title of this substitute bill, yet it contains no provisions regarding these topics.

Page 2, line 5: As of July 1, 2023, which is also the effective date of this bill, the name of the licensing board changes to the law enforcement certification board. See Section 29-7-7(C).

Page 11, lines 13-15: DPS suggests the phrase “or a state-commissioned employee of a police department of an Indian nation, tribe or pueblo” be replaced with “or an officer commissioned by

an Indian nation, tribe or pueblo and also commissioned by the chief of the New Mexico state police in accordance with Section 29-1-11, NMSA 1978.”

AMENDMENTS

DPS recommends Section B of SB33/SIRCS be replaced with

The chief of the [NMSP] shall issue commissions as New Mexico peace officers to enforce state laws, including the power to make arrests for violations of state law to tribal or pueblo officers commissioned by their respective tribes or pueblos and certified by the New Mexico law enforcement academy or a basic law enforcement training program approved by the New Mexico law enforcement academy and who have completed all other requirements for receiving a commission set forth in the cross-commission agreement executed by the Chief and the tribe or pueblo, unless the Chief in the exercise of the Chief’s discretion determines that grounds exist for denying the commission. The thirty days will begin to run from the day after the commissioning, certification or completion by the officer or the tribe of any other requirements for the commissioning of the officer set forth in the agreement executed by the Chief and the tribe or pueblo, whichever occurs last.

MD/al/hg