

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Vigil DATE TYPED 2/14/05 HB 664/aHJC

SHORT TITLE Scientific Personnel for DWI Prosecutions SB _____

ANALYST Collard

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|---------|-----------------------------|------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | \$115.0 | | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Public Defender Department (PDD)
 Department of Health (DOH)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 664 was made to clarify the language and has no impact on the intent of the original bill, which provides additional operational chemists to train law enforcement personnel for improved prosecution of DWI offenders.

Synopsis of Original Bill

House Bill 664 appropriates \$115 thousand from the general fund to the department of health for the purpose of hiring operational chemists to train law enforcement personnel for improved DWI prosecutions.

Significant Issues

The Scientific Laboratory Division (SLD) of DOH is responsible under the State Implied Consent Act to train and certify law enforcement officers of New Mexico in the use of breath alcohol testing instrumentation.

In contrast to the prosecution of alcohol-impaired drivers, for whom a per se blood alcohol level of 0.08g/dl percent is sufficient for conviction, a conviction of driving while impaired for drugs other than alcohol requires proof of causal drugs in the individual's blood, and the relating of these drugs to impaired behavior/performance of the driver under suspicion. Because of this, it is important that law enforcement officers complete their police reports in such a manner and with sufficient detail that, at trial, the expert witness for the prosecution can relate the physical toxicology findings with the performance of the driver as reported by the arresting officer. Previous continuing education sessions offered by SLD toxicologists and operational chemists have improved the utility and effectiveness of the law enforcement report at trial.

FISCAL IMPLICATIONS

The appropriation of \$115 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 shall revert to the general fund.

According to the Family Groups and Pay Schedule produced by the State Personnel Office on January 3, 2004, an operational chemist has a pay range from \$27,190 per year to \$48,335 per year. The \$115 thousand appropriated in this bill would allow three chemists to be hired at a mid-point salary of \$37,762 per year. However, DOH indicates the funding provided by this bill would enable SLD to hire two (2) operational chemists to provide training to law enforcement officers for one year

ADMINISTRATIVE IMPLICATIONS

DPS recommends the training be accredited through the DPS New Mexico Law Enforcement Academy Training and Recruiting Division.

RELATIONSHIP

DOH indicates House Bill 664 relates to House Bill 667 that proposes to appropriate \$553 thousand in recurring general funds to SLD for the purpose of purchasing state-of-the-art breath testing instruments to replace those currently used by SLD and provided by to law enforcement agencies throughout the state.

OTHER SUBSTANTIVE ISSUES

The Public Defender Department notes the problems with officer testimony has generally not been in the area of chemical analysis, but rather unscientifically based biological tests.

DOH notes many police officers have not been adequately trained as to how to structure their reports on the arrest to provide the maximum assistance to the assessment of performance by the toxicologist who must, at the time of trial, link the physical findings with the behavior of the alleged offender. Continuing education by the toxicologists and operational chemists at SLD has been offered sporadically in the past due to resource limitations. Training does significantly improve the utility and effectiveness of the law enforcement report at trial.

These continuing education sessions for law enforcement officers have occurred only occasion-

ally and not at all in the current year due to an increasing workload in the Toxicology Bureau of SLD. Providing additional resources to support these training sessions would benefit the DWI initiative of the state.

The ability to hire operational chemists to provide training to law enforcement on the documentation of drug-impaired behavior of motorists officers would improve the ability of prosecutors to successfully prosecute DWI cases involving drugs other than alcohol, because the arrest report would better enable the expert witness to link laboratory results with behavioral signs of impairment, proving impairment beyond a reasonable doubt.

ALTERNATIVES

DPS suggests the money flow through DPS New Mexico Law Enforcement Academy Training and Recruiting Division to facilitate and coordinate the related training.

KBC/lg:yr