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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/09
 LAST UPDATED 02/20/09 HB 26/aHTPWC

SPONSOR Rehen

SHORT TITLE Arrests by Non-salaried Peace Officers SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)\$0.1

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)

Attorney General's Office (AGO)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HTPWC Amendment

House Transportation and Public Works Committee (HTPWC) amendment clarifies that a commissioned officer making an arrest for violating the Motor Vehicle Code must be wearing a uniform clearly indicating the officers official status and "working under the supervision of the officer's agency."

Synopsis of Original Bill

House Bill 26 amends Section 66-8-124 NMSA 1978 that portion of the law requiring arrests to be made only by "commissioned salaried" police officers so that "commissioned" non-salaried police officers could make arrests.

SIGNIFICANT ISSUES

Regarding the HTPWC amendment, the Attorney General's Office notes:

Assuming a non-salaried officer is nonetheless engaged in activity as a "peace officer" or "law enforcement officer," the HTPWC amendment would not resolve the legal issues we earlier identified in analyzing the initial bill. For ease of reference, we re-state our earlier analysis as follows:

The bill appears to attempt to grant part-time and volunteer officers who have been commissioned, such as the Mounted Patron or “reserve officers” greater authority.

An issue exists whether non-salaried law enforcement officers would be afforded the protections and coverages under the Tort Claims Act, NMSA 1978, Sections 41-4-1 to -29, and, if so, the capacity in which they would be covered. Also, an issue exists whether the Tort Claims Act waives immunity with respect to such officers’ conduct that would ordinarily be waived for conduct of law enforcement officers. The following statutes are implicated:

The definitions at Section 41-4-3:

D. “law enforcement officer” means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes

F. “public employee” means any officer, employee or servant of a governmental entity ...and including:

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation

The “law enforcement waiver” at Section 41-4-12 provides: “The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for [describing various acts or conduct].”

The term “law enforcement officer” is used in statutes of the Motor Vehicle Code pertaining to “blood alcohol content” or “breath” testing of suspected DWI offenders. See Sections 66-8-107, 66-8-111, 66-8-111.1. The term “law enforcement officer” is used in connection with required reports of accidents. See Section 66-7-207. The Motor Vehicle Code, at Section 66-1-4.20, uses the term “law enforcement officer” to mean a “salaried” officer. Also, Section 66-8-125 (A) provides: “Members of the New Mexico state police, sheriffs and their salaried deputies and members of any municipal police force, may arrest without a warrant any person....”

Other statutes and New Mexico Supreme Court Rules governing criminal procedure use or define the terms “law enforcement officer” or “peace officer” to mean a “salaried” officer. See Section 29-4A-3 (Peace Officer’s Survivors Supplemental Benefits Act); Section 31-1-2 (F) (definitions for purposes of the Criminal Procedure Act); Section 35-6-3 (magistrate court costs); Section 57-30-2 (F) (Sale of Recycled Metals Act).

The New Mexico Supreme Court’s Rules pertaining to criminal procedure use the term “law enforcement officer” to mean “salaried” officer. See Rules 5-207, 5-210, 5-211, 6-206, 6-208, 7-205, 7-206, 7-208, 8-205, and 8-207.

According to the Attorney General’s Office, the bill appears to attempt to grant part-time and volunteer officers, who have been commissioned, such as the Mounted Patrol or “reserve officers”, greater authority. An issue exists whether non-salaried law enforcement officers would be afforded the protections and coverages under the Tort Claims Act, NMSA 1978, Sections 41-4-1 to -29, and, if so, the capacity in which they would be covered. Also, an issue exists whether the Tort Claims Act waives immunity with respect to such officers’ conduct that would ordinarily be waived for conduct of law enforcement officers. The following statutes are implicated:

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OTHER SUBSTANTIVE ISSUES

The Department of Public Safety reports that the current statute denotes a “salaried” peace officer. The term “salaried” creates a problem as a defense attorney could argue that the reserve officer is a not a salaried peace officer therefore the arrest is not legal.

AMENDMENTS

It may be important to add language to HB 56 to reflect that salaried and non-salaried peace officers would be covered as “law enforcement officers” for purposes of the Tort Claims Act and also to amend those other statutes that are implicated by HB 56’s purpose and that contain the qualifying language “salaried” by adding the language “salaried or non-salaried” where pertinent.

Only the New Mexico Supreme Court can amend its rules.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If non-salaried police officers were not able to make these arrests, arrests would likely still be made though perhaps not in as timely a manner.

DL/mt