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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 28

SHORT TITLE Reserve Officer Act SB \_\_\_\_\_

ANALYST Chabot

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$450.0	\$160.0	\$565.0	\$165.0 Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)  
 Department of Public Safety (DPS)  
 Municipal League (ML)

### SUMMARY

#### Synopsis of Bill

House Bill 28 creates a certification program for Reserve Officers and authorizes certified Reserve Offices to perform law enforcement activities.

### FISCAL IMPLICATIONS

DPS provides the following analysis of implementing costs: “The bill requires the creation of new NMAC [New Mexico Administrative Code] reserve officer rules in the areas of reserve officer standards for basic certification, standards for maintenance of reserve certification, identify funding for the development of a contract for an independent contractor to complete a statewide job task analysis for reserve officers, design /development of reserve curriculum for basic certification, and the design/development of reserve curriculum for a biennial in-service training program. This would require a significant funding commitment involving a contractual funding source for the job task analysis, the amount of which is yet to be determined but is estimated to be \$250,000. In addition, maintenance of the new certification process would require a minimum of two FTE positions, one FTE for the administrative support of the new program and one FTE for instructor support of the program in DPS/TRD. The resources required to develop and maintain the Reserve Officer Act currently do not exist within DPS/TRD. This would add an additional \$160K in recurring costs.”

The Municipal League suggests the bill may increase the cost of Law Enforcement Liability Coverage to localities establishing reserve officer programs.

## **SIGNIFICANT ISSUES**

AGO questions the intent of the phrase “when working with supervision from a full-time” on-duty officer. (Section 4, page 3, line 21). Supervision can be close with the on-duty officer on site or an individual back at the office monitoring a situation.

DPS provided an extensive analysis as follows:

“This bill would result in reserve officers achieving equivalent certification, power and authority of regular full-time officers with 324 fewer hours of training.

The lack of definition of the content of what training topics the 500-hour training curriculum will consist of for reserve officer certification is a significant issue. The current minimum standard of training for certification of law enforcement officers that has been established by the NMLEA Board is 824 hours. This 824-hour curriculum is based on a job task analysis completed on the duties and responsibilities of a police officer in New Mexico.

The NMLEA Board would be required to identify the training topics to be eliminated by this bill. The concern is that there is not currently a reserve officer job task analysis upon which this 500-hour standard has been based and therefore DPS/TRD is not in a position to support the sufficiency of the 500 hour requirement. This is also in conflict with NMAC Rule 10.29.9.8 which requires an 824 hour curriculum for basic certification.

The next area of concern relates to the language of the bill in Section 3, Paragraph E. This language “...*has not received a dishonorable discharge from any of the armed forces of the United States;*” is inconsistent with the language in existing state statute 29-7-6 NMSA, “...*has not been released or discharged under dishonorable conditions from any of the armed forces of the United States.*”

The next area of concern relates to the vagueness of Section 3, Paragraph F. Under 29-7-6-A (5) & (6) NMSA, and section 10.29.1.10.A (5) & (6) NMAC, the statute and rules requires that a police officer must be examined by a licensed physician and by a certified psychologist. This section of the bill does not specifically require a medical or psychological exam. The section should duplicate the same language as in statute 29-7-6 in order to ensure that a full medical exam and psychological evaluation is completed on each reserve officer.

In Section 3, consideration could be given to including a statement about domestic violence convictions and exclusion if convicted.

The next area of concern relates to the language of the bill in Section 5, Paragraph B. This language states that the reserve officer training program “...*may be taught at a location designated by the head of a local law enforcement agency.*” This conflicts with the authority of the NMLEA Board. Under 29-7-7-H, only a state training facility can deliver a program of basic law enforcement certification and it must be certified by the director and approved by the board. It is also in conflict with NMAC Code under section 10.29.5 which establishes the process of approval of regional training facilities. The purpose of this requirement is to ensure that the

highest quality of training is delivered by certified staff and that the facility has the appropriate classrooms, equipment, driving track, firearms range, obstacle course, and defensive tactics training area.

Under Section 5, Paragraph C, the reserve officer standard is set at 50% of that of a certified officer. This does not seem reasonable when they are expected to do essentially perform the same job as a certified officer. Reducing the physical standard for a reserve officer is a safety issue for other officers and the public.

The next area of concern relates to the language of the bill in Section 6, Paragraph A, establishing a waiver process for achieving reserve certification. This language conflicts with the similar existing certification by waiver rule under 10.29.6 (NMAC). The conflict is substantial. Under existing NMAC rule, 10.29.6.8(A), *“In order to be eligible for certification by waiver of basic training, such applicants shall be required to successfully complete a 120-hour certification by waiver of previous training program in order to demonstrate proficiency.”*

The first concern is that a reserve officer applicant that would not be required to meet this 120 hour training requirement to achieve a certification which otherwise is required of all other certification by waiver applicants.

Under existing NMAC rule, 10.29.6.9, *“Any applicant who has not been employed as a full-time law enforcement officer for a period in excess of eight (8) years must attend the basic police officer training program to become certified.”*

The second concern is that a reserve officer applicant that would not be required to meet this training requirement to achieve a certification which otherwise is required of all other applicants. Using the “director’s opinion” as the standard on whether or not to waive the basic training program too subjective.

The next area of concern relates to the language of the bill in Section 6, Paragraph B. This language establishes a process and activity that based on our past experience with the Officer Transition, program is extremely labor intensive and is in conflict with NMAC Rule 10.29.8.

The concern is that under existing NMAC Code 10.29.8.20, it does not allow credit for *“...all law enforcement training received...”* it only allows credit for completing a *“...non-accredited police officer basic training academy* and it only allows this *“...until 1/01/12.”* The bill’s language allows a reserve officer applicant to be eligible for training credit for past training not allowed under 10.29.8.20.

The next area of concern relates to the language of the bill in Section 6, Paragraph C. This language allows *“A person who began service as a reserve officer prior to July 1, 2012 may be exempted from the basic law enforcement training program at the director’s discretion.* This represents a major concern as it enables certification in violation of the standards established under 29-7-6 NMSA, and NMAC Codes sections 10.29.8 and section 10.29.9. Using the “director’s opinion” as the standard on whether or not to waive the basic training program is subjective.

The next area of concern relates to the language of the bill in Section 7, Paragraph A. This language states that “*The board shall develop in-service law enforcement training courses for reserve officers...*”

This section and language is a concern because it separates and establishes a separate requirement from what has already been established under 29-7-7.1 NMSA and 10.29.7 NMAC for all other certified law enforcement officers. The section should simply reference 29-7-7.1 as the in-service training standard.

The next area of concern relates to the language of the bill in Section 4, Paragraph A. This language states that the reserve officer shall have full powers “*...when working with supervision from a full-time salaried on-duty certified police officer.*” The bill does not provide a definition of what is meant by “*working with supervision.*” Without a legal definition, agencies would be free to determine what this “supervision” means and there would be no method to standardize and ensure consistency in its application. Example: One agency may determine that supervision means that there is a certified officer on duty somewhere in the jurisdiction, but the reserve officer works and responds independently to calls, while another agency may require the reserve officer to physically be with the certified officer on all calls for service.”

## **PERFORMANCE IMPLICATIONS**

DPS contends “absent additional funding, the efficiency and effectiveness of DPS/TRD would be severely and negatively compromised. Current operations, staffing, and available resources are already straining in meeting statutory requirements.”

## **TECHNICAL ISSUES**

AGO expresses Section 3(H) and Section 6(A) use the phrase “basic” training program, which can be confused with the same term in Section 29-7-7(B) NMSA 1978 for law enforcement officers.

DPS advises the bill has conflicts with Chapter 29-7 NMSA 1978 and the New Mexico Administrative Code 10.29.1, 10.29.7, 10.29.8 and 10.29.9.

## **OTHER SUBSTANTIVE ISSUES**

AGO and the municipal question the level of fitness that would be required for reserve officers be less than for active officers. The risk and exposure could be the same so the fitness requirements should also be the same to reduce Tort Claims Act file on behalf of officers and against the state when an officer gets hurt or suffers a medical conditions.

GAC/amm