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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR Trujillo, CA LAST UPDATED 02/20/13 HB 306/aHHGIC

SHORT TITLE Deputization of Tribal Officers SB _____

ANALYST Chenier/Pahl

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)

Administrative Office of the Courts (AOC)

Administrative of the District Attorneys (AODA)

SUMMARY

Synopsis of HHGIC Amendment

The House Health, Government and Indian Affairs Committee (HHGIC) amendment makes three changes to House Bill 306. First, the amendment eliminates a potential training redundancy by not requiring each applicant for a commission to complete the 400 hours of training if they have already completed that training or equivalent training to that of a deputy sheriff in the commissioning county (per the IAD, see *technical issues*). Second, the HHGIC amendment also more concisely conveys the boundaries of the Navajo reservation (per the AOC, see *technical issues*). Lastly, the amendment changes HB 306 so that it will not affect duly-approved existing cross-commission agreements (per the IAD, see *significant issues*)

Synopsis of Original Bill

House Bill 306 (HB 306) creates a new statute, and amends existing statutes, related to the commissioning of the members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs.

Section 1 of HB 306 creates a new section in Chapter 4, Article 41 NMSA 1978, the statutes that address the authority of county sheriffs. The new section gives sheriffs the authority to issue commissions as deputy sheriffs to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs. Once commissioned, the officers will have all the powers of deputy sheriffs to enforce state laws in New Mexico, including the power to make arrests for violations of state laws. The procedures to be followed in issuing and revoking commissions, and the respective rights and responsibilities of the offices or departments shall be set forth in a written agreement to be executed between the sheriff and the Indian nation, tribe or pueblo or the appropriate federal official, and shall contain the conditions set out in HB 306. The language in Section 1 of HB 306 mirrors the language of the existing statute that gives the chief of the New Mexico state police the authority to issue commissions as New Mexico peace officers to members of the of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs.

Section 2 of HB 306 amends Section 4-41-10 NMSA 1978 which addresses the right of sheriffs and deputy sheriffs to carry arms. It adds Subsection D to recognize that the commissioning as a deputy sheriff of members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs is governed by Section 1.

Section 3 of HB 306 makes minor style changes to Section 29-1-11NMSA 1978, the statute setting out a process under which the chief of the New Mexico state police may issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs. Section 3 of HB 306 also amends Subsection G of the statute to recognize that the commissioning as a deputy sheriff of members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs is governed by Section 1. The amendment removes language that recognized the same deputization authority under Chapter 4, Article 41, NMSA 1978, which addresses the authority of county sheriffs.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) provided the following:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The Indian Affairs Department (IAD) provided the following:

In regard to the State-Tribal Collaboration Act, the IAD is unaware of any collaboration efforts prior to the introduction of this bill, such that it appears that tribal communities have had no input on HB 306.

The Navajo Nation currently has cross-commission agreements with McKinley County and Socorro County and is close to finalizing a cross commission agreement with Cibola County. HB 306 makes no reference to its effect on existing county-tribal cross-commission agreements. The bill could be seen as overriding the negotiated provisions in these existing agreements and imposing new requirements in their place. These agreements authorize Navajo Nation police officers to exercise their county commissions throughout the territory bounded by each respective county.

This authorization allows the Nation's officers to deal immediately with an offense wherever in the county it happens and whether the offender is Indian or non-Indian. This also enables more immediate and effective law enforcement responses without delays that would otherwise be caused by an officer first having to deduce whether he or she would be acting within proper jurisdictional boundaries. HB 306, as introduced, would severely restrict the territory throughout which the Nation's officers could exercise their county commissions, including areas in McKinley and San Juan Counties that are primarily populated by Navajo Nation tribal members.

Section 1(C)(3) of the bill states, "the sheriff shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the sheriff's discretion." This language can be troublesome because it is so broad. Under HB 306, the sheriff can terminate or suspend the cross commission agreement *for reasons solely within the sheriff's discretion*. It appears that the sheriff would not need to consult or collaborate with the Tribal, Nation, or Pueblo police departments or the Tribe, Nation, or Pueblo itself. It is recommended by the IAD that the bill include language regarding collaboration or consultation with the Tribe, Nation, or Pueblo police department or Tribe, Nation, and Pueblo before the sheriff can unilaterally suspend or terminate the agreement.

The bill requires tribal officers to complete four hundred hours of basic police training before receiving county commissions. It is unclear whether this requirement would be in addition to training the Nation's officers have already completed to receive state police commissions (Under Section 29-1-11) or in addition to the training required to receive the Navajo Nation's own commissions.

The Administrative Office of the District Attorneys (AODA) provided the following:

New Mexico law enforcement officers must address complicated issues of tribal sovereignty and jurisdiction. See, for example, the discussion in *State v. Harrison*, 2010 NMSC 38 (N.M., 2010). One way to simplify the issues is cross-commissioning tribal/federal and state law enforcement officers. Section 29-1-11 sets out the authority and procedure for cross-commissioning for state police; HB 306 mirrors that authority and procedure for cross-commissioning for deputy sheriffs.

TECHNICAL ISSUES

The AOC provided the following:

We do note that the description of the exterior boundaries of the Navajo reservation is different than in the current law that addresses DPS's cross commission. HB 306 omits

an entire paragraph that exists in current law at Section 29-1-11C(8) NMSA 1978 which excludes such municipalities as Cuba, Gallup, Thoreau and Prewitt and other communities in the checkerboard areas.

The IAD provided the following:

Section 1(C)(3) of the bill states, “the sheriff shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the sheriff’s discretion.” This language can be troublesome because it is so broad. Under HB 306, the sheriff can terminate or suspend the cross commission agreement *for reasons solely within the sheriff’s discretion*. It appears that the sheriff would not need to consult or collaborate with the Tribal, Nation, or Pueblo police departments or the Tribe, Nation, or Pueblo itself. It is recommended by the IAD that the bill include language regarding collaboration or consultation with the Tribe, Nation, or Pueblo police department or Tribe, Nation, and Pueblo before the sheriff can unilaterally suspend or terminate the agreement.

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ALTERNATIVES

The IAD provided the following:

The bill could be amended clarify that it would not affect duly-approved existing cross-commission agreements. The bill could be amended to include additional collaboration with tribes. The bill could be amended to clarify the training requirements for commissioning.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The IAD provided the following:

Tribes and counties would continue to be able to negotiate the terms for cross commissioning agreements, including territorial scope of the commissions, what training is necessary to gain commissions, and so on. Tribal cross commission agreements that are currently in place will continue uninterrupted.

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