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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/28/2016

**SPONSOR** Ruiloba **LAST UPDATED** \_\_\_\_\_ **HB** 239

**SHORT TITLE** Law Enforcement Fund for Officer Retention **SB** \_\_\_\_\_

**ANALYST** Rogers

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NF	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 119  
Replaces SB 117

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

#### Responses not Received From

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

This bill amends the Law Enforcement Protection Fund (LEPF) Act to allow counties and municipalities to use LEPF funding to make lump-sum payments to retain law enforcement officers who are eligible to retire. The ability to make these lump-sum payments is effective until June 30, 2021. The amended language in the bill would also require that the county or municipality match the retention payment amount. The retention lump-sum payments would not constitute base salaries or wages or be considered for determining Public Employees Retirement Act (PERA) pensions.

### FISCAL IMPLICATIONS

According to the DFA, there is no fiscal impact to the LEPF of the general fund, to which LEPF balances revert annually, because this bill does not amend sections of the LEPF Act that

determine the distribution amounts to which county sheriff and municipal police departments are entitled.

DFA also states that the new section in the bill would provide an additional expenditure allowance. Counties and municipalities that request to use LEPF funding for lump-sum retention payments would have less of their LEPF distribution to expend on other allowable uses under current law, such as the purchase and repair of law enforcement apparatus and equipment and expenses associated with advanced law enforcement training.

DPS states that there is no apparent fiscal impact as a result of the bill. The bill requires the continued payment of employee and employer pension plan contributions to PERA during re-employment, which is currently the case for current law enforcement personnel.

### **SIGNIFICANT ISSUES**

In response to a similar bill, SB 117, the State Personnel Office (SPO) referenced a 2004 Advisory Letter from the Attorney General which states that “a retroactive bonus or retroactive one-time salary increase is prohibited by the New Mexico Constitution.” The letter also states that “employees may only be paid a bonus if paid prospectively for future services. In other words, employees may be paid a one-time salary increase or bonus if the one-time salary increase and bonus, and the specific criteria for receiving it, were agreed to before the services were rendered and if the employee did not, going forward, meet those criteria, they would have earned the bonus and not been eligible to receive it.” (Attorney General Advisory Letter #2004 WL 1988102 N.M.A.G)

DFA believes that the use of LEPF for lump-sum retention payments places additional strain on the LEPF’s availability to accommodate other authorized uses.

DFA also described that, due to the uncertainty in the amount of annual revenue received by the LEPF, which depends on the business activity in certain types of insurance, as well as the amount required to be transferred directly into the Peace Officer’s Survivor’s Fund, the amount available to fund these types of payments may vary from year to year.

Current law allows DFA, Local Government Division to reduce allocations if there is insufficient fund balance to permit for the total allocations provided in the LEPF Act. This could also affect the amount available for lump-sum retention payments.

DFA also confirmed with Public Employees Retirement Association (PERA) that the provisions of the bill are consistent with PERA retirement plan stipulations.

DPS stated that the department would realize a higher positive fiscal impact if it were permitted to rehire retired officers, as DPS would not have to train new officers. It costs DPS approximately \$50 thousand to train a new officer. Rehiring an officer who already has graduated from a law enforcement academy and spent a career as an officer would result in substantial savings. If DPS had 20 or 30 “hire-backs,” the fiscal savings would be well in excess of \$1 million.

**ADMINISTRATIVE IMPLICATIONS**

If this bill is enacted, the DFA Local Government Division (LGD) will have to develop a process for counties and municipalities to submit their request to use LEPF funding for lump-sum retention payments. This review process will involve verifying the additional requirements in Section 29-13-7A(7) NMSA 1978. While LGD currently verifies officer certification with the Department of Public Safety, it will also need to verify with PERA the years of service credit for the affected officers. In addition, LGD will need to obtain information from the requesting counties and municipalities to as to whether the affected officers are performing patrol duties and if the lump-sum retention payments are being matched with other local funds.

LGD would also be required to update the LEPF Rule, 2.110.3 New Mexico Administrative Code, to include the additional allowable expenditure included in this bill.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB 119 and realtes to SB 117.

TMR/jle