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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2021  
 SPONSOR Rehm LAST UPDATED 2/11/2021 HB 61  
 SHORT TITLE Reserve Police Officer Act SB \_\_\_\_\_  
 ANALYST Rabin

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$631.1	\$1,161.5	\$1,792.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Public Safety (DPS)  
 Attorney General’s Office (NMAG)

### SUMMARY

#### Synopsis of Bill

House Bill 61 would enact the Reserve Police Officer Act and provide an option for local governments to commission reserve police officers. The Act authorizes governments to commission reserve police officers, with the powers of a police officer, when under supervision from a full-time salaried on-duty certified police officer, although only for the scope and duration of the reserve officers’ specific assignments. Entities that commission reserve officers must submit quarterly reports to the Director of the Law Enforcement Academy on each reserve officer. The act does not affect a sheriff’s power to issue special deputy commissions.

This bill offers reserve officers nearly all of the authority that standard police officers have while reducing the requirements compared to police officer requirements. Currently the mechanism for certifying officers so that they can be commissioned is through the New Mexico Law Enforcement Academy (NMLEA), which includes the Law Enforcement Academy Board (the board).

The bill defines the qualifications, fitness, training, and licensure requirements a candidate for reserve commission must possess.

The act also amends the following statutes:

- The Criminal Procedure Act by adding “commissioned reserve police officer” to the list of officers vested with the duty to maintain public peace.
- The statute governing Magistrate Courts (Sec. 35-6-3, et seq.) by including reserve officers among those exempt from paying costs in advance for filing a complaint in a criminal action.
- The Tort Claims Act by including commissioned reserve officers in the definition of “law enforcement officer.”
- The Motor Vehicle Code, in the sections limiting arrest for a misdemeanor motor vehicle violation to officers in uniform, or providing for arrest without a warrant in certain situations.

The effective date of this bill is July 1, 2022.

The bill was endorsed by the interim legislative Courts, Corrections and Justice Committee.

### **FISCAL IMPLICATIONS**

There is a significant fiscal impact on DPS as a result of this bill. DPS explains that because there are currently no statutory regulations for municipal or sheriff departments’ reserve officer programs, the program in its entirety would need to be established and developed. Without additional funds, DPS states NMLEA and the board would be extremely limited in their capacity to provide for the effective implementation of the elements of this bill.

HB61 requires NMLEA, in conjunction with the board, to establish multiple levels of licensure for reserve officers, with clearly defined duties at each level. In addition to creating these levels, DPS notes it would subsequently need to conduct a job task analysis for reserve officers, create a training curriculum, develop an instructor-level curriculum to meet the new training requirements, promulgate regional reserve officer basic training academy standards and regulations, established an unknown number of regional reserve officer basic training academies, and increase staffing for oversight of reserve officer basic training academies.

DPS estimates successful implementation of HB61 would require six full-time Law Enforcement Academy Instructors starting in FY22 at a cost of \$631.1 to develop the curriculum prior to the bill taking effect at the beginning of FY23. If the bill is passed, NMLEA plans to conduct two reserve police academies with 60 cadets each during FY23 at an estimated cost of \$619.1 for instructors and \$542.4 for two classes.

DPS also notes that because there are currently no requirements for employment or separation of reserve officers to be reported to the board, which makes it difficult to establish the total number of reserve officers to which this bill would apply; therefore, it is difficult to do more than estimate the bill’s fiscal impact.

### **SIGNIFICANT ISSUES**

DPS expresses concerns that the requirements of HB61 might lead to underperforming or untrained reserve officers acting with the full authority of certified law enforcement. The bill

would allow reserve police officers to obtain commissioned status without requiring them to complete the minimum required training as full-time law-enforcement officers; DPS notes that the bill mandates one level of reserve officer license allow an officer to work independently with no more than 500 hours of training, compared with 656 hours currently required for certified police officers to work independently, that the physical fitness level standards for this level of license would be lower than those currently required of certified officers, and that the in-service training requirements for reserve officers would be lower than those required for certified officers. DPS states this gap in standards and training will lead to potentially underqualified people being given full authority to act as certified and commissioned police officers, possibly without the supervision of full-time commissioned officers.

DPS also expresses concerns that the bill would allow current reserve police officers to be exempted from training requirements and would exempt retired officers from any reserve officer training, with no time limitations or consideration of the circumstances under which they retired.

The Attorney General’s Office (N MAG) notes that the provision of Subsection G of Section 5 providing for reserve police officers to complete “fewer hours of in-service law enforcement training courses prescribed by the board every two years than is required for certified police officers” is inconsistent with the Law Enforcement Training Act, which itself sets biennial in-service training requirements. While HB61 presumes that the board sets the hour requirements, this is actually set by statute. To provide clarity, N MAG suggests Subsection G of Section 5 either explicitly set the hour requirement or state “prescribed by the Law Enforcement Training Act” instead of “the board.”

## **PERFORMANCE IMPLICATIONS**

DPS notes that the Law Enforcement Academy Board currently does not have the funding for staffing to create what could amount to an estimated 33 percent increase in certified officers to track, academy classes to process, satellite training academies to audit, and reserve officer basic academy training to provide.

## **TECHNICAL ISSUES**

Subsection A of Section 4 of HB61 states that a reserve police officer “shall have the powers of a police officer when working with supervision from a full-time salaried on-duty certified police officer.” However, Subsection B of Section 5 states that one level of licensure for reserve police officers shall “provide that the reserve police officer is qualified to work independently”. “Supervision” is not defined, making it difficult to determine how an officer can both be working with supervision and working independently, or if these provisions are in conflict.

N MAG notes the following additional technical issues:

Section 5(I)’s requirement that each governmental entity report quarterly to the Law Enforcement Academy Director as to the “status” of all of its reserve police officers (see page 6, lines 2-6) may be ambiguous, as the word “status” is not defined.

Section 7(A) provides that the Law Enforcement Academy Board may suspend or revoke a reserve police officer license for a number of specified reasons only “[a]fter consultation with the commissioning governmental entity as defined in the Tort Claims

Act” (page 7, lines 1-5). This is also ambiguous as to the role of the commissioning governmental agency. The bBill should clarify the form of this obligatory consultation.

One of the sentences in Section 5(G) is phrased awkwardly, positioning the in-service training course as the subject rather than the object of the sentence. That sentence currently reads: “The first in-service training course shall commence no later than twelve months after graduation from the initial law enforcement training program.” To provide clarity, it could be rephrased as: “Each reserve police officer shall enroll in and commence study in the first in-service training course no later than twelve months after graduation from the initial law enforcement training program.”

Section 5(D)(2) provides that the Law Enforcement Academy Director must waive the training required to be a licensed reserve police officer for “an applicant who... is a retired certified police officer.” This raises ambiguity as to whether such an applicant must be a *currently*-certified police officer or whether any *formerly*-certified police officer qualifies for this waiver. Presumably, the bill is intended to apply to formerly-certified officers, but if that is the case it should so state.

Throughout Section 5, and particularly on pages 4 and 5 and subsections D, E, and F, the Act uses language about the waiver of training requirements that fails to distinguish between the training required for initial licensure and subsequent in-service training for licensees. For example, Section 5(E) states that the Director may exempt an individual already commissioned as a reserve police officer prior to July 1, 2021, from “the law enforcement training required by the Reserve Police Officer Act.” Presumably, this means the training required for initial licensure, but it is not clear and should be clarified.

Both DPS and NMAG note that while reserve police officers under the proposed Reserve Police Officer Act would be “licensed,” law enforcement officers under the existing Law Enforcement Training Act are “certified,” a potentially confusing difference in terminology.

## **OTHER SUBSTANTIVE ISSUES**

NMAG notes the following:

The various provisions of Section 5 vary with respect to the entity responsible for granting applications for licensure as reserve police officers. Although the Law Enforcement Academy Board would grant and deny applications, see Section 5(A), the Law Enforcement Academy Director would have unilateral authority to waive the law enforcement training required on the part of new applicants. See sections 5(D) and (E). Thus, the Board is responsible for granting applications, but not responsible for waiving training requirements.

The Act’s grant of authority to the Director to exempt an individual already commissioned as a reserve police officer prior to July 1, 2021, from training requirements is very broad, simply stating that this decision would be made “at the director’s discretion” (p.5, l. 10). This may create confusion as far as what factors the Director might consider in making such a decision.

**ALTERNATIVES**

DPS suggests law enforcement agencies could hire certified law enforcement officers who are not otherwise employed in a part-time capacity.

ER/rl