

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR Dixon/Gallegos/Rehm **ORIGINAL DATE** 1/28/2022 **LAST UPDATED** _____ **HB** 141
SHORT TITLE Enhance Law Enforcement Death Benefits **SB** _____
ANALYST Rabin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
NFI	(\$12,458.6)	(\$13,987.9)	Recurring	General Fund
NFI	\$3,277.1	\$4,806.4	Recurring	Peace Officers Survivors Fund

(Parenthesis () Indicate Revenue Decreases)

Conflicts with House Bill 100
 Duplicates Senate Bill 3

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Municipal League
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 141 increases distributions from the law enforcement protection fund (LEPF) for municipal, county, university, school district, and tribal law enforcement agencies; increases benefits for law enforcement officers killed in the line of duty; and redirects all remaining balances in the LEFP from the general fund to the peace officers', New Mexico mounted patrol members', and reserve police officers' survivors fund (peace officers' survivors fund, or POSF).

HB141 increases the per-department distributions from the LEPF for university police departments from \$45 thousand to \$95 thousand; analysis from the Municipal League states the bill's intent is to also increase per-department distributions for municipal police departments, county sheriff's offices, and school district police departments from \$45 thousand to \$95

thousand, and their exclusion in the current version of the bill reflects a drafting error that will be rectified by a forthcoming amendment.

HB141 further increases the per-officer distributions from the LEPF for municipal police departments, county sheriff's offices, school police departments, and tribal police departments from \$1,000 to \$1,500, and increases the per-officer distribution for school resource officers employed by municipal police departments, county sheriff's offices, and school district police departments from \$1,000 to \$1,500.

Additionally, HB141 increases death benefits paid from the POSF for officers killed in the line of duty from \$250 thousand to \$1 million, and increases the minimum balance to be kept in that fund (provided by the LEPF) from \$350 thousand to \$1 million.

Finally, HB141 redirects remaining balances in excess of \$100 thousand in the LEPF at the end of the fiscal year from the general fund to the POSF.

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

Notably, Laws 2020, Chapter 67 (House Bill 184), made significant increases to LEPF distributions and added beneficiaries but does not take effect until July 1, 2022. These changes included increasing all per-department distributions to \$45 thousand (HB141 would further increase these to \$95 thousand), increasing per-officer distributions from \$600 to \$1,000 (HB141 would further increase these to \$1,500), and adding \$1,000 per-officer distributions for school resource officers (HB141 would increase these to \$1,500). HB141 would make these additional changes before 2020 HB184's changes took effect.

FISCAL IMPLICATIONS

Fiscal implications of HB141 are outlined in detail below, including

- General fund revenues will be reduced by \$12.5 million in FY23, \$14 million in FY24, and \$15.5 million in FY25;
- Revenues to the POSF will be increased by \$3.3 million in FY23, \$4.8 million in FY24, and \$6.3 million in FY25;
- Because the uses of the POSF are limited to death benefits and relatively few officers are killed in the line of duty in New Mexico, the fund will have a balance of almost \$20 million by the end of FY26, which cannot be used for other purposes;
- If LEPF revenues fall below \$22 million (which they have every year since FY08 except FY21), the Department of Public Safety will not receive its \$2 million distribution for governor-ordered special deployment operations; and,
- If LEPF revenues fall below \$20 million (which they have every year since FY08 except FY18 and FY21), other law enforcement agency beneficiaries will see their distributions reduced.

General Fund Revenue Impacts. The LEPF intercepts general fund revenue and redirects it to distributions to local law enforcement agencies, NMLEA, and DPS. Under current law, remaining balances in excess of \$100 thousand at the end of the fiscal year revert to the general fund, so any changes to the fund's revenues or distributions impact the general fund. In addition

to increasing LEPF distributions, HB141 would redirect those remaining balances from the general fund to the POSF. The fiscal impact of these changes is therefore considered a recurring reduction in general fund revenue.

In combination with changes to LEPF distributions under 2020 HB184, which also take effect in FY23, LFC staff project HB141 will increase distributions to law enforcement agencies by \$9.2 million in FY23 and future fiscal years, and will result in additional reversion to the POSF of \$3.3 million in FY23, \$4.8 million in FY24, and \$6.3 million in FY25. Overall, this will result in reductions to general fund revenue of \$12.5 million in FY23, \$14 million in FY24, and \$15.5 million in FY25. For more details, see Attachment 1.

Peace Officers’ Survivors Fund Uses. The POSF may only be used to pay death benefits for officers killed in the line of duty. Between 2011 and 2020, nine New Mexico law enforcement officers were killed in the line of duty (either accidentally or feloniously), an average of less than one per year. Assuming an average of one officer is killed in future years, the POSF would pay a total of \$1 million each year under HB141. However, the transfers from the LEPF to the POSF proposed under HB141 would result in much higher revenues than the fund would use. As a result, LFC staff project the POSF under HB141 would carry a balance of \$2.9 million at the end of FY23, \$6.9 million at the end of FY24, \$12.5 million at the end of FY25, and \$19.7 million at the end of FY26. With no other allowable uses of the POSF, these funds would remain unused. For more details, see Attachment 1.

LEPF Revenues. LEPF revenue is volatile and, historically, the fund would not always have been able to handle these increased distributions, resulting in decreased allocations. The LEPF is funded from 10 percent of all money received for fees, licenses, penalties, and taxes from life, general casualty, and title insurance business pursuant to the New Mexico Insurance Code. The nature of the insurance business means revenue received will fluctuate from year to year depending on the volume of related insurance business activity. LFC analysis of LEPF revenue since FY08 shows the fund would have been unable to sustain anticipated FY23 expenditures under HB141 (\$22 million prior to POSF reversions) in any year except FY21.

Section 29-13-4(D) NMSA 1978 provides that, should the amount of funds in the LEPF be insufficient to cover total allocations, the Department of Finance and Administration (DFA) shall reduce the allocations to tribal police departments and some allocations to local

law enforcement agencies to the maximum amount permitted by available funds. Additionally, the \$2 million distribution to the Department of Public Safety (DPS) for governor-ordered special deployment operations will only be distributed if the balance in the LEPF is sufficient after all other distributions have been made. Historically, the POSF would not have been able to maintain the proposed HB141 distributions without cutting the entirety of the DPS distribution *and* reducing distributions to other beneficiaries in any year since FY08 except FY18 and FY21.

Historical LEPF Revenues and Reversions
(in thousands)

Fiscal Year	Revenue	GF Reversion
FY08	\$12,024.9	\$6,699.1
FY09	\$12,594.8	\$6,792.1
FY10	\$15,573.1	\$9,768.3
FY11	\$14,544.7	\$9,089.3
FY12	\$13,471.4	\$8,290.8
FY13	\$9,846.0	\$4,497.7
FY14	\$9,012.1	\$3,936.3
FY15	\$13,229.0	\$7,646.9
FY16	\$21,053.6	\$15,277.2
FY17	\$19,382.6	\$18,382.6
FY18	\$19,425.9	\$13,704.5
FY19	\$17,202.0	\$11,967.1
FY20	\$19,894.3	\$14,604.3
FY21	\$23,149.3	\$17,358.8
Total:	\$208,378.6	\$134,523.9

Source: DFA audits

SIGNIFICANT ISSUES

HB141 has a significant, recurring negative impact to the state general fund of \$12.5 million in FY23, \$14 million in FY24, and \$15.5 million in FY25. The significant revenues from LEPF reversions have contributed to balancing the budget during oil and gas revenue declines.

HB141 is further expected to result in significant unused balances in the POSF that are anticipated to approach \$20 million by the end of FY26 and continue to grow in future fiscal years.

DPS's Law Enforcement Academy Board is responsible for overseeing police officer training and conduct but has no power to enforce compliance with its reporting requirements or investigations, and often faces issues ensuring law enforcement agencies fulfill their statutory reporting obligations. DPS has also faced difficulties obtaining data on crime reports from local law enforcement agencies, despite statutory requirements agencies make such reports. LFC has previously noted that making law enforcement agencies' distributions from the LEPF contingent on compliance with these statutory requirements could improve the board's ability to fulfill its mission and DPS's ability to effectively report on crime trends in New Mexico.

The Municipal League offers the following comments:

The bill would increase death benefits for families of fallen law enforcement officers from \$250,000 to \$1 million, better aligning with costs of raising children and replacement of lost income. For example, a 2015 USDA study¹ found that the cost of raising a child in New Mexico is estimated at nearly \$250,000 from birth through age 18. Many officers have multiple children, leaving current death benefits insufficient to support many families. The increase also better addresses lost retirement benefits of fallen officers. Current survivor pension benefits under PERA do not make up the loss of income for most families of fallen officers.

ADMINISTRATIVE IMPLICATIONS

DPS generally budgets two payouts of \$250 thousand from the POSF for each year in its Law Enforcement Program. Budget adjustment requests (BARs) for additional payouts during a fiscal year are subject to the current budget adjustment language in the annual General Appropriation Act (GAA). DPS did not request additional language for this purpose be included in the 2022 GAA, so its budget adjustments for this purpose would be subject to a 5 percent cap. Increasing the benefit to \$1,000,000 would exceed that cap. The agency suggests language be added to HB141 exempting relevant budget increases for POSF payouts from any language restricting those increases in the GAA.

DFA reports that if HB141 is enacted, its Local Government Division will update the LEPF Rule (2.110.3 New Mexico Administrative Code) to include the higher distribution amounts proposed in the bill. In addition, the division will update the current application to include the new distribution amounts proposed.

¹ https://fns-prod.azureedge.net/sites/default/files/CRC_Infographic-2015.2.pdf

CONFLICT, DUPLICATION

HB141 conflicts with House Bill 100, which proposes to increase death benefits from the POSF from \$250 thousand to \$500 thousand and increases the minimum balance required to be maintained in the fund (supplied by the LEPF) from \$350 thousand to \$500 thousand.

HB141 duplicates Senate Bill 3 as amended by the Senate Health and Public Affairs Committee.

OTHER SUBSTANTIVE ISSUES

Current Allocations and Allowable Uses of LEPF. In FY21, LEPF made allocations to all 33 county sheriffs and 95 municipal police departments around the state, as well as 10 tribal police departments and six university police departments. Currently, by statute (Section 29-13-7 NMSA 1978), the allowable uses of the LEPF include

- Maintaining the balance of the peace officers', New Mexico mounted patrol members', and reserve police officers' survivors fund at a minimum amount of \$350 thousand;
- For the law enforcement academy, providing tourniquet and trauma kits and training on their use (from a specific distribution of \$24.5 thousand);
- For DPS, overtime, travel, fuel, per diem, and ammunition expenses related to governor-ordered special deployments (from a specific distribution of \$2 million under 2020 HB184, effective in FY23);
- For law enforcement agency beneficiaries:
 - The repair and purchase of law enforcement apparatus and equipment, including the financing and refinancing thereof, that meet minimum nationally recognized standards;
 - The purchase of law enforcement equipment, including protective vests, for police dogs;
 - Expenses associated with advanced law enforcement planning and training;
 - School resource officer training for county sheriffs and municipal and school district police departments (from a specific per-officer allocation under 2020 HB184, effective in FY23);
 - Complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs;
 - No more than 50 percent of the replacement salaries of law enforcement personnel participating in basic law enforcement training; and,
 - Contingent on the availability of funding and until June 30, 2021, a law enforcement officer retention payment in the amount of \$7,500; provided that
 - The distribution is requested by a municipality or county law enforcement agency that on January 1, 2018, had a staffing vacancy rate of at least 10 percent to retain a law enforcement officer who is certified in accordance with the Law Enforcement Training Act and has at least 20 years of actual service credit earned under a municipal police member coverage plan as determined by the public employees retirement association;
 - The municipality or county law enforcement agency provides \$7,500 in matching funds to the law enforcement officer; and
 - The distribution and the matching funds paid to a law enforcement officer shall not constitute the officer's base salary or wages and shall not be

considered to be salary or otherwise be used to determine a pension for the purposes of the Public Employees Retirement Act.

ALTERNATIVES

Rather than directing significant funds to the POSF that cannot be expended, the Legislature may wish to consider directing some of these funds to other purposes to support New Mexico law enforcement officers. For example, House Bill 86 would create the law enforcement retention fund to provide retention differential payments to law enforcement officers statewide at five-year intervals, but is not fully funded for an initial five-year cycle and would not receive recurring funding. Residual LEPF benefits in excess of what is needed to provide survivors benefits could be used for a nonrecurring appropriation or to provide a recurring funding stream to this fund.

AMENDMENTS

As noted under Administrative Implications, above, DPS suggests language be added to HB141 exempting relevant budget increases for POSF payouts from any language restricting those increases in the GAA.

Attachments

1. LEPF and POSF Sources and Uses, FY20 – FY26

ER/al/rl

Law Enforcement Protection Fund Projected Revenues & Expenditures
FY20 to FY26

	ACTUALS	ACTUALS	PROJECTED	PROJECTED	PROJECTED	PROJECTED	PROJECTED
	FY20	FY21	FY22	FY23	FY24	FY25	FY26
BEGINNING BALANCE	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
REVENUE							
Fees, Licenses, Penalties, and Taxes	\$ 19,894,279	\$23,149,303	\$ 24,073,082	\$ 25,311,144	\$ 26,840,444	\$ 28,358,873	\$ 30,022,166
TOTAL REVENUE	\$ 19,894,279	\$23,149,303	\$ 24,073,082	\$ 25,311,144	\$ 26,840,444	\$ 28,358,873	\$ 30,022,166
EXPENDITURES							
Base Distribution	\$ 5,289,943	\$ 5,790,464	\$ 5,593,129	\$ 5,593,300	\$ 5,593,300	\$ 5,593,300	\$ 5,593,300
Additional Distribution due to 2020 HB184 (FY23 Implementation)	\$ -	\$ -	\$ -	\$ 7,259,200	\$ 7,259,200	\$ 7,259,200	\$ 7,259,200
Additional Distribution due to Proposed Bill	\$ -	\$ -	\$ -	\$ 9,181,500	\$ 9,181,500	\$ 9,181,500	\$ 9,181,500
TOTAL EXPENDITURES	\$ 5,289,943	\$ 5,790,464	\$ 5,593,129	\$ 22,034,000	\$ 22,034,000	\$ 22,034,000	\$ 22,034,000
ENDING BALANCE	\$ 14,704,336	\$17,458,839	\$ 18,579,953	\$ 3,377,144	\$ 4,906,444	\$ 6,424,873	\$ 8,088,166
POSF Reversion Amount due to Proposed Bill	\$ -	\$ -	\$ -	\$ 3,277,144	\$ 4,806,444	\$ 6,324,873	\$ 7,988,166
General Fund Reversion Amount	\$ 14,604,336	\$17,358,839	\$ 18,479,953	\$ -	\$ -	\$ -	\$ -

Source: SHARE, DFA website, DFA audits, LFC files (LFC economist projections as of November 3, 2021)

Peace Officers' Survivors Fund Projected Revenues & Expenditures
FY20 to FY26

	ACTUALS	ACTUALS	PROJECTED	PROJECTED	PROJECTED	PROJECTED	PROJECTED
	FY20	FY21	FY22	FY23	FY24	FY25	FY26
BEGINNING BALANCE	\$ 108,087	\$ 111,530	\$ 599,384	\$ 350,000	\$ 2,877,144	\$ 6,933,588	\$ 12,508,461
REVENUE							
LEPF Transfers under Current Law	\$ -	\$ 488,195	\$ 249,829	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Other Revenues	\$ 3,443	\$ -	\$ 787	\$ -	\$ -	\$ -	\$ -
Additional LEPF Transfers due to Proposed Bill	\$ -	\$ -	\$ -	\$ 3,277,144	\$ 4,806,444	\$ 6,324,873	\$ 7,988,166
TOTAL REVENUE	\$ 3,443	\$ 488,195	\$ 250,616	\$ 3,527,144	\$ 5,056,444	\$ 6,574,873	\$ 8,238,166
EXPENDITURES							
Distributions under Current Law	\$ -	\$ -	\$ 500,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Other Expenditures	\$ -	\$ 341	\$ -	\$ -	\$ -	\$ -	\$ -
Additional Distribution due to Proposed Bill	\$ -	\$ -	\$ -	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000
TOTAL EXPENDITURES	\$ -	\$ 341	\$ 500,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
ENDING BALANCE	\$ 111,530	\$ 599,384	\$ 350,000	\$ 2,877,144	\$ 6,933,588	\$ 12,508,461	\$ 19,746,627

Source: SHARE, DFA website, DFA audits, LFC files (LFC economist projections as of November 3, 2021)

Note: Law enforcement protection fund (LEPF) revenues are ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business (except for money received from health insurance) collected by the New Mexico Public Regulation Commission. Under current law, balances in excess of \$100 thousand revert to the general fund at the end of the fiscal year. SB3 proposes to redirect those reversions to the peace officers' survivors fund (POSF).