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FISCAL IMPACT REPORT

SPONSOR Jaramillo/Pirtle
LAST UPDATED 3/14/2023
ORIGINAL DATE 2/3/2023
SHORT TITLE NM Mounted Patrol as Law Enforcement
BILL NUMBER Senate Bill 230
ANALYST Hanika-Ortiz

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
\$0.0	\$94.6	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
GSD/RMD	No fiscal impact	\$94.6	\$94.6	\$189.2	Recurring	Public Liability and Workers' Compensation Funds

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Duplicates an appropriation in the GAA of 2023 as amended by the Senate.

Sources of Information

LFC Files

Responses Received From

General Services Department (GSD)
 New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 230

Senate Bill 230 (SB30) amends NMSA 1978 Sections 31-1-2(F), 35-6-3(B), 41-4-3(D), 66-8-124(A), and 66-8-125(A)(C) to add (volunteer) members of the New Mexico Mounted Patrol (NMMP) to the definition of “law enforcement officer” primarily for the purposes of the Criminal Procedure Act and the Tort Claims Act. The bill also adds those members to law

enforcement officers who may file a criminal complaint in magistrate court, exempts them from fees, and authorizes members to make arrests, with or without a warrant, for violations under the Motor Vehicle Code.

SB230 also appropriates \$94,560 from the general fund the Risk Management Division (RMD) of GSD for expenditure in FY24 for the costs of general liability, civil rights, tort claims, and workers' compensation insurance coverage for members of the NMMP.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The appropriation of \$94,560 contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund. According to RMD, the appropriation appears sufficient to cover risk insurance for FY24. However, the House Appropriations and Finance Committee Substitute for House Bills 2 and 3 as amended by the Senate includes language that there are "sufficient funds" to cover the NMMP members for liability and workers' compensation insurance.

GSD notes law enforcement professional liability coverage is subject to both the Tort Claims Act and the terms of RMD's letter of administration and liability certificate. Coverage is afforded only for those officers performing their official duties under the course and scope of the public entity being served. Coverage may include alleged civil rights violations, excessive force, wrongful arrest, personal injury, and other exposures faced by law enforcement officers and their departments. Workers' compensation coverage will be purchased through a third-party carrier.

The NMMP is not a state agency nor is it administratively attached to another state agency. As such, the funding is not recurring in the General Appropriation Act (GAA), which brings challenges keeping it in the risk pool year over year, thus, the GAA language.

For the public liability fund, jury verdicts and settlements have increased the state's litigation exposure, and RMD is expecting increased costs for litigation. The financial position of the public liability fund declined from 98 percent for FY21 to 55 percent for FY22, with projected assets falling from \$63.4 million to \$52.7 million while projected liabilities increased from \$59.5 million to \$75.9 million. Because RMD funds claim payments on a trailing five-year basis, this deterioration could indicate agencies in the risk pools may see increased rates in future years.

DPS does not anticipate a fiscal impact insofar as the New Mexico Law Enforcement Academy, administratively attached to DPS, has an established program of basic officer training.

SIGNIFICANT ISSUES

Under current law, the NMMP provides assistance at the request of law enforcement agencies and under its direction and control (Section 29-6-4 NMSA 1978). When called to assist, members of the NMMP are deemed to be the agents or deputies of the requesting agency and possess the same powers and duties (Section 29-6-5 NMSA 1978). (See also Section 29-6-2 NMSA 1978, authorizing the director of DPS' State Police Division to provide NMMP members

with pocket commissions effective only when the State Police requests their assistance).

SB230 describes a member of the NMMP who is considered a law enforcement officer for purposes of the specified laws as one “who has satisfactorily completed a basic law enforcement training program pursuant to Section 29-6-4.1 NMSA 1978 and who has been requested to provide law enforcement assistance by the New Mexico state police or another law enforcement or state regulatory agency.” Section 29-6-4.1 NMSA 1978 empowers the New Mexico Law Enforcement Academy to approve a basic law enforcement training program for the NMMP.

However, DPS reports, NMLEA has not developed a specific training program for the NMMP. If NMMP members are to be given full arrest authority, they should be subject to the same training and certification requirements that apply to the State Police and other law enforcement officers. Otherwise, DPS and other law enforcement agencies that request assistance from NMMP members under Section 29-6-5 NMSA 1978 will incur additional liability.

PERFORMANCE IMPLICATIONS

Under the state’s Civil Rights Act, a person may sue the state, city, or county, when their rights under the state’s constitution has been violated, as in cases involving law enforcement misconduct.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB230 conflicts with House Bills 138 and 139, bills that also propose to amend Section 35-6-3.

Duplicates an appropriation for this purpose in House Appropriations and Finance Committee Substitute for House Bills 2 and 3 as amended by the Senate (page 33).

TECHNICAL ISSUES

When assisting DPS and other law enforcement agencies, NMMP members are deemed to be agents or deputies of those agencies with the same powers and duties. Therefore, it may not be necessary to expressly name NMMP members in provisions amended by the bill. Additionally, Chapter 29, Article 6, NMSA 1978 might be amended to provide that liability coverage of the law enforcement agency that requested assistance also applies to any NMMP members who respond to the request. GSD may be able to provide assistance in this regard.

AHO/al/hg/ne