

LFC Requester:	Joseph Simon
-----------------------	---------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/07/2025 *Check all that apply:*
Bill Number: HB 299 Original Correction
 Amendment Substitute

Sponsor: William A. Hall II, Patricia A. Lundstrom and Joshua N. Hernandez **Agency Name and Code** 790 – Department of Public Safety
Short Title: PERA Law Enforcement Instructor Members **Number:** _____
Person Writing Louise Riebe
Phone: 505-827-9080 **Email** Louise.Riebe@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0.0	\$0.0	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0.0	\$0.0	\$0.0	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$3.6	\$3.6	\$7.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: 2025 SB173
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Amends the Public Employees Retirement Act to create and define a “state law enforcement instructor” member; to include state law enforcement instructor members under State Public Safety Member Coverage Plan 1 as of July 1, 2025 if they so elect; to increase their service credit accrued after July 1, 2025 by 20 percent for purposes of that plan; and to require the PERA board to conduct an election to submit to state law enforcement instructor members the question of adopting that plan.

Makes State Public Safety Member Coverage Plan 1 applicable to state law enforcement instructor members in the first full pay period after July 1, 2025 if the PERA board certifies to the Secretary of State that, of those instructor members to be covered, a majority have voted to approve adoption of that plan at the required election.

PERA board must hold the member election required by the bill on or before June 30, 2025.

“State law enforcement instructor member” means a member who maintains a law enforcement certification and is employed by the NM Law Enforcement Academy to provide training pursuant to the Law Enforcement Training Act.

FISCAL IMPLICATIONS

The Department of Public Safety (DPS) has identified seven (7) positions that will be eligible to participate in this election if passed:

Position No	Job Title	Status	FTE	Grade 1
17879	NM LAW ENFORCEMENT ACADEMY INS	PERM	1.00	PI
27258	NM LAW ENFORCEMENT ACADEMY INS	PERM	1.00	PI
10114512	NM LAW ENFORCEMENT ACADEMY INS	PERM	1.00	PI
10115965	NM LEA INSTRUCTOR MANAGER	PERM	1.00	PJ
64630	NM LAW ENFORCEMENT ACADEMY INS	PERM	1.00	PI
10114511	NM LAW ENFORCEMENT ACADEMY INS	PERM	1.00	PI
10109117	NM LEA INSTRUCTOR MANAGER	PERM	1.00	PJ
	TOTAL		7.00	

If approved, these positions will transition from the Public Employee Retirement Association's (PERA) State General Plan 3 to the State Police & Adult Correctional Officer Plan, as well as from the New Mexico Retiree Health Care Association's (NMRHCA) Regular Plan to the Enhanced Plan, at the current employer contribution rates.

As a result of these changes, DPS projects the increased contributions to PERA and NMRHCA to cost an additional \$3,600 per year which must be absorbed by the New Mexico Law Enforcement Academy's (NMLEA) General Fund operating budget. While this amount may not

seem significant, NMLEA is currently operating on an already-minimal budget, meaning even modest cost increases require careful financial management. Given these financial constraints, an appropriation to the NMLEA will be necessary to account for this change and ensure continued operations without disruption.

SIGNIFICANT ISSUES

In recent years, DPS has been involved in conversations with PERA regarding a potential retirement plan change for the NMLEA instructors. As a result of these discussions, DPS recently received two (2) legal determinations issued by PERA on November 4, 2024, for the *New Mexico Law Enforcement Academy Instructor Manager* and *New Mexico Law Enforcement Academy Instructor* positions which stated:

“The term “state police member” is defined in the PERA Act as “a member who is an officer of the New Mexico state police division and who has taken the oath prescribed for such officers and shall include a member who is an officer of the New Mexico state police division and who was certified and commissioned in the former motor transportation division or the former special investigations division of the department of public safety.” See NMSA 1978, Section 10-11-2(N)(9). Employees who meet this definition are eligible for membership in State Public Safety Member Coverage Plan 1 once all statutory criteria are met.”

“Although the position requires a current New Mexico Police Officer certification, the position is for an *instructor manager* and is not “an officer of the New Mexico State Police” as required by the statute. Accordingly, the position meets the statutory requirements for coverage under State General Member Coverage Plan 3.”

“Although the position requires a current New Mexico Police Officer certification, the position is for an *instructor* and is not “an officer of the New Mexico State Police” as required by the statute. Accordingly, the position meets the statutory requirements for coverage under State General Member Coverage Plan 3.”

DPS has engaged in multiple discussions with PERA over the past several years to clarify the status of these instructors under 2.80.100.7 NMAC. Per NMAC, the New Mexico Law Enforcement Academy Instructors do not qualify as a “police member” per 2.80.100.7 NMAC, disqualifying them from consideration of this proposed change:

O. “Police member” means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers. The term shall not include volunteers, juvenile correctional officer members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee shall be regarded as a police member if more than fifty percent of the member’s total salary is paid as a police officer.

DPS understands and supports PERA’s legal determination as it aligns with the statutory definition of a “police member” and provides necessary clarification regarding eligibility

requirements. NMLEA Law Enforcement Instructors play a crucial role in training officers; however, the primary function of their job responsibilities does not include being paid fifty percent (50%) of their total salary as a paid police officer with law enforcement duties. The statute currently indicates that their classification under current PERA guidelines appropriately reflects the nature of their responsibilities.

DPS remains committed to ensuring that all employees receive fair and accurate retirement plan designations under applicable laws and regulations. We will continue to work with our partners to uphold compliance and transparency in employment retirement plans while supporting the mission of the NMLEA.

DPS also identifies potential consequences of this bill's passage that may create concerns about contributions, overtime pay, and social security benefits.

If the state law enforcement instructor member are added to the State Police member, correctional office member, and probation and parole member pay plan it would require state law enforcement instructor member to operate on a modified 7(k) plan of eighty-three (83) hours at straight time with subsequent overtime hours worked paid at one and one-half times the hourly rate for officers and sergeants during the State of New Mexico's fourteen-calendar day pay period. The 81st, 82nd and 83rd hours worked in a pay period are overtime paid at straight time and are coded to SHARE HCM Time Reporting Code and are charged to SHARE Financial account 520300-Perm. The 84th hour onward is charged to 520700-Overtime.

As state law enforcement instructor members would be moving to this federally recognized enhanced plan group, they would now become subject to the agency's modified 7(k) plan. State law enforcement instructors are currently on a 40-hour week (Saturday to Friday) and are eligible for overtime at one and one-half times the hourly rate starting with the 41st hour worked in each seven-day period.

PERFORMANCE IMPLICATIONS

While the bill seeks to align state law enforcement instructors benefits with those of other public safety personnel, it does not account for the disparity in job duties, training, and physical risks faced by sworn officers compared to state law enforcement instructors. This creates an equity imbalance that could impact workforce morale and operational cohesion. The key difference between a state law enforcement instructor versus a law enforcement officer is the nature of threats, work environment, and frequency of risk and risk severity. Given the significant operational and administrative challenges posed by HB299, as well as the potential negative impact on NMSP's ability to maintain and enhance public safety, we recommend against supporting this legislation. The burdens far outweigh the proposed benefits, and alternative approaches should be considered to recognize the vital contributions of state law enforcement instructors without compromising the mission and effectiveness of law enforcement agencies.

ADMINISTRATIVE IMPLICATIONS

In addition, the new plan would require state law enforcement instructors to participate in Medicare only, which means that they would no longer be eligible for social security benefits.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

2025 SB173, Telecommunicators as Police in PERA.

TECHNICAL ISSUES

None for DPS.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

The state should consider the *Peace Officer* retirement plan which defines a "Peace Officer" as "any employee of the state with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes, and who is not specifically covered by another coverage plan." Peace Officer positions include Conservation Officers at the Department of Game and Fish, and could be amended to include the NMLEA State Law Enforcement Instructors. This plan is currently limited to *TIER 2 Members* as defined below:

TIER 1 Members are eligible to retire from PERA when they meet the age and service credit requirement for the plan they participate in. You are a TIER 1 member if you were hired for the first time on or before June 30, 2013; and had member contributions on account as of June 30, 2013; or were retired as of June 30, 2013.

TIER 2 Members are eligible to retire from PERA when they meet the age and service credit requirement for the plan they participate in. You are a TIER 2 member if you were hired for the first time on or after July 1, 2013; or refunded your employee contributions on or before June 30, 2013, and returned to work for a PERA-affiliated employer on or after July 1, 2013.

The *Peace Officer* retirement plan will need to be amended to open membership to *TIER 1 Members* as many of the NMLEA instructors have service on or before June 30, 2013.

This would ensure that they receive appropriate compensation for their crucial role in public safety while addressing any disparities in benefits compared to other state employees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain and all state law enforcement instructors will remain in State Plan 3 retirement and will continue to have Medicaid and social security deducted.

AMENDMENTS

None proposed.