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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

Check all that apply:

Original  Amendment   
 Correction  Substitute

Date Prepared: 02/04/23  
 Bill No: [HB254](#)

Sponsor: Zamora  
 Short Title: SCHOOL MARSHAL ACT

Agency Name and Code  
 Number: PED - 924  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Bill 254 (HB254) would create the School Marshal Act in the Public School Code to allow school districts to appoint one or more school marshal to each campus.

The bill defines “school marshal” as a school employee who has successfully completed a school marshal training program, is licensed to carry a handgun pursuant to the Concealed Handgun Carry Act and has been selected by the school district to be a school marshal.

## **FISCAL IMPLICATIONS**

HB254 does not contain an appropriation.

Individuals licensed to carry a handgun, pursuant to the Concealed Handgun Carry Act and who participate in the school marshal training program, would be required to pay a “reasonable fee,” to be used by the Department of Public Safety (DPS), to cover the cost of conducting the program.

## **SIGNIFICANT ISSUES**

**Current Law.** In 2019, the School Personnel Act was amended to define school security personnel and the conditions under which firearms may be present on school grounds (22-10A-40 NMSA 1978). The act specifically requires that school security personnel shall not perform any other job in the school district, by title or duty, other than school security while carrying a firearm. The act requires the Public Education Department (PED) to issue rules to implement the requirements ([6.12.12 NMAC, Armed Public School Security Personnel](#)).

HB254 does not amend the section on school security personnel, but rather creates new sections of the Public School Code to permit school employees to also carry weapons as “marshals.” School security personnel are currently defined as former certified and commissioned law enforcement personnel and are prohibited from performing any other duty while carrying a firearm; by contrast, school marshals as defined in HB254 could be serving in other roles.

The department promulgated rule ([6.12.12 NMAC](#)) for the administration of security personnel on school campus that establishes their training requirements, requires physical and psychological examination, and bars certain persons from serving as security personnel, including:

- Individuals convicted of felonies or misdemeanors involving moral turpitude and the conviction relates to employment as security personnel;
- Individuals convicted of drug trafficking, criminal sexual penetration, or related sexual offense, child abuse, or sexual exploitation of children;
- Individuals who have been subject to employment investigation resulting in a finding of ethical misconduct related to inappropriate touching, sexual harassment, sexual assault, sexual abuse, discrimination, or grooming;
- Individuals who have been convicted of battery of a household member or dependent, or stalking;
- Individuals convicted of negligent or illegal use of firearms; or
- Individuals who have received discipline for the excessive use of force.

**Provisions of HB254.** The bill would require a school district that appoints a school marshal to enact policies that provide for the safe carrying of a concealed firearm by the school marshal, including that:

- the school marshal may carry a concealed handgun on their person or possess the handgun on the physical premises of a school in a locked and secured safe or other locked and secured location; and

- the handgun carried or possessed by a school marshal may be loaded only with frangible duty ammunition approved for that purpose by DPS.

The identity of an appointed school marshal would be part of a confidential tactical plan or procedure and would not be allowed to be disclosed in a request made pursuant to the Inspection of Public Records Act.

HB254 would require DPS to establish an 80-hour training program, which may be conducted only by DPS staff or a provider approved by the DPS. The training would be required to:

- emphasize strategies for preventing school shootings and for securing the safety of potential victims of school shootings;
- educate a trainee about legal issues relating to the duties of peace officers and the use of force or deadly force in the protection of others;
- introduce the trainee to effective law enforcement strategies and techniques;
- improve the trainee's proficiency with a handgun; and
- enable the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.

HB254 would also require DPS to conduct psychological testing of the school marshal applicants, allow DPS to charge a reasonable fee, and issue a school marshal license to an applicant who completes the training and passes the psychological testing. The bill also provides conditions for license renewal and revocation.

The provisions of HB254 conflict with requirements under the New Mexico Public School Insurance Authority (NMPSIA). It is NMPSIA's position that due to their extensive training, sworn law enforcement officers are the most effective responders to any emergency in which the threat of great bodily harm is posed to students and school personnel.

According to NMPSIA's Mandatory Standards, a school district or charter school may choose from the following three options for an armed security presence:

- **Option 1: School Resource Officer.** It is the official position of NMPSIA that any district or charter seeking an armed security presence should contract with local certified law enforcement agency for a School Resource Officer (SRO) or other sworn law enforcement officer whenever possible.
- **Option 2: Licensed Private Security Guard.** If it is determined by a district/charter that it is not feasible to obtain an SRO, it would be preferred that any New Mexico district/charter contract with an outside security company, licensed through the New Mexico Regulation and Licensing Department as outlined in NMAC 16.48.1 and pursuant to the New Mexico Private Investigators Act (61-27B-1 NMSA 1978) and specifically trained to be stationed among students in a campus setting.
- **Option 3: School Security Personnel with a Level 3 Security Guard License.** It is the official position of NMPSIA that a district or charter should only use this third option as a last resort, and only after Options 1 and 2 have been thoroughly explored and found to be impossible to implement.

## PERFORMANCE IMPLICATIONS

None noted for PED. Despite the bulk of responsibilities in the bill being assigned to DPS, the provisions of the bill reside primarily in the Public School Code.

## ADMINISTRATIVE IMPLICATIONS

HB254 would assign rulemaking and policymaking as specified in the bill to the local school districts. As noted, PED has promulgated rules related to firearms and security personnel in schools.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

[HB283, School Marshal Act](#), which is a duplicate.

[SB93, Mora School Security](#), which proposes to appropriate \$78,000 to PED for expenditure in FY25 for updated security infrastructure for Mora Independent School District.

which [SB95, Statewide School Safety](#), which would appropriate to \$25 million from the Public School Capital Outlay Fund to the PED for expenditure in FY24 for school safety statewide.

[SB131, Public School Funding Changes](#), would appropriate \$25 million from the Public School Capital Outlay Fund to the Public School Finance Authority (PSFA), and would require PSFA to disburse the funds to school districts in FY24, to be used for school security infrastructure.

## TECHNICAL ISSUES

- Section 4, Subsection A of the bill states, “A local *school district* [emphasis added] may appoint one or more school marshals for each school campus,” and Subsection B states, “A local *school district* [emphasis added] may appoint an applicant who is a school employee of the *school district or charter school* [emphasis added] as a school marshal.” This seems to clearly include locally chartered charter schools but technically does not include state-chartered charter schools. The definition of “school district” contained in the general provisions of the Public School Code is not helpful or applicable, here, as it refers to an area of land established as a political subdivision of the state. The sponsor may wish to amend the bill to clearly include state-chartered charter schools by adding “...and charter schools” to each reference to a school district. Alternatively, the sponsor may wish to use the terms “local school board” and “governing body” (which is defined in HB254), as those bodies set policy.
- Section 3 Subsection A of the bill refers to “school district, charter school or private school”; this is the only mention of private schools in the bill and the sponsor may wish to amend the bill to expand the definition of which schools may participate, such as adding a definition of “participating schools” to the act that would include public school districts, state-chartered charter schools and private schools.
- HB254 would require that the school marshal shall only carry a concealed handgun at “the specific school” as specified by the local school board or governing body; however, it’s conceivable that school districts may want the option for a school marshal be available to move between schools and this provision may not allow for that particular school’s choice.

## OTHER SUBSTANTIVE ISSUES

According to The Center for Homeland Defense and Security (CHDS), non-active shooter school shootings significantly outweigh active shooter incidents. In 2021 there were 240 non-active shooter incidents in US schools compared to nine active shooter incidents. According to CHDS, 37 percent of incidents were related to escalation of dispute, 10.4 percent were accidental, 7.6 percent were suicide or attempted suicide, and the rest from various causes including 4.9 percent from indiscriminate shooting.

On May 24, 2022, a gunman entered Robb Elementary School in Uvalde, Texas and killed 19 students and two teachers. A [timeline of the incident](#) indicated it took about an hour and 15 minutes for police officers to stop the perpetrator. According to [a June 2022 article in the Texas Tribune](#), Texas had implemented a school marshal program in 2013, to “reduce response times from minutes down to seconds.” However, only 84 of over 1,200 districts had implemented the program. In the article, teachers cite the concern of having guns around students as a deterrent to implementing the program.

Texas’ program is very similar to the program proposed in HB254. School districts may identify employees with a license to carry a firearm to volunteer and candidates are required to undergo an 80-hour training and psychological exam. It is otherwise against federal law to carry a firearm in a school zone.

Currently, armed security in schools must be former or retired law enforcement if not working in the capacity of a school resource officer. School Resource officers are employees of the department that are assigned to and not school staff. School security personnel are employees of the school or district and are former police. The proposed new language introduces armed school personnel who may not meet the higher threshold for training and preparedness. The sponsor may also wish to consider clarifying the age of who might be able to become a school marshal (e.g., over 25 years of age), and if random drug and alcohol testing would be required of a school marshal.

According the 2021 National Youth Risk Behavior Survey Data, n 2021, 7% of high school students reported that they were threatened or injured with a weapon, such as a gun, knife, or club, on school property during the past year. And according to the 2021 Youth Risk and Resiliency Survey (YRRS) for New Mexico, 4.6% of high school students in New Mexico reported that they had carried a weapon, such as a gun, knife, or club, on school property in the past 30 days.

School districts and charter schools wishing to employ school marshals or contract with agencies or individuals to perform the services of a school marshal may incur additional costs, for which the bill does not provide funding. School districts and charter schools may choose to rely on their operational funding or other local resources to fund the provisions of HB283 if they decide to employ a school marshal. School Boards may need additional technical assistance to promulgate the necessary rules and policies for appoint a school marshal, which can be obtained from the Department of Public Safe, law enforcement, and the public school insurance authority.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

N/A

## **AMENDMENTS**

See “Technical Issues”, above.