

LFC Requester:	Chilton
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 02/08/23
Bill No: HB283

Sponsor: Lord
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
Total	None	None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 283 (HB283) would create the School Marshal Act in the Public School Code to allow school districts to employ school marshals.

The bill defines “school marshal” as a retired or former certified and commissioned law

enforcement officer who was certified and commissioned for no less than three years and left law enforcement in good standing and who is employed by a school district.

FISCAL IMPLICATIONS

HB283 does not include an appropriation.

SIGNIFICANT ISSUES

Current Law and Rule. 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 (Section 22-10A-40 NMSA 1978). HB283 would duplicate much of existing law and rule in the School Marshal Act. Rule currently specifies that school security personnel defined in 22-10A-40 NMSA 1978 shall have been certified and commissioned law enforcement officers for at least three years and left in good standing, effectively giving existing school security personnel in existing law and school marshals in HB283 identical definitions.

The School Personnel Act 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 these requirements (Rule 6.12.12 NMAC).

Current PED rule requires that school security personnel, prior to employment, complete:

- a 16-hour program of training, approved by PED in collaboration with the New Mexico Public School Insurance Authority (NMPSIA), for working with students with special needs;
- a four-hour program of training approved by PED and NMPSIA on cultural competency and prohibited profiling practices;
- a background check; and
- firearms training and successful firearms qualification provided by a certified use-of-force instructor through a local law enforcement agency, or through a New Mexico Law Enforcement Academy certified firearms instructor, and ongoing annual firearms training.

PED rule specifies the requirements of the firearms training:

- an initial use-of-force training program of eight hours and details of what must be included;
- an initial firearms training program of 16 hours;
- an annual qualification shoot requiring qualifying scores that meet or exceed the New Mexico law enforcement academy standard scores; and
- an annual firearms manipulation training program of four hours.

Current rule also 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 HB283. HB283 would duplicate much of existing law and rule in the School Marshal Act but does not repeal existing provisions in law.

Requirements regarding school marshals that differ from the current provisions for school security personnel are:

- the requirement to hold a concealed handgun permit;
- that school districts and charters report the school marshals' names and identifying information to PED, NMPSIA, the Law Enforcement Certification Board, and applicable law enforcement agencies; and
- school marshals may not simultaneously collect retirement from either the Educational Retirement Board or the Public Employees Retirement Association.

HB283 also specifies conditions under which a school marshal would no longer be eligible to serve, which includes:

- the suspension or revocation of a concealed carry permit;
- formal discipline for the use of excessive force or misconduct or is convicted of a felony; a misdemeanor involving moral turpitude that has bearing on the job of school marshal; crimes that include inappropriate touching, sexual harassment, sexual assault, sexual abuse, discrimination, behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior, crimes against children and dependents or sexual exploitation of children; or negligent or illegal use of a firearm; or
- the person's employment with the school district ends.

The bill would also create a new section of the Law Enforcement Training Act to create the School Marshal Training Program.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

[House Bill 254, School Marshall Act](#), would create the School Marshal Act in the Public School Code to allow school districts to appoint employees to serve as school marshals. While similar to HB283, the two bills are not identical.

[Senate Bill 93, Mora School Security](#), which proposes to appropriate \$78 thousand to PED for expenditure in FY25 for updated security infrastructure for Mora Independent School District.

[Senate Bill 95, 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.

[Senate Bill 131, 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

As noted, the current definition of school security personnel and the proposed definition of school marshals are identical, when considering existing PED rule. HB283 also adds school marshals to the statutory definition of school security personnel, and simultaneously requires that school marshals meet the requirements of school security personnel, thereby creating a circular reference.

The bill would amend Section 30-7-2.1 NMSA 1978 of the Criminal Code so that carrying a weapon on school premises would be unlawful for anyone but a school marshal or other law enforcement officer, striking the current exception for school security personnel, as established in the Public School Code and PED rule. This would create a conflict between the Criminal Code, and the Public School Code, which still permits school security personnel other than school marshals to carry weapons on school premises.

HB283 also refers to School Resource Officers, who are not currently defined or established in law or rule.

OTHER SUBSTANTIVE ISSUES

In 2022 there were two active shooter incidents in US schools ([Charts & Graphs - CHDS School Shooting Safety Compendium](#)). The likelihood of an active shooter in a New Mexico school being stopped by a school marshal is exceedingly low. The likelihood of a firearm accident, or a firearm theft or loss due to increasing the number of firearms in New Mexico schools is significantly greater.

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.

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, in 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

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.