

LFC Requester:	Eric Chenier
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

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

Date January 25, 2013
Bill No: HB 221--305

Sponsor: Rep. William "Bill" Rehm **Reviewing** Attorney General's Office
Short Reserve Law Enforcement **Person Writing** Rick Word, AAG
Title: Officers **Phone:** 827-6029 **Email** rword@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: HB 221 would enact the Reserve Officer Act, which would provide for certification by the Law Enforcement Academy Board (Board) of “reserve officers” to serve law enforcement agencies as volunteers or as temporary or part-time employees performing law enforcement duties pursuant to the proposed act. The bill provides that duly commissioned reserve officers would have the powers of a certified law enforcement officer so long as they are working with the supervision of a full-time on-duty certified officer and are acting within the scope and duration of their specific assignment. Section 3 of the bill sets qualifications for Board certification of reserve officers, essentially tracking the corresponding qualifications law enforcement officers found in Section 29-7-6 of the Law Enforcement Training Act (LETA). Also consistent with LETA, Section 5 of the bill would require training by board-qualified instructors of no less than four hundred hours. Significantly, the bill specifies that a reserve officer would only need to obtain a fifty percent or better rating on physical fitness and agility tests required for the certification of regular law enforcement officers. Under the proposed Act, reserve officers would be required to obtain an unspecified number of board-developed in-service training hours every two years. In contrast with the LETA, the bill allows the waiver of training requirements by the Director of the LEA without the approval of the Board. The bill would also give the Director the discretion to exempt a reserve officer who begins service before July 1, 2013 from the initial training requirements specified in the bill. Section 9 of the bill also essentially adopts the provisions of LETA with respect to the refusal, suspension or revocation of certification. *See* NMSA 1978, Section 29-7-13. As with Section 29-7-13 of the LETA, the proposed Act requires the Board to promulgate rules and administrative procedures for the suspension or revocation of certification that include notice, opportunity to be heard, and procedures for the review of the Board’s decision.

The bill states that it’s provisions would not restrict a Sheriff’s power to issue special deputy commissions or to utilize uncertified volunteer staff members.

HB 221 would amend other statutes so that reserve officers are recognized as having the authority and immunities afforded certified law enforcement officers. The bill would add certified reserve officer to the definition of officer under the Section 31-1-2(F) of the Criminal Procedure Act, and extend the waiver of criminal magistrate fees afforded other officers by Section 35-6-3 to reserve officers. The bill would also amend the Tort Claims Act to add commissioned certified reserve officers to the definition of law enforcement officer found at Section 41-4-3(D). Finally, the bill would amend Sections 66-8-124 and 125 to allow for arrests by commissioned certified reserve officers.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

There are no fiscal implications for this agency.

SIGNIFICANT LEGAL ISSUES

If enacted, an issue could arise under Section 4 of the bill regarding a certified reserve officer's scope of authority. The bill currently states that "[t]he powers and authority of a reserve officer extend only to the scope and for the duration of the reserve officer's specific assignment." It is not clear what the scope and duration of a reserve officer's specific assignment might entail, and this ambiguity could give rise to claims based on the reserve officer acting outside the scope of his or her authority.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

There are no performance implications for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

No administrative implications are noted for the agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None are noted.

TECHNICAL ISSUES OR DRAFTING ERROR

None are noted.

OTHER SUBSTANTIVE LEGAL ISSUES

No other substantive legal issues are noted.

ALTERNATIVES TO ENACTING THIS BILL

No alternatives to enacting this bill are noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None noted.