

LFC Requester:	Jorgensen, Connor
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**AGENCY BILL ANALYSIS
2014 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 February 7, 2014
Bill No: HB338-305 Feb 7

Sponsor: Reps Chasey & Ivey-Soto **Reviewing** Attorney General's Office
Short Public Defender Department **Person Writing** Charles B. Kraft
Title: Personnel Policies **Phone:** 827-6079 **Email** ckraft@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
FY14	FY15		

(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
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to:

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	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 338 gives the Public Defender Department (the “Department”), through the Public Defender Commission (the “Commission”), the option of exempting its employees from the State Personnel Act. To provide the employees of the Department rights that they would have had if they were not exempt from the State Personnel Act, HB 338 mandates that the Commission develop and implement appropriate personnel policies and procedures provided that those policies and procedures do not provide employees of the Department fewer rights than they would have under the State Personnel Act or under administrative rules applicable to other state employees. These policies and procedures must be implemented by the Commission before any employee of the Department may be exempted from the State Personnel Act.

HB 338 also requires that the Appellate Division of the Department be headed by a District Public Defender.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

N/A

SIGNIFICANT LEGAL ISSUES

Because HB 338 effectively removes employees of the Department from the State Personnel Act, an amendment to NMSA 1978, Section 31-15-7(B)(1) is necessary. That section provides:

B. To perform the chief’s duties, the chief has every power implied as necessary for that purpose, those powers expressly enumerated in the Public Defender Act or other laws and full power and authority to:

(1) exercise general supervisory authority over all employees of the department subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978];

Section 31-15-7(B)(1) (emphasis added). Most employees of the Department will no longer be subject to the State Personnel Act, and as such, Section 31-15-7(B)(1) should be amended to reflect that change. As it reads and if the Commission removes Department employees from the State Personnel Act, the Chief will have limited statutory authority over a majority of his or her employees.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

The Commission will need to promulgate rules, which will require proposals, a public meeting, and a public rule-making hearing, all with proper notice to interested parties. The Public Defender's Commission will likely require counsel to advise during the rule-making process and ensure that the Commission comply with the Open Meetings Act (NMSA 1978, §§ 10-15-1 through -4).

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

N/A

TECHNICAL ISSUES OR DRAFTING ERROR

N/A

OTHER SUBSTANTIVE LEGAL ISSUES

HB 338, Section 1 amends NMSA 1978, Section 10-9-4(O) in that the word "personnel" is removed. The subsection reads: "state employees if the board in its discretion decides that the position is one of policymaking." Compare HB 338, Section 1 with Section 10-9-4(O). Both these sections refer to which individuals are exempted from the State Personnel Act. Id. By removing the word "personnel," ambiguity is created, as it is no longer clear which board the provision applies to. As it is written, Section 10-9-4(O) could refer to both the State Personnel Board or any board in which the employee is subject to.

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A