

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 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: Date February 2, 2015
Original **Amendment** **Bill No:** HB254
Correction **Substitute**

Sponsor: Rep. Paul Pacheco & Sander Rue **Agency Code:** Attorney General's Office
 Hazardous Officer Compelled **Person Writing** Roscoe A. Woods, AAG
Short Statement Release **Email**
Title: _____ **Phone:** 505.827.7411 : rwoods@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis:

HB 254 is an amendment to the Hazardous Duty Officers’ Employer-Employee Relations Act (Act) proposing, *inter alia*, to clarify that a compelled statement of an officer will not be released except upon court order.

Under the Act, “officer” means “an individual who is employed full-time by the state or a political subdivision of the state as a firefighter, emergency medical technician or paramedic... .” Section 10-7F-2(C). Section 2 of HB 254 defines a “compelled statement” as “a statement provided by an officer to the officer’s employer if the statement is compelled under threat of dismissal from employment or any other employment sanction.”

FISCAL IMPLICATIONS

None for the AGO

SIGNIFICANT ISSUES

1. The Inspection of Public Records Act (“IPRA”) arguably provides an exception to the disclosure of compelled statements covered by HB 254. Specifically, NMSA 1978, Section 14-2-1(A)(3) protects “letters or memoranda that are matters of opinion in personnel files... .”. As interpreted by New Mexico courts, the exception applies to certain records pertaining to the employer/employee relationship, such as internal evaluations, disciplinary reports or documentation, promotion, demotion or termination information, and performance evaluations. *See Cox v. N.M. Dep’t of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, *State ex rel. Newsome*, 90 N.M. 790 (1977), *superceded on other grounds by statute, Republican Party v. New Mexico Taxation & Revenue Dep’t*, 2012-NMSC-026, 283 P.3d 853. Because, as defined by HB 254, a compelled statement is provided to an officer’s employer under threat of dismissal or other employment sanction, it likely constitutes disciplinary documentation or information related to the employment relationship covered by the exception

Although IPRA likely excepts compelled statements from public inspection, the application of the exception to compelled statements has not been addressed by a New Mexico

court. Accordingly, to the extent that any doubt remains, HB 254 makes it clear that compelled statements by hazardous duty officers would be protected from public disclosure.

2. HB 254 only protects compelled statements by hazardous duty officers, as defined by the Act. It does not apply to other similarly situated public employees, such as law enforcement officers.

3. HB 254 addresses “compelled statements” which, as quoted above, refer to statements “compelled under threat of dismissal from employment or any other employment sanction.” See Section 2 of HB 254. This description is inconsistent with Section 3 of the bill, which amends Section 10-7F-3 of the Act. Subsection A of Section 10-7F-3 addresses an investigation of an officer “for alleged actions that could result in administrative sanctions being levied against the officer....” The bill’s definition of compelled statement might be amended to make it consistent with Section 10-7F03(A). For example, the bill’s language could be changed to “compelled under threat of administrative sanctions against the officer.”

ADMINISTRATIVE IMPLICATIONS

None for AGO.

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

Does not appear to be a companion Bill in the Senate.

TECHNICAL ISSUES

None for AGO

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo—“compelled statement” may not be protected from public disclosure.

AMENDMENTS

See discussion above under “Significant Issues.”