

LFC Requester:	Eric Cheiner
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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:

Original	<input type="checkbox"/>	Amendment	<input checked="" type="checkbox"/>	Date	<u>February 6, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 303</u>

Sponsor:	<u>Rep. Paul Pacheco</u>	Agency Code:	<u>Attorney General's Office</u>
Short	<u>DWI Chemical Test Search</u>	Person Writing	<u>Clara Moran</u>
Title:	<u>Warrants</u>	Phone:	<u>505-222-9027</u> Email <u>cmoran@nmag.gov</u>

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: Synopsis:

House Bill 303 amends 66-8-111(A) to allow the issuance of a search warrant for a chemical test so long as there is probable cause to believe that the person to be tested operated a motor vehicle while under the influence of alcohol or a controlled substance. The bill strikes the requirement that a warrant may only be obtained for chemical testing when there is probable cause to believe that the person to be chemically tested has driven a motor vehicle while under the influence of alcohol or a controlled substance thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical test will produce material evidence in a felony prosecution. The bill further requires a person who refuses a chemical test to pay the cost of chemical testing required by a search warrant.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Because this bill allows law enforcement to obtain a warrant for chemical testing any time there is probable cause to believe that a person has driven a motor vehicle under the influence of alcohol, practical concerns regarding execution may arise. Law enforcement may need to hire additional officers to obtain judicial approval for drafting and execution of warrants for chemical testing during evening and night-time hours and have access to or staffing of a phlebotomist during evening and night-time hours as well.

This bill would also allow chemical testing or a warrant to draw blood in cases where probable cause regarding a misdemeanor DWI offense exists, where the law currently requires probable cause that a felony offense exists. Additionally, the bill requires a person who refuses testing and is then subject to a chemical test after issuance of a warrant to pay the cost of chemical testing required by a search warrant. It is unclear whether the cost of testing is triggered by a per-se level of alcohol or controlled substance indicated by the test or whether an individual who tests negative for alcohol or controlled substances would still be required to pay the cost of chemical testing. It is also unclear within the bill whether law enforcement, which would apparently pay

initial costs of chemical testing pursuant to a warrant would be reimbursed based on the language of the bill, and at what point in a criminal proceeding or license revocation proceeding an individual subject to the new language of the bill would be mandated to pay for the chemical testing.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

See above

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

ADDITIONAL SIGNIFICANT ISSUES