

LFC Requester:	Eric Chenier
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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 **Amendment**

Correction **Substitute**

Date 02/11/2015

Bill No: HB 381

Sponsor: Rep. Sheryl Williams Stapleton Agency Code: Attorney General's Office

Short Law Enforcement Person Writing Rick Word, AAG

Title: Academy Records Phone: 827-6070 Email rword@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

BILL SUMMARY

Synopsis: House Bill 381 proposes to enact a new section of the Law Enforcement Training Act and to amend existing sections of the Law Enforcement Training Act related to discipline of police officers.

New material in the bill provides that all law enforcement agencies in the state shall forward copies of any disciplinary action or caution taken against a law enforcement officer to the Law Enforcement Academy Board. Next, when any agency seeks to hire an individual who has been previously employed by a different agency, the hiring agency must request copies of all discipline in the possession of the Law Enforcement Academy Board. The Board is required to develop rules to administer the reporting of discipline and the access to the disciplinary records. The bill provides that “records provided by the Board and any related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the police officer.” Last, in the new language proposed, there is an immunity provision which provides that neither the Board nor law enforcement agency shall be held liable for civil damages as a result of reporting or requesting the contents of a police officer’s disciplinary record.

At section two, the bill proposes to amend NMSA 1978, Section 29-7-4 regarding powers and duties of the Law Enforcement Academy Board. New language would be added that requires the Law Enforcement Academy Board to, “compile a database or another readily accessible retrieval system for the personnel files and disciplinary records of out-of-state applicants for police officer positions in New Mexico”.

FISCAL IMPLICATIONS

There are minimal fiscal implications to the Attorney General’s Office from passage of the proposed legislation in that it would require additional time spent by both the Attorney General, who sits on the Law Enforcement Academy Board, as well as additional staff attorney time, as an Assistant Attorney General represents the Law Enforcement Academy Board. This change is anticipated to increase the amount of time these individuals must spend relating to the Board and Board business.

SIGNIFICANT ISSUES

The most significant issues presented by the proposed legislation are the multiple layers of responsibility that are now added to the hiring process in the state of New Mexico for peace officers. Initially, every agency is required to submit disciplinary information to the Law Enforcement Academy Board. It should be noted that this information is treated, by statute and case law, as being highly confidential. It should be noted that the confidentiality provision of the proposed legislation may not relate to the initial release of disciplinary information to the Law Enforcement Academy Board.

Next, law enforcement agencies are required by the proposed legislation to request this information from the Law Enforcement Academy Board. As noted above, HB 381 provides that such information provided to the law enforcement agency is privileged. The proposed legislation does not define “disciplinary records” and otherwise does not define the scope of this privilege. It is for example unclear if this privilege would extend to requests made under the Inspection of Public Records Act, making “disciplinary records” held by the LEAB exempt from inspection under NMSA 1978, Section 14-2-1(A)(8). Last, the Law Enforcement Academy Board is required to maintain and create a process for adequate review and retrieval of this information.

Additionally, the language proposing to amend NMSA 1978, Section 29-7-4 would create a very difficult requirement for the Law Enforcement Academy Board. This language requires the Law Enforcement Academy Board to compile personnel files and disciplinary records of out-of-state applicants for police officer positions in New Mexico. Simply put, the Law Enforcement Academy Board has no way of knowing what out-of-state individuals have or will apply for vacant peace officer positions in the state of New Mexico. Neither the Act nor the bill requires out of state applicants to submit such records to the Law Enforcement Academy Board, which would also be a very difficult proposition. The implication is that any law enforcement agency in New Mexico seeking to hire an out-of-state applicant would be required to ask the Law Enforcement Academy Board about that individual’s disciplinary history. The Law Enforcement Academy Board has no power or authority to request this information from any out-of-state entity. As written, the language referenced above seems difficult to implement and not feasible for the Academy Board to comply with.

PERFORMANCE IMPLICATIONS

See Fiscal Implications above.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A.

TECHNICAL ISSUES

See Significant Issues above.

OTHER SUBSTANTIVE ISSUES

See Significant Issues above.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.