

LFC Requester:	
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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 2-4-16
Original **Amendment** _____ **Bill No:** HB322
Correction _____ **Substitute** _____

Sponsor: Patricia Roybal Caballero **Agency Code:** 264
Short AG Special Excessive Force **Person Writing** Gail MacQuesten
Title: Unit **Phone:** 466-0532 **Emai** gailmacquesten@q.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
\$1,500	0	nonrecurring	General fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	(minimal)	(minimal)	(minimal)	unknown	recurring	general

(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:

HB322, the “Excessive Force Act,” establishes a division of the office of the attorney general and gives it exclusive powers to investigate and prosecute cases alleging excessive force by law enforcement officers in the state. HB322 requires such cases to be presented in a preliminary hearing or inquiry before the district court in the judicial district in whose jurisdiction the incident occurred for a determination of probable cause.

“Excessive force case” is defined as a case arising out of an action taken by a law enforcement officer while the officer was acting in the officer’s official capacity, including a shooting by a law enforcement officer, an allegation of assault, battery or homicide by a law enforcement officer, or any other allegation of the use of excessive force brought against a law enforcement officer.

HB322 appropriates one million five hundred thousand dollars from the general fund to the office of the attorney general for expenditure in fiscal year 2017 to establish the unit. Any unexpended or unencumbered balance shall revert to the general fund.

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.

The office of the attorney general will experience increased costs. It is unknown whether the appropriation is sufficient to establish the unit, and no appropriation is made for expenses beyond fiscal year 2017.

Costs for the district attorneys will be reduced to the extent cases are moved from the local district attorney offices to the office of the attorney general.

SIGNIFICANT ISSUES

HB322 give the attorney general exclusive powers to investigate and prosecute excessive force cases by law enforcement officers. Presumably, once an allegation of excessive force is made, or

once a local body determines that a situation may involve excessive force, the matter must be referred to the attorney general's office for investigation. And, presumably, the attorney general may initiate an investigation even if no referral is made.

Currently, district attorneys may arrange for cases to be prosecuted by attorneys outside their office or refer cases to the attorney general if local prosecution would create the appearance of a conflict of interest or lack of independent review. And currently the attorney general has jurisdiction over criminal matters when the district attorney either refers a case or fails to prosecute a case. Under HB322, however, that prosecution decision is automatic: all excessive force cases will be handled by the attorney general.

HB322 not only gives the office of the attorney general the exclusive power over such cases, it creates a new division and unit in the office of the attorney general to handle the cases. Currently, the attorney general has a special prosecutions division, which handles criminal cases, and units devoted to particular types of crime. Creating a new division for excessive force cases helps ensure that the review will be independent – special prosecutions division attorneys will not be charged with handling cases against the law enforcement officers with which they work.

HB322 requires cases to be presented in a preliminary hearing or inquiry before the district court in the judicial district in whose jurisdiction the incident occurred, and not to a grand jury. Preliminary hearings are public, while grand jury proceedings are not. While transparency in charging such cases is one factor to consider, HB322 will not allow the attorney general to consider any other factors: a grand jury proceeding is not an option.

PERFORMANCE IMPLICATIONS

HB322 removes discretion in the handling of excessive force cases, requiring the investigation and prosecution to be by the attorney general's office, and requiring the determination of probable cause in a public preliminary hearing, rather than by grand jury. HB322 also dictates the internal structure of the attorney general's office, requiring establishment of a new division and unit.

ADMINISTRATIVE IMPLICATIONS

The district attorneys will need to establish a procedure for referring excessive force cases to the attorney general. The attorney general will need to establish the division and unit required by HB322.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Excessive force cases will be investigated and prosecuted in the jurisdiction in which the event occurred, unless the district attorney refers the case for prosecution by the office of the attorney general or arranges for prosecution by an attorney outside the office of the district attorney.

AMENDMENTS

None suggested.