

LFC Requester:	Theresa Rogers
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**AGENCY BILL ANALYSIS
2016 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:** HB 322
Correction _____ **Substitute** _____

Sponsor: Patricia Roybal Caballero **Agency Code:** 305
Short _____ **Person Writing** Jason Yamato
Title: Excessive Force Act **Phone:** 505.222.9136 **Email** jyamato@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(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		1,500			Nonrecurring	General Fund

(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

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.

Synopsis:

House Bill 322 proposes that a new division, called the excessive force division, within the Office of the Attorney General be created that would have original ("exclusive") jurisdiction with regard to the investigation and prosecution of any and all "alleged excessive force cases by law enforcement officers in the state." HB 322 requires that all excessive force cases be presented by way of preliminary hearing, expressly forbidding presentation to a grand jury.

HB 322 would appropriate \$1,500,000 to the Office of the Attorney General in order to create and fund the excessive force division. The Office of the Attorney General would be responsible for sufficient allocation of resources to the excessive force division with the directive to "ensure the swift and competent investigation and prosecution of excessive force cases." The appropriated funds are nonrecurring.

FISCAL IMPLICATIONS

\$1,500,000 would be appropriated to the Office of the Attorney General the created the excessive force unit. This amount would roughly fund 1 administrative assistant, six investigators, one supervising investigator, three attorneys, and one supervising attorney.

SIGNIFICANT ISSUES

The one time appropriation of \$1,500,000 to the Office of the Attorney General would only fund the specialized unit for one fiscal year. It would be impossible, on already scarce resources, to fund the specialized unit past fiscal year 2017 without a recurring fund especially since the Act is extremely broad in what it considers to be excessive force.

Section 4 of the Act limits the discretion of a prosecutor by requiring that the excessive force case be presented to a district court via a preliminary hearing. The way the section currently reads, it might be interpreted to require that all excessive force cases be presented, even where the prosecutor does not believe there is probable cause to present the case. Forcing a prosecutor to present a case where probable cause does not exist could result in claims that the prosecutor acted in an unethical manner. There are also situations where a prosecutor may feel that it is in the interest of justice to present a case to a grand jury. Also, cases of simple assault or battery (misdemeanor offenses) may be more appropriately handled by a magistrate or metropolitan

court.

The Act also completely removes the authority of an elected district attorney to prosecute a case that occurs in his or her jurisdiction. Current law generally permits elected district attorneys to use their discretion and decide whether to prosecute a case and, if they elect not to, ask the Office of the Attorney General if they would accept the declined case. The Office of the Attorney General then uses its discretion in deciding whether to accept the case.

PERFORMANCE IMPLICATIONS

HB 322 creates a new division within the Office of the Attorney General. It would also increase the criminal caseload tremendously by purporting to give the Office of the Attorney General “exclusive” jurisdiction over all violent crimes committed by law enforcement while working in official capacity.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Section 2 of HB 322 defines an “excessive force case” as “a case that arises out of an action taken by a law enforcement officer while the officer was acting in the officer’s official capacity.” Section 2 also provides a non-exhaustive list of examples including the catchall language “any other allegation of the use of excessive force brought against a law enforcement officer.” This definition could be construed as overly broad. The drafters may wish clarify the definition. Most law enforcement agencies have use of force reports that are not necessarily excessive in nature. The current definition, specifically subsection A, leaves open the possibility that a justified law enforcement action must proceed to a preliminary hearing.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A