

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 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 24 January 2024

Bill No: SB 55-280

Sponsor: Harold Pope
Short Title: Anti-Hazing Act

Agency Name and Code Number: LOPD-280
Person Writing: Melanie McNett
Phone: (505) 395-2890 **Email:** melanie.mcnett@lopdm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None known

Duplicates/Relates to Appropriation in the General Appropriation Act: None known

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 55 would criminalize hazing at public and private post-secondary educational institutions. The bill defines hazing as any act, pastime, or amusement related to recruitment, initiation, pledging, or admission to an organization, athletic team, or living group that causes or is likely to cause bodily danger, physical harm, or serious psychological or emotional harm to a student or other person attending the educational institution. This would include causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance that subjects the person to risk harm, regardless of the person’s willingness to participate. It would not include customary athletic events or other similar contests or competitions, practice, training, conditioning, or eligibility requirements for various athletic organizations, as long as such events do not include gratuitous hazing activities.

The bill provides that no student or other person in attendance at a public or private post-secondary educational institution may *intentionally* haze another.

Under SB 55, whoever commits hazing is guilty of a misdemeanor, and whoever commits hazing that results in “substantial bodily harm to another” is guilty of a fourth-degree felony.

This bill also includes a number of non-criminal provisions regarding damages associated with hazing, educational institutions’ responsibility to prevent or report hazing, and the responsibility of fraternities and sororities to report internal investigations related to hazing to the educational institution.

FISCAL IMPLICATIONS

Creation of any new crime is likely to create new prosecutions and, therefore, additional clients for LOPD. It is impossible to predict how substantial an increase in workload Law Offices of the Public Defender (“LOPD”) attorneys and staff would see from the passage of SB 55. However, news reports of hazing incidents nationwide suggest at least the possibility that many charges will result, especially if prosecutors charge hazing cases that do not result in harm and/or these cases result in multiple individuals being charged from a single incident. The latter scenario specifically implicates the need for conflict-free contract counsel to represent co-defendants from a single incident. A precise fiscal impact is impossible to predict.

SIGNIFICANT ISSUES

SB 55 is drafted broadly, presumably in order to encompass a variety of actions that would qualify as hazing to a layperson's understanding. However, the danger is of penalizing any intentional action or the creation of any situation that causes physical danger or psychological or emotion harm to another student is that the law would be interpreted by law enforcement officers and prosecutors to include unintended consequences. It is clear that the actions are to be between college students involved in an activity association, such as a student club, an athletics squad, a fraternity, sorority, etc., but the bill includes conduct with huge variations in actual culpability and it remains an open question whether the relationship between offender and victim needs to be one in which coercion, or a power-imbalance, would naturally exist.

The bill does not require actual injury to physical or mental health to criminalize hazing, only acts that are *likely to cause* bodily danger or physical harm or serious psychological or emotional harm. Criminalizing endangerment without harm has led to significant "line-drawing" litigation in the child abuse context. *See e.g., State v. Chavez*, 2009-NMSC-035, 146 N.M. 434; *State v. Cabezuela*, 2011-NMSC-041, 150 N.M. 654; *State v. Consaul*, 2014-NMSC-030, 332 P.3d 850; *State v. Garcia*, 2014-NMCA-006, among others. Furthermore, where the type of action taken by the perpetrator remains undefined, such a law could result in challenges on the basis of 'void-for-vagueness' under the 5th Amendment or the rule of lenity. *See e.g., State v. Laguna*, 1999-NMCA-152, 128 N.M. 345.

The bill is particularly vague with respect to its prohibition of "gratuitous hazing activities occurring as part of [a] customary athletic event or contest." The bill does not create parameters around what kind of athletic events, training, competitions, etc. are permissible versus gratuitous.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

There is likely to be some overlap between the conduct prohibited by SB 55 and conduct addressed by preexisting statutes such as assault, aggravated assault, battery, and aggravated battery, and where death results, homicide. *See below* →

Name	Citation	Classification	Basic sentence	Definition
Hazing	SB 55	No/minor injury→ Misdemeanor	6 months-1 year	Intentionally requiring, for admission, recruitment, or membership in a student organization at an educational institution, an act that causes or is likely to cause bodily danger, physical harm, or serious psychological or emotional harm to a student.
		Resulting in substantial bodily harm→ 4 th degree felony	18 months	
Murder	NMSA 1978, § 30-2-1	<ul style="list-style-type: none"> • First degree • Second degree 	<ul style="list-style-type: none"> • Life • 15 years 	<ul style="list-style-type: none"> • felony murder, deliberate intent, or depraved mind • reckless or sudden intentional killings
Manslaughter	NMSA 1978, § 30-2-3	<ul style="list-style-type: none"> • Voluntary • Involuntary 	<ul style="list-style-type: none"> • 6 years • 1 ½ years 	<ul style="list-style-type: none"> • Provoked sudden intent killings • Negligent (unintentional) killings
Assault	NMSA 1978, § 30-3-1	Petty misdemeanor	≤ 6 months	<ul style="list-style-type: none"> A. An attempt to commit a battery upon the person of another; B. Any unlawful act, threat, or menacing conduct which causes a person to believe he is in danger of receiving an immediate battery; C. The use of insulting language toward another impugning his honor, delicacy, or reputation
Aggravated assault	NMSA 1978, § 39-3-2	4 th degree felony	18 months	<ul style="list-style-type: none"> A. Unlawfully assaulting or striking at another with a deadly weapon; B. Committing assault by threatening or menacing another while wearing a mask, hood, robe, or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or C. Willfully and intentionally assaulting another with intent to commit any felony
Battery	NMSA 1978, § 30-3-4	Petty misdemeanor	≤ 6 months	The unlawful, intentional touching or application of force to the person of another when done in a rude, insolent, or angry manner.

Aggravated Battery	NMSA 1978, § 30-3-5	Resulting in injury not likely to cause death or great bodily harm → Misdemeanor	6 months-1 year	The unlawful touching or application of force to the person of another with intent to injure that person or another
		Inflicting or possible to inflict great bodily harm → 3 rd degree felony	3 years	

ALTERNATIVES

The bill uses without defining the term “substantial bodily harm.” To make this bill uniform with the existing criminal code, it may be more appropriate to use the predefined term, “great bodily harm.” Great bodily harm means “an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.” NMSA 1978, § 30-1-2 (1963).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Conduct resulting in fear or injury would be punishable by existing crimes as outlined in the chart above.

AMENDMENTS

None at this time.