

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 1/26/2024

Bill No: HB 225

Sponsor: Rep. Hernandez
Short Title: Create Crime of Hazing

Agency Name and Code University of New Mexico-952
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$500.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB 55 (2024)
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 225 would create the crimes of hazing and aggravated hazing. Hazing is defined as an act intentionally or recklessly committed against a student or a prospective student of an educational entity: (1) in connection with initiation into, affiliation with, holding office in or maintaining membership in any student organization, student body or student athletic team or club, regardless of whether the student organization, student body or student athletic team or club is officially recognized, sanctioned or authorized by an educational entity; and (2) when the act creates a substantial risk of physical or mental injury to the student or prospective student.

Aggravated hazing is defined as an unlawful act, intentionally committed against a person who is a student or prospective student of an educational entity: (1) in connection with initiation into, affiliation with, holding office in or maintaining membership in any student organization, student body or student athletic team or club, regardless of whether the student organization, student body or student athletic team or club is officially recognized, sanctioned or authorized by an educational entity; and (2) when such act causes painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body of the student or prospective student or causes substantial mental harm to the student or prospective student.

HB 225 would make hazing a misdemeanor offence and aggravated hazing a fourth-degree felony. HB 225 also creates criminal liability for educators and staff who should have knowledge of hazing going on and not acting on it. Additionally, HB 225 creates a state-wide, monitored database, housed at the Higher Education Department (HED), to track hazing cases across the state that occur at an educational entity, which is defined as either a public or private school serving kindergarten through twelfth grade students; or a public or private post-secondary educational institution. Each educational entity is required to report annually regarding hazing. Further, HB 225 prescribes that a public or private post-secondary educational institution shall provide hazing prevention education to employees, including student employees. HB 225 provides an Inspection of Public Records Act exception for all complaints and information provided with the complaints made through the statewide online reporting portal regarding hazing. HB 225 provides an appropriation of five hundred thousand dollars (\$500,000) to the HED to implement the statewide hazing reporting portal.

FISCAL IMPLICATIONS

UNM Police Department-

There is no appropriation that accompanies this bill for an educational entity (public or private post-secondary educational institution) other than the HED. However, there will be a significant cost to the institutions related to providing prevention education, especially related to staff time, possibly materials and training. There may also be costs associated with any institution that employees law enforcement for training, tracking, and reporting of such incidents.

UNM Student Activities Center-

There is one appropriation included in HB 225 for five hundred thousand dollars (\$500,000) for the creation of and staffing of an anti-hazing office. As New Mexico would be the first state with a state-wide government entity tracking hazing, this cost is uncertain. The funding provided in HB 225 is helpful in the implementation of a novel online reporting portal, but the educational requirements laid out for staff and faculty members at post-secondary educational institutions will have costs associated with the purchase of or creation of new training and personnel to execute the training. There is no appropriation to offset the costs educational institutions will likely encounter when setting up these educational requirements.

UNM Office of Compliance, Ethics and Equal Opportunity-

HB 225 includes an appropriation for HED to create and staff the online reporting portal but does not include appropriation for educational institutions to investigate hazing reports either administratively and/or criminally (for post-secondary institutions with campus police). It is unclear how many reports of hazing will be reported so it is difficult to assess the impact to

educational institution staff or campus police to be trained on how to investigate and to investigate hazing complaints.

HB 225 does not include appropriation for educational institutional annual requirements to train all employees (including student employees). Educational institutions will have some financial impact for creating and administering annual hazing training. Larger educational institutions with more employees will likely have a greater financial impact.

SIGNIFICANT ISSUES

UNM Police Department-

No appropriations for the hazing prevention education.

Clarification of the components that define hazing may be helpful as noted in stophazing.org, which includes the following:

1. It occurs in a group context
2. Humiliating, degrading, or endangering behavior
3. Happens regardless of an individual's willingness to participate

Clarification of what defines a **substantial risk** of physical or mental injury is needed under the penalties section A subsection 2 as well as **substantial mental harm** under section E subsection 2. Current New Mexico State Statutes include Assault, Battery and Aggravated Battery, which could also relate to the criminal penalties of this bill.

Extend the definition of hazing as related to social media as well:

The Intersection of Hazing and Cyberbullying

The combination of hazing and the Internet can also lead to cyberbullying and cyberstalking. In our practice, we've seen this happen with growing frequency. What starts as joking among members of a team turns into cruel name-calling and memes being circulated among group chats and elsewhere online. **An extreme example of hazing rising to the level of cyberstalking involves seven fraternity members at the University of Mississippi who were [arrested after using social media to harass](#) a former member of their fraternity who reported a hazing ritual that took place at the fraternity's house.** The former fraternity member reported the incident after seeing pictures on social media - [Cyber Warning: Watch Out for Digital Hazing | Kohrman Jackson & Krantz LLP - JDSupra](#).

It should also be noted that New Mexico enacted anti-bullying laws but has yet to enact anti-hazing laws.

UNM Student Activities Center-

Section 1-A – Hazing does not just happen in the educational system. Hazing is related to obtaining or continuing membership in an organization. It happens in schools, non-school related sports teams, military organizations, the workplace, and more. The student connection runs through the entire bill and should be expanded to general membership in any entity.

Section 1-B - The bill includes language that "...bodily danger, physical harm, or serious psychological or emotional harm to a student..." (Section B lines 13-14) The use of the word "serious" is problematic. Defining serious psychological and emotional damage is subjective, and harm shouldn't have to be serious to be considered impactful to the victim.

Section 1-B - Attempts to define possible acts of hazing in lines 15-18 but the language is very limiting and seems to apply only to consumption-based hazing.

Section 1-D - Provides criminal penalties for teachers, professors, coaches, or other staff that knew or "reasonably should have known" of a hazing incident. Defining what a person should reasonably know is speculative at best. Charging someone because they should have known something was happening is worrisome. Who is the staff required to report it to? A superior in the organization, the hotline, etc.? This should potentially be addressed in the bill.

Section 1-F - The creation of a felony may not be preventative, especially without the inclusion of education and awareness. In addition, the felony definition in part 2 is uneven and vague. Defining substantial mental harm is subjective.

Section 1-G - Provides for anyone under the age of 18 as a delinquent. This decision should be left up to prosecutor discretion. A student under 18 in a K-12 institution should likely be charged as a juvenile, but a fully matriculated college student under 18 may not be charged as a juvenile.

Section 2 - The statewide reporting portal created through this bill is a novel idea. No other state in the country, even the 44 with anti-hazing laws on their books, have a statewide reporting portal. Although, hazing incidents may be better suited to be reported and managed through the institution.

Section 3 - While the bill adds a training requirement for staff, faculty, and student employees, this may not fully address and prevent hazing. Training and prevention education must be provided to individual students attending the institution. In addition, the training must be standardized across the state and consistent. The only funding provided by this bill is for HED to implement and maintain the online reporting portal. No funding is provided to the educational institutions for hazing prevention education or their administration costs. Fiscal impact to institutions could be significant. To implement effective training and guarantee quality, the state should contract with a third-party for creation of this training. This will guarantee consistency and provide the state an opportunity to have oversight of the training each student will receive. Relying on individual staff or faculty to create and facilitate this program for every student at an institution at current staffing levels is unrealistic. Staff and faculty training would also need to be consistent. Additionally, a program, delivered through electronic means would provide more accurate assessment data. For example, AliveTek which runs prevent.Zone and the hazing prevention network, is the leading digital educational provider on the topic of hazing prevention, they would be an ideal partner. A proposal provided by AliveTek to UNM based the cost on number of users and an estimated cost to train all UNM students, staff, and faculty would cost an estimated \$15,250 per annum.

There may also be financial impact from an investigatory standpoint. Depending on the current burden of the staff assigned to investigate, these requirements may necessitate additional staff in the conduct office. Training for law enforcement will also be necessary and could be complex based on the different levels of punishment through this bill.

PERFORMANCE IMPLICATIONS

UNM Police Department-

Institutions would be required to also be diligent in the reporting and review of off-campus incidents as well.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

UNM Police Department-

SB 55 – 2024 NM Legislative Session

The 118th Congress introduced the “Stop Campus Hazing Act.” The Act will improve hazing reporting by requiring colleges to include hazing incidents in their annual security report (inclusion of hazing incidents as a Clery Act crime). Prevent hazing by establishing campus-wide, research-based hazing education and prevention programs, and help students and their parents make informed decisions about joining organizations on campus by requiring colleges to publish on their websites the institution’s hazing prevention policies and the organizations that have violated them.

UNM Student Activities Center-

Conflict – HB 225 is the second bill introduced during this legislative session with a goal of preventing hazing, the other is SB 55. The intent of both bills seems the same based on the titles, but this bill differs from SB 55 in that its education component does not offer hazing education and prevention for students.

UNM Office of Compliance, Ethics and Equal Opportunity-

HB 225 is related to Senate Bill 55. HB 225 applies to both K-12 and post-secondary institutions; SB 55 applies only to post-secondary institutions. HB 225 and Senate Bill 55 similarly define misdemeanor and felony hazing. Senate Bill 55 includes reporting that occurs in student living environments which is not defined in SB 55. HB 225 has mandatory hazing reporting responsibilities for teachers, coaches, professors, and staff. Failure to report constitutes a misdemeanor and may be used as justification to suspend or revoke educator licensure. Senate Bill 55 does not have mandatory reporting responsibilities but requires reporting only when a reporter has “reasonable cause” to believe hazing has occurred. Arguably HB 225 holds educational institution employees to a higher reporting standard which may reduce or prevent hazing acts. HB 225 creates an online reporting portal maintained by HED while SB 55 requires post-secondary institutions to create an annual public report. HB 225 requires annual training for employees only and SB 55 requires training for both students and employees.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico would remain one of six states without a hazing law. Each institution will continue to address and report incidents of hazing in their own way, which would most likely be inconsistent state-wide. Basically, the consequence of not enacting this bill will result in a lack of state-wide standards to address and report incidents of hazing or suspected incidents of hazing. According to an on-line media report, college campuses' safeguards are "uneven".

AMENDMENTS