

1 SENATE BILL 426

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Joseph Cervantes

5
6
7
8
9
10 AN ACT

11 RELATING TO CIVIL RIGHTS; ESTABLISHING THE CIVIL RIGHTS
12 DIVISION IN THE OFFICE OF THE ATTORNEY GENERAL; AUTHORIZING
13 CIVIL INVESTIGATIVE DEMANDS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new Section 8-5-23 NMSA 1978 is enacted to
17 read:

18 "8-5-23. [NEW MATERIAL] CIVIL RIGHTS DIVISION--CREATED--
19 CIVIL INVESTIGATIVE DEMANDS.--

20 A. The "civil rights division" is created within
21 the office of the attorney general. The civil rights division
22 shall have the authority to investigate civil rights
23 violations, intervene in civil actions for civil rights
24 violations and bring civil actions for civil rights violations
25 in the name of the state when, in the attorney general's

.224547.1

underscoring material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material] = delete~~

1 judgment, the interest of the state requires such prosecution.

2 B. The attorney general may hire employees for the
3 civil rights division on a full- or part-time basis, at
4 salaries to be fixed by the attorney general within budget
5 allowances and appropriation limits as the business of the
6 civil rights division shall require, and the attorney general
7 may assign duties for the civil rights division.

8 C. The civil rights division may issue a civil
9 investigative demand to a person or public body for the
10 production of documentary material and the inspection and
11 copying of the material when there is reason to believe the
12 person or public body is in possession, custody or control of
13 an original copy of any book, record, report, memorandum,
14 paper, communication, tabulation, map, chart, photograph,
15 mechanical transcription or other tangible document or
16 recording and the civil rights division determines the material
17 to be relevant to the subject matter of an investigation. A
18 civil investigative demand shall:

19 (1) state generally the subject matter of the
20 investigation;

21 (2) describe with reasonable certainty the
22 classes of documentary material to be produced;

23 (3) provide a date by which the documentary
24 material is to be produced, which shall be no less than ten
25 days after the date the demand is served;

.224547.1

underscoring material = new
~~[bracketed material] = delete~~

1 (4) identify the members of the attorney
2 general's staff to whom the documentary material is to be made
3 available for inspection and copying; and

4 (5) contain no requirement that would be
5 unreasonable or improper if contained in a subpoena duces tecum
6 issued by a court of this state.

7 D. Notwithstanding any confidentiality provision
8 established by law, a person or public body that is issued a
9 civil investigative demand pursuant to Subsection C of this
10 section shall comply with that demand.

11 E. The attorney general may petition the court for
12 enforcement of a civil investigative demand, and, in
13 appropriate cases, the court shall order the production of the
14 documentary material required in the demand. Upon petition and
15 for good cause shown, the court may set aside or modify a civil
16 investigative demand or extend the production date.

17 F. A civil investigative demand and any documentary
18 material produced in response to a civil investigative demand
19 shall not be made public or used for purposes other than
20 investigations and prosecutions by the civil rights division,
21 except as otherwise provided in this section.

22 G. In lieu of beginning or continuing a civil
23 action under this section, the civil rights division may accept
24 a written assurance of the discontinuance of a civil rights
25 violation from the person or public body engaged in the civil

.224547.1

underscoring material = new
~~[bracketed material] = delete~~

1 rights violation. A violation of an assurance entered into
2 pursuant to this subsection shall constitute prima facie
3 evidence of the alleged civil rights violation in any civil
4 action commenced by the civil rights division.

5 H. The civil rights division may collect
6 information upon request and make policy recommendations for
7 public bodies to adopt measures to ensure the protection of
8 civil rights. The civil rights division may publish and report
9 information, statistics, findings or conclusions regarding its
10 civil rights investigations if the release of this information
11 is in the public interest or made upon request by the
12 legislature or any appropriate legislative committee; provided
13 that the civil rights division shall redact names and personal
14 identifying information.

15 I. In the case of any conflict of interest between
16 the attorney general's duties under this section and the
17 attorney general's duty to represent an entity pursuant to
18 Section 8-5-2 NMSA 1978, the entity shall be entitled to
19 alternative representation by special counsel or as determined
20 by the risk management division of the general services
21 department.

22 J. As used in this section:

23 (1) "civil rights violation" means an act,
24 practice or pattern of conduct by any person or public body
25 that:

.224547.1

underscoring material = new
~~[bracketed material] = delete~~

1 (a) subjects, or causes to be subjected,
2 other persons to the deprivation of any rights, privileges or
3 immunities secured by the constitution or laws of this state or
4 the United States; or

5 (b) interferes, or attempts to
6 interfere, by threats, intimidation or coercion with the
7 exercise or enjoyment by other persons of any rights,
8 privileges or immunities secured by the constitution of this
9 state or the United States; and

10 (2) "public body" means a state or local
11 government, an advisory board, a commission, an agency or an
12 entity created by the constitution of New Mexico or any branch
13 of government that receives public funding, including political
14 subdivisions, special tax districts, school districts and
15 institutions of higher education, but not including an acequia
16 or community ditch, a soil and water conservation district, a
17 land grant-merced, a mutual domestic water consumers
18 association or other association organized pursuant to the
19 Sanitary Projects Act or a water users' association."