

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

SPONSOR Block LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/2/2023  
BILL \_\_\_\_\_  
SHORT TITLE Repeal Civil Rights Act BILL NUMBER House Bill 109  
ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>GSD/RMD</b>	No fiscal impact	(Indeterminate but minimal)	(Indeterminate but minimal)		(Recurring)	Public Liability Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 98

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)  
New Mexico Attorney General (NMAG)  
Law Offices of the Public Defender (LOPD)  
Department of Public Safety (DPA)  
General Services Department (GSD)

#### No Response Received

New Mexico Municipal League  
New Mexico State University  
New Mexico Counties  
State Ethics Commission  
Department of Finance and Administration  
Administrative Office of the Courts  
University of New Mexico

## SUMMARY

### Synopsis of House Bill 109

House Bill 109 (HB109) repeals Sections 41-4A-1 NMSA 1978 through Section 41-4A-13 NMSA 1978 for all actions filed pursuant to the New Mexico Civil Rights Act after June 16, 2023.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

GSD reports that it is difficult to estimate any impact on the public liability fund, as there have been no verdicts or settlements under the New Mexico Civil Rights Act (NMCRA). There are currently 10 cases in active litigation under the NMCRA and 74 notices of future litigation.

Since 2021, DPS reports it has been sued under NMCRA a few times, but only in cases to which it was inapplicable, or which have not progressed sufficiently to estimate resolution or final cost.

LOPD reports the agency has not been sued under the NMCRA. Although LOPD may be subject to liability under the current law, the majority of the agency's work in representing indigent criminal defendants is protected from civil liability, and was therefore largely not affected by the act, or the availability of qualified immunity. When the qualified immunity is removed as a defense, existing statutory immunities, including that of the Indigent Defense Act, remain.

## SIGNIFICANT ISSUES

HB109 would repeal in its entirety the New Mexico Civil Rights Act passed in 2021. The New Act created a statutory framework creating a state cause of action that allows a person who claims a deprivation of any "rights, privileges or immunities" secured by the bill of rights of the New Mexico Constitution to sue a public body for damages or injunctive relief in state district court.

NMAG notes the bill allows pending actions (and those filed before June 16, 2023) to proceed under the NMCRA, even following repeal. By implication, the bill cuts off actions filed after that date. This does not address claims or causes of action that *accrued* prior to repeal, have a limitations period not yet expired, but not filed by June 16, 2023. Thus, litigation could result to determine if claims that accrued prior to repeal of the NMRCA can be divested by legislation.

*See, e.g., Century Tel of Ala., LLC v. Dothan/Houston Cnty. Comm'cns Dist.*, 197 So.3d 456, 461-62 (Ala. 2015) (holding repeal of statute will not divest claims accrued prior to repeal); *E.J.R. v. Dist. Ct., Cnty. of Boulder*, 892 P.2d 222, 227-228 (Colo. 1995) (en banc) (same); *Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah 1985) ("However, once a cause of action under a particular rule of law accrues to a person by virtue of an injury to his rights, that person's interest in the cause of action and the law which is the basis for legal action becomes vested, and a legislative repeal of the law cannot constitutionally divest the injury person of the right to litigate the cause of action to a judgment."); *but see Miss. Dep't of Corrs. v. Roderick & Solance MacArthur Justice Ctr.*, 220 So.3d 929 (Miss. 2017) (imposing more demanding definition of "vested" rights).

## PERFORMANCE IMPLICATIONS

According to DPS, if the NMCRA were repealed, civil rights claims would still be actionable under the Tort Claims Act, and federal 42 USC Section 1983. Its repeal would just reduce the

potential recovery to the Tort Claims Act limitation of \$750 thousand for each claim, from the NMCRA limitation of \$2 million for each claim, inclusive of the claimant's costs of action and reasonable attorney fees. The Tort Claims Act limitation does not apply to federal claims.

### **TECHNICAL ISSUES**

NMCD commented that the bill allows previous actions filed under the NMCRA to continue through the courts if filed by June 16, 2023, which could force individuals to file a claim under the law without having conducted a good faith reasonable investigation in advance of their filing.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to House Bill 98 and House Bill 203, both reinstating the defense of qualified immunity.

AHO/al/ne