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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HJC</u>	<b>LAST UPDATED</b> <u>3/8/23</u>	<b>ORIGINAL DATE</b> <u>2/16/23</u>
<b>SHORT TITLE</b> <u>Removal of Traffic Obstructing Vehicles</u>	<b>BILL NUMBER</b> <u>CS/House Bill 334/HJCS</u>	<b>ANALYST</b> <u>J. Torres</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Department of Transportation (NMDOT)  
 Department of Public Safety (DPS)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

### Synopsis of HJC Substitute for House Bill 334

The House Judiciary Committee substitute for House Bill 334 (HB334/HJCS) amends state law to allow a law enforcement officer or Department of Transportation employees to remove vehicles or other objects, attended or unattended, that are an obstruction to traffic or roadway maintenance from the right of way.

HB334/HJCS provides the object can be removed so that it is no longer an “immediate public safety hazard.”

The proposal exempts the state, county, or municipality employee or a law enforcement officer, a Department of Transportation employee or anyone acting under the direction of the officer or employee from liability of the motor vehicle, vehicle, cargo or debris is damaged by the removal.

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

NMDOT states:

HB334/HJCS allows but does not require NMDOT employees to remove a motor vehicle, vehicle, cargo, or debris from the right of way. For vehicles deemed traffic hazards, the Department of Public Safety (DPS), as part of its law enforcement responsibilities, has historically been responsible for removing vehicles from NMDOT right of way. NMDOT does not have law enforcement authority. Given that HB334/HJCS allows the NMDOT to act in a manner previously reserved for law enforcement, NMDOT may be obligated to remove nonhazard motor vehicles from the right of way if DPS does not do so. NMDOT reports it does not have sufficient equipment or the personnel trained to perform such removals, including to deal with members of the public should conflict arise during removal operations.

While NMDOT might be able to hire tow truck drivers and others to remove vehicles and other obstructions, the department might also need to ensure that each district has properly trained staff for removing obstructions and has and maintains the appropriate equipment that would be used to remove vehicles and other obstructions, as well as an appropriate secure place to store such vehicles and other authorized items. Whether it contracts with others or buys the equipment and rents storage space directly, HB334/HJCS represents a cost to NMDOT. This cost is indeterminate.

DPS states:

While there would be no added fiscal impact to DPS, this will be beneficial to DPS and NMDOT to remove traffic obstructions preventing the flow of traffic in a timely manner to reduce road closure time and the possibility of further injury to the motoring public traveling along New Mexico highways.

## SIGNIFICANT ISSUES

NMDOT states:

HB334 is silent about notice provisions and due process. If the NMDOT removes personal property from its right of way absent notice, there may be due process implications regarding seizure of property. The NMDOT is not a law enforcement agency and has limited mechanisms in place for notifying members of the public that the NMDOT will remove their property from the right of way. Further, the NMDOT has limited means to dispose of such property if it is not reclaimed.

Attempting to remove attended personal property from the right of way may lead to dangerous interactions with members of the public for which NMDOT employees are not trained or equipped. Pursuant to preexisting regulation at 18.20.5 NMAC, NMDOT can remove certain encroachments and hazards, but HB334 expands its authority to remove obstructing motor vehicles, vehicles, cargo, or debris from the right of way even if such items are non-hazards and identifiable with plates, or are otherwise attended, presumably by the owner or a representative thereof. Such action taken by NMDOT employees may lead to confrontations with members of the public. The NMDOT is not a law enforcement agency—its employees do not carry weapons and are not trained to manage or deescalate such confrontations.

## PERFORMANCE IMPLICATIONS

NMDOT states:

In addition to not having an adequate fleet of vehicles designed to remove vehicles or other significant objects from the right of way, the NMDOT does not have personnel assigned to such tasks. Performing the removals authorized by HB334 will create additional work for existing NMDOT staff, which will impact other areas of job performance. The NMDOT will also need to designate staff authorized to remove vehicles or other such obstructions, as well as train authorized staff to perform removal tasks.

## ADMINISTRATIVE IMPLICATIONS

NMDOT states:

HB334 will require NMDOT to create internal policies regarding removal of motor vehicles, vehicles, cargo, or debris from the right of way, including those normally addressed by law enforcement. The NMDOT may also need to promulgate rules concerning storage and disposal of personal property removed pursuant to HB334, or otherwise revise existing rules. See, e.g., 18.20.5 NMAC, Removal of Encroachments, Obstructions, Abandoned Motor Vehicles and for Restriction of Vending. Further, the NMDOT will have to create a policy or practice for notifications of owners, assess impound fees (if applicable), or determine if this process will be better handled via a contract with a third party. If the latter, NMDOT will need to go through the procurement process, including to allocate money for a third-party contract at the expense of operations for which those funds were originally intended.

## TECHNICAL ISSUES

NMDOT states:

The use of “Traveled Portion” of the highway in HB334 is not in keeping with NMDOT’s terminology. Traveled Portion could mean many things given the route, the width of the right of way, speed restrictions, foreslope and backslope of the roadway, etc. NMDOT utilizes AASHTO’s Roadside Design Guide to provide guidance on providing an unencumbered roadside recovery area that is as wide as practical on a specific highway. Studies have indicated that on high-speed highways, a width of 30 feet or more from the edge of the through traveled way permits about 80 percent of the vehicles leaving a roadway out of control to recover.

NMDOT has concerns regarding HB334’s substantial impact on its existing budget and workforce. It is also concerned about the bill’s lack of due process notification requirements, as well as the agency’s lack of inherent law enforcement authority to move obstructive vehicles, cargo and debris. In addition, NMDOT notes that it does not have the necessary removal equipment or storage facilities to perform vehicle, cargo, and debris removal. DPS states that it will experience no fiscal impact and supports the bill.

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