

Duplicates/Conflicts with/Companion to/Relates to:
HB328 duplicates SB303.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 Sections A, B and D prohibit the Department of Public Safety and local law enforcement agencies from “knowingly” expending any state funds “joint operation with federal law enforcement officers or other employees or agents of the federal government who conceal their identity while exercising law enforcement authority.” Section E provides that proof of “specific intent to defraud” is not required.

Section 1.C contains exceptions for a sanctioned undercover operation, an officer performing special weapons and tactics responsibilities, and conducting an explosive recovery and disposal operation to render safe or disassemble an explosive or incendiary device or materials.

Section 1.F provides civil penalties for violations including making the violator liable for three times the amount of damages sustained by the state or political subdivision because of the violation, a civil penalty between \$5,000 and \$10,000 for each violation, costs of bringing the civil action, and reasonable attorney fees including the fees of the attorney general, state agency or political subdivision counsel.

Sections G, H, I, and J provide that a person or a government entity may bring a civil action for a violation of this section. A person bringing such an action is the “qui tam plaintiff” who must serve the attorney general with a copy of the complaint and disclosure of material evidence. The attorney general or a government entity may intervene and proceed with the action within sixty days after receiving the complaint and the material evidence and information. The state or government entity is entitled to all proceeds, reasonable expenses and reasonable attorney fees to be paid by the defendant. The qui tam plaintiff shall receive reasonable expenses and attorney fees to be paid by the defendant. Only the attorney general or government entity may intervene or bring a related action based on the facts underlying the pending action.

Section K provides definitions for “peace officer” and “undercover operation.”

SUBSTANTIVE ISSUES

HB328 proposes a new ground for a qui tam action similar to the existing qui tam statute that covers fraud against taxpayers, NMSA 1978, section 44-9-5, with the exceptions that section B requires that the fraud against taxpayers action be filed in camera “and shall remain under seal for at least sixty days” during which time the complaint is not served on the defendant, and (section D) before the end of 60 days from filing the Attorney General must notify the court if the AGO will intervene and proceed with the action or, if not, decline which allows the qui tam plaintiff to proceed. SB303 may contemplate, without explicitly stating, that if the AGO or government entity declines to proceed with the action proposed in the bill the individual may

proceed. If that is intended, it would be helpful to make it explicit as is done in the Fraud Against Taxpayers Act (FATA) (NMSA 1978, section 44-9-5D). Similar provisions (60-day confidentiality period and prosecution of the claim by the qui tam plaintiff if the government declines) are found in the Medicaid False Claims Act (MCFA) (NMSA 1978, section 27-14-7).

Both of these qui tam statutes also provide for the individual plaintiff to collect a portion of the proceeds ultimately collected (FATA, 1978, section 27-14-9A; MFCA NMSA 1978, section 44-9-7A). HB328 as proposed provides that all proceeds of an action go to the political entity with the individual entitled only to costs (HB328, sections H, I). “Participating in a portion of the proceeds may act as an incentive for an individual to bring a complaint.” Charles Doyle, *Qui Tam: The False Claims Act and Related Statutes*, (Congressional Research Service, April 26, 2021) found at [Qui Tam: The False Claims Act and Related Federal Statutes | Congress.gov | Library of Congress](https://www.congress.gov/library/legislation/2021/04/26/qui-tam-the-false-claims-act-and-related-federal-statutes). On the other hand, the federal False Claims Act permits the court in which a defendant prevails and the action was brought only by an individual to award the defendant attorneys' fees and expenses, should it conclude that the action was clearly frivolous, vexatious, or brought to harass. 31 U.S.C. § 3730(d)(4). Consideration to awarding a portion of the proceeds to an individual plaintiff (or imposing a penalty for vexatious claims) may be consistent with the intent of HB328.

Beyond the above issues concerning the qui tam provisions, the question of law enforcement officers obscuring identity is an area of significant public interest in legislation requiring police officers to clearly identify their law enforcement status and not obscure identity with face masks or other means, especially focused on federal officers working as agents of the Immigration Customs and Enforcement Agency (ICE) of the Department of Homeland Security. HB328, sections 1.A and 1.B do not directly impose that requirement, but restrict it to the extent of making state appropriations unavailable to any action in which “federal law enforcement officers or other employees or agents of the federal government . . . conceal their identity while exercising law enforcement authority.” Both SB57 and HB208 propose criminal liability for a peace officer, including federal officers, concealing identity. Analysis of substantive issues raised by those proposals are discussed at length in references identified in analysis of those bills. See e.g. *Masked and Unidentifiable: The Risks of Federal Law Enforcement Operating Without Identification*, Allie Preston, Center for American Progress (CAP) Report (August 28, 2025) found at: [Masked and Unidentifiable: The Risks of Federal Law Enforcement Operating Without Identification - Center for American Progress](https://www.americanprogressaction.org/reports/2025/08/28/masked-and-unidentifiable-the-risks-of-federal-law-enforcement-operating-without-identification/); *Masq-or-Raid: Why Concealing Cops' Identities Creates Reasonable Doubt When Cops Are Victims*, Brandon Marc Draper, Texas Law Review Online Edition, Volume 104, (2025-2026), found at: [Masq-or-Raid: Why Concealing Cops' Identities Creates Reasonable Doubt When Cops Are Victims, Texas Law Review](https://www.texaslawreview.com/online-edition/volume-104/2025-2026/masq-or-raid-why-concealing-cops-identities-creates-reasonable-doubt-when-cops-are-victims/); Sam Levin, *The Alarming Rise of US Officers Hiding Behind Masks: 'A Police State,'* GUARDIAN (June 25, 2025, at 08:00 ET), <https://www.theguardian.com/us-news/2025/jun/25/immigration-officers-wearing-masks> [<https://perma.cc/QB2Q-R3CS>].

PERFORMANCE IMPLICATIONS

Courts can expect additional caseload from this new civil action and its impact on federal law enforcement activities in New Mexico.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB328 duplicates SB303. It relates to HB208 and SB57 as discussed in this analysis.

TECHNICAL ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo is maintained.

AMENDMENTS