

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

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

SPONSOR Lord/Pettigrew ORIGINAL DATE 02/24/21  
LAST UPDATED \_\_\_\_\_ HB 307  
SHORT TITLE Law Enforcement Tort Immunity Exceptions SB \_\_\_\_\_  
ANALYST Dick-Peddie

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate but Minimal	Indeterminate but Minimal	Indeterminate but Minimal		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with House Bill 4, Senate Bill 376

### SOURCES OF INFORMATION

LFC Files  
New Mexico Civil Rights Commission 2020 Report

#### Response Received

Administrative Office of the Courts (AOC)  
New Mexico Attorney General (NMAG)  
Department of Public Safety (DPS)

#### No Response Received

New Mexico Counties  
New Mexico Municipal League  
General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

House Bill 307 proposes to eliminate the waiver of immunity for the independent tort of negligent spoliation of evidence, the independent tort of intentional spoliation of evidence, and failure to comply with duties established pursuant to statute or law which had been granted in the New Mexico Tort Claims Act. The existing exemption from immunity for negligent and intentional spoliation became effective on September 20, 2020.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## FISCAL IMPLICATIONS

House Bill 307 relates to Senate Bill 8, introduced and passed during the 2020 first special session and signed into law, which, in addition to requiring law enforcement agencies to use body-worn cameras, amended the Tort Claims Act to add “the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence” to the list of exceptions to immunity for a law enforcement officer. The bill also added “failure to comply with duties established pursuant to statute or law,” to the list of exceptions to immunity. House Bill 307 would remove these exceptions to immunity, presumably to shield officers from liability related to body camera use and related footage.

Though the General Services Department did not submit agency response in time for this analysis, the agency opposed the amendment to SB8 which House Bill 307 proposes to un-do, anticipating that the waiver would result in more claims against law enforcement officers. The agency stated:

[W]hile the intent is to ensure officer compliance and equal application of laws, it will increase claims against officers, and therefore increase defense costs. Further, this waiver is expanded each time a public body creates a new law or ordinance. Thus, depending on the jurisdiction that an officer patrols, the statutes or laws that the officer is required to uphold change; and the officer is open to suit for either a mistake or conscious decision not to enforce a specific law, which will limit officer discretion.

The Municipal League similarly opposed the amendment, stating:

[W]aiver from immunity for “failure to comply with duties established pursuant to statute or law” appears to be an attempt to statutorily take away a “qualified immunity” defense from law enforcement with respect to state tort claims. According to the Municipal League, qualified immunity defenses are intended to protect an officer from liability where the law has not been clearly established under particular circumstances. Removal of this qualified immunity defense adversely impact the defenses available to law enforcement officers regarding claims involving interactions between law enforcement and the public.

In its 2020 report to the Legislature, The New Mexico Civil Rights Commission, established in the first special legislative session of 2020, examined the frequency at which qualified immunity was used in New Mexico federal court between 2015 and 2020 and found that qualified immunity motions were filed in 16 percent of the cases and granted 54 percent of the time. The commission report notes that even in the 9 percent of total cases where qualified immunity was granted, the court often dismissed cases before final disposition. The commission summarized that for qualified immunity cases, “only 85 out of 1,691 were fully disposed of by the qualified immunity motion from 2015-2020. That is approximately 7 cases per year.”

LFC analysis projects an indeterminate but minimal fiscal impact to the state given this low number of cases. Any potential savings from the passage of HB307 would be the result of the inability of parties to bring forward claims against officer misconduct or evidence spoliation, and would likely be incurred at the county or municipality, rather than state, level.

**SIGNIFICANT ISSUES**

House bill 307 would eliminate law enforcement liability for “the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence, failure to comply with duties established pursuant to statute or law.” This exemption is broad, and could include not only the improper use of body cameras, but any charges of misconduct resulting from footage recovered from a body camera, as well as any other “failure to comply with duties established pursuant to statute or law.”

The Department of Public Safety (DPS) notes that some law enforcement agencies struggled to procure, distribute, and train officers to use body cameras within the time constraints mandated by SB8. The agency states that House Bill 307 may protect some law enforcement agencies from liability resulting from what the agency viewed as an unrealistic mandate in statute.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The bill conflicts with House Bill 4, creating the New Mexico Civil Rights Act, which allows individuals to bring claims alleging the violation of civil rights provided under the New Mexico Constitution by a public body in a state court. House Bill 4 explicitly prohibits the defense of qualified immunity, which House Bill 307 essentially provides for law enforcement agencies, considered a public body.

House Bill 307 also conflicts with Senate Bill 376, which amends the Tort Claims Act to prohibit the use of qualified immunity as a defense for law enforcement agencies, and raises the “caps” on all tort claim awards.

ADP/al/sb