

LFC Requester:

Scott Sanchez

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: Feb. 1, 2024

Bill No: SB 248

Sponsor: Leo Jaramillo

Short Title: UNSAFE USE OF
PUBLIC ROADWAYS &
SPACES ACT

Agency Name and Code Number: 305 – New Mexico
Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Senate Bill 248 (“SB 248”), entitled **UNSAFE USE OF PUBLIC ROADWAYS & SPACES ACT** contains new material, including: **Section 2**, Definitions; **Section 3**, Solicitation Regulations for which a person who violates this section may be guilty of a petty misdemeanor and sentenced under Section 31191 NMSA 1978; and **Section 4**, Aggressive Solicitation for which a person who violates this section may be guilty of a misdemeanor and sentenced under Section 31-19-1 NMSA 1978. Section 31-19-1 NMSA 1978 is under the Criminal Code and entitled *Sentencing authority; misdemeanors; imprisonment and fines; probation.*

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

If SB248 is published in Chapter 66, Motor Vehicle Code (“MVC”), MVC Article 1 contains definitions which may conflict with and/or cause confusion with the SB 248, Section 2, Definitions.

Two examples **only**, of this potential issue are as follows:

1. SB248 Section 2 (G) states "public roadway" means a publicly owned street, road, highway or other traveled route intended for vehicular traffic.

Compare: MVC Section 66-1-4.15 (P) "roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder; when a highway includes two or more separate roadways, the term "roadway" refers to each roadway separately but not to all of the roadways collectively.

2. SB248 Section 2 (H) "right of way" means the entirety of a public roadway, including

the traveled surface, sidewalks, trails, medians and other adjoining spaces separating the traveled roadway from adjoining properties.

Compare: MVC Section 66-1-4.15 (N) "right of way" means the privilege of the immediate use of the roadway.

The Committee commentary relating to criminal jury instruction, 14-2817 [2020], Criminal solicitation; essential elements states:

Section 30-28-3 NMSA 1978 sets out not only the essential elements of the crime of criminal solicitation, but also what is and is not a defense. **To be guilty of solicitation the crime intended to be committed must be a felony. New Mexico law makes no provision for soliciting someone to commit a lesser offense than a felony.** The same is true for the crimes of attempt and conspiracy. **The underlying crime must be punishable as a felony.**

SB 248 contains definitions of “solicit” and “solicitation” which may result in criminal petty misdemeanor and misdemeanor charges. Therefore, sentencing under the Criminal Code, for the underlying SB 248 crimes of “Solicitation Regulations” (Section 3 (E)) and “Aggressive Solicitation” (Section 4(B)) may be confusing and/or unenforceable under Chapter 31, Criminal Procedure, Article 19, Sentencing Authority for Misdemeanors.

See also the U.S. Court of Appeals, Tenth Circuit, opinion in *Brewer v. City of Albuquerque* relating to the City’s “panhandling” ordinance which upheld a district court judgment finding that the ordinance violated the First Amendment. This decision is binding in New Mexico, may apply to SB 248, and held:

When the government restricts the time, place, or manner of expressive activities in “traditional public for[a],” like streets and sidewalks, it must show that such restrictions are “narrowly tailored to serve ... substantial and content-neutral government interests.” *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1209 (10th Cir. 2021), citing *Ward v. Rock Against Racism*, 491 U.S. 781, 803, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

Addressing these SB 248 issues will help make SB 248 clearer and provide for more effective enforcement.

PERFORMANCE IMPLICATIONS

See above.

ADMINISTRATIVE IMPLICATIONS

NA.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See above.

TECHNICAL ISSUES

See above.

OTHER SUBSTANTIVE ISSUES

See above.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A