

LFC Requester:

Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.gov*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 3/12/25*Check all that apply:***Bill Number:** HB 253sub

Original

Correction

Amendment

Substitute X**Sponsor:** Rep. Andrea Romero**Agency Name****and Code****Number:**

AOC

218

Short Title: Sealing of Certain Court Records**Person Writing**Celina Jones**Phone:** 505-470-3214**Email** aoccaj@nmcourts.**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Related to HB 98, providing for the

automatic expungement of eviction records after 5 years.

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The House Judiciary Committee (HJC) Substitute for HB 253 enacts a new statutory section within Chapter 47, governing property law, Section 47-8B-1 NMSA 1978, governing eviction records, sealed court records and unsealing court records.

The HJC Substitute for HB 253 requires the court record to be sealed upon the commencement of an eviction. (Subsection B) The law requires that when an order granting an owner possession of the premises is entered in an eviction, the court record shall be unsealed no fewer than 15 days after the date of the order upon written request of the owner, unless:

- 1) the parties agree and the court orders that the court record should remain sealed;
- 2) the resident files an appeal, in which case the court record shall remain sealed through the pendency of the appeal; or
- 3) the order is later set aside by the court, in which case the court shall as soon as practicable seal the court record.

The law also requires that the court record shall be available to the public, provided that the court shall seal the record no less than and as close to 3 years as possible after the date on which the court record was made available to the public. (Subsection C) The HJC Substitute for HB 253 prohibits the court from publishing the names of the parties online or selling or releasing a sealed court record as part of a bulk or individual transfer to a third party. (Subsection D)

The HJC Substitute for HB 253 provides that a resident who is a party to an eviction in which a court record is sealed pursuant to this statutory section shall not be liable for failing to disclose the eviction in response to any inquiry from a third party. (Subsection E)

HJC Sub for HB 253, Subsection F, lists the circumstances under which, upon a resident's motion, a court record that is made available to the public pursuant to Subsection C (2) is required to be sealed again.

Subsection G requires a court record sealed pursuant to Section 47-8B-1 NMSA 1978 to be unsealed on order of the court upon a showing of compelling need, which may include scholarly, educational, journalistic or governmental purposes. The court, in determining whether there is a compelling need, is required to balance the interests of the resident for nondisclosure against the interests of the requesting party.

Subsection H of the HJC Substitute for HB 253 prohibits a resident from being charged a filing fee for a motion to seal.

The HJC Substitute for HB 253, Subsection I, requires a sealed court record to be released to an authorized attorney and maintain its status as a sealed court record without being made available and without a showing of compelling need.

The law provides that the provisions of Section 47-8B-1 NMSA 1978 shall apply to all evictions provided pursuant to the Uniform Owner-Resident Relations Act (UORRA) and the Mobile Home Part Act (MHPA) filed on or after the effective date of this 2025 Act.

FISCAL IMPLICATIONS

A significant focus of the HJC Substitute for HB 253 is sealing court records related to eviction cases. The required procedures implicate an increased workload for clerks in Bernalillo County Metropolitan and magistrate courts, where cases under the Uniform Owner Resident Relations Act or the Mobile Home Park Act are originally filed. After an initial time-intensive effort to identify and seal existing eligible eviction records, clerks will have an ongoing responsibility to ensure that records that become eligible due to their age are sealed in a timely manner. AOC estimates that the initial sealing effort will cost at least \$50,000.

The new procedures required by HB 253 will require a significant amount of additional work by court clerks, primarily in the Metropolitan Court and in magistrate courts statewide. The new requirements include determining whether a case should be sealed, unsealing cases if requested, and helping parties—primarily tenants—access court records. **The magistrate courts will need more clerks to absorb the additional work as well as in-depth and regular training to learn when records are to be sealed and unsealed.**

If eviction hearings are required to be sequestered as a result of this bill, additional staff would be required. **For example, the Metropolitan Court projects a need for additional court staff and possibly judges to timely process cases.** Other high-volume magistrate courts may also require additional staff to process eviction cases and administer sequestered hearings.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1. The procedures required by HB 253 create new and burdensome responsibilities for court clerks across the state.** Currently, clerks docket all landlord-tenant cases under one of three case types: (1) UORRA, (2) MHPA, or (3) possibly as a general civil case, following the structure of New Mexico law. HB 253 would require court staff to review the arguments by parties in the pleadings (documents) that they file with the court to see if the relief being sought by the plaintiff is “eviction,” and then court staff would be required to “seal” those cases upon the commencement of those actions. They would not be able to rely on the case type the matter was brought under, as some landlord-tenant cases may only seek money damages or the return of a deposit. This is a tremendous responsibility for clerical staff at the court who are not attorneys. This will be time-consuming for court staff, require additional staff, new training, and create a substantial risk that cases will be mistakenly sealed or left unsealed if court staff do not recognize that the relief being sought is or is not an “eviction.” **The process cannot be automated as it requires manual review of each case by the clerk.**

Further, the schedule of sealing and unsealing of court records in the bill is confusing and would require additional court staff at a minimum 1.0 to 1.5 FTE judicial specialists to track and take steps to seal and unseal these records as required in the bill. Paragraph B of the bill states that upon the “commencement of an eviction,” the court record is automatically sealed. Then, under Paragraph C (2), even when records are unsealed and made available to the public the court record again has to be resealed in three years “after the date the record was made available to the public.”

It is also unclear if this means the date the judgment on writ of restitution or judgment of possession was entered, two separate actions in a restitution case. In addition to requiring dedicated court staff to calendar and docket the re-sealing of these cases three years into the future, this also would mean that paper court case files would have to be kept and could not be “final closed” and sent to storage after a judgment was entered as court staff would again have to docket and take action on a case three years after the judgments were entered.

2. There is no one clear case type for “evictions.” While the bill seeks to seal records relating to an “eviction,” that is not a term currently used in New Mexico statutes. There are numerous types of cases that can be brought under either the UORRA or the MHPA none of which are called “evictions” but could conceivably fall in that category. These include:

- Cases being brought by an owner under UORRA seeking “restitution” of the property for non-payment of rent.
- Cases brought by an owner under UORRA or MHPA where the owner is petitioning the court for a termination of a tenancy, but it could be for many reasons, including non-payment of rent. Under the MHPA reasons could include because the property is being condemned or there has been a non-compliance with a local ordinance or state law.
- Under the MHPA, there can be an action by a lienholder to execute on a judgment and remove the mobile home.

Other cases can be brought under UORRA that are not about restoring the property (restitution) to the owner. These types of claims may also be raised as counterclaims by a resident in response to a lawsuit initiated by an owner.

- Petitions by residents for relief such as when an owner owes a resident damages, or when an owner is denying a resident quiet enjoyment of the rental property or is essentially constructively evicting a tenant such as when there is no heat or running water.
- Complaint by a resident for return of a deposit
- Complaints for when a resident is seeking to abate rent or terminate a rental agreement

Further, as many parties are self-represented litigants, residents may not use the Supreme Court forms for these types of cases and may just file a general civil complaint with the court where in the body of that document they make these kinds of arguments.

Actions under the MHPA are different from landlord tenant proceedings under UORRA because the defendant in an action under the MHPA may own the mobile home but is a tenant as to the real property on which the mobile home sits. The defendant could also be a tenant of both – if the owner owns the mobile home as well as the land.

These cases make up a large portion of the dockets in the Metropolitan and magistrate courts. For example, in the Metropolitan Court, in Fiscal Year 2024, 9,384 restitution cases were filed under UORRA, and 298 cases were filed under the MHPA.

3. **Court’s power over its own procedure.** HB 253 may improperly infringe on the judicial branch’s constitutional power to determine its own procedures contrary to *Ammerman v. Hubbard Broadcasting, Inc.*, 1976-NMSC-031, ¶ 15 *quoting and affirming*, *State ex rel. Anaya v. McBride*, 1975-NMSC-032 ¶ 11, that “[u]nder the Constitution, the legislature lacks the power to prescribe by statute rules of practice and procedure, although it has in the past attempted to do so. Certainly, statutes purporting to regulate practice and procedure in the courts cannot be made binding, for the constitutional power is vested exclusively in this court.”

The NM Supreme Court has already prescribed a process for sealing and unsealing court records in the sealing rules that have been ordered for all of the courts

(Rules 1-079, 1-079.1, 2-112, 3-112, 5-123, 6-114, 7-113, 10-166, and 12-314 NMRA).

Generally, evidence in the courts is procedural and the domain of the courts. Some laws direct that certain case types are to be sequestered, such as mental health and some proceedings involving juveniles. However, statutes do not prescribe the actual sealing procedures. Beyond addressing a general case type that is sequestered, HB 253 veers into addressing court procedure by directing (1) the documents that are to be sealed; (2) when those items are sealed or unsealed; (3) who has access to the sealed records; and (4) specifying that a technical advisory council controls access to bulk records.

The court procedures required by the bill conflict with Court Rules and rulemaking.

(a) **What items are sealed.** The bill declares that “court records” are sealed, which is a defined term meaning the docket, pleadings, and orders. In listing the records to be sealed, the bill directs a court how to handle certain documents beyond identifying that a case type is sealed.

(b) **When items are sealed and unsealed.** The bill directs court staff to seal and unseal the records at a regular time: sealed upon filing, unsealed after an order is entered in favor of the Petitioner at the request of the owner unless certain conditions exist (paragraph C), sealed after three years, and unsealed with a compelling need for scholarly, journalistic, or governmental purpose. In addition to mandating regular monitoring of a subset of landlord tenant cases under

UORRA, it also acts as a procedural mandate in defining the status of the records based on the stage of the case.

(c) **Who can access sealed records.** Includes a provision for “authorized attorneys” to have access sealed records without an order. The bill requires creation of a policy for who is ‘authorized’ and as a consequence requires implementing a technical shift providing specific information to a specific case type and not based on the level of access currently provided. For sealed cases, however, case data is accessible only to parties named in the case; case management systems provide no flexibility on this matter. **The Judiciary’s case management system cannot be configured to automatically allow additional parties access to sealed cases if they are not named parties to the case.**

(d) **Bulk Records Permissions.** The bill directs the “judicial technology council” to determine if bulk records requests may be unsealed. This appears to be directing the judicial branch to have an advisory committee make decisions that have the effect of overruling a judge’s order to seal. This is a direct procedural mandate, instructing the judicial branch that a technical advisory council should make the decision.

4. **The bill creates a conflict with the standard the court is to apply when considering whether to reseal and unseal eviction records.** Supreme Court Rules specify the standards sealing and unsealing court records. *See* 1-079(G) and (I) and Rule 2-112 (F) and (H). Except for when a category of proceeding is automatically sealed (for example, grand jury proceedings in the District Criminal Rules of Procedure Rule 5-123 NMRA), the courts engage in the balancing test of the public’s right to access against the privacy interest that supports the sealing of the court record. This balancing requires that the proposed sealing be “narrowly tailored” and that there be “no less restrictive means [that] exist to achieve the overriding [privacy] interest” that is at stake.

Paragraph F of HB 253 states a different standard, providing that records can be resealed if “in the interests of justice.” Further, Paragraph G states yet another sealing standard for the court, that eviction records would only be unsealed at upon a showing of a “compelling need” and the balancing of the “interests of the resident for nondisclosure against the interests of the requesting party.” This is a different balancing test and standard than what already exists in the Supreme Court’s Sealing Rules. Additionally, this balancing test focuses upon the need of the requestor as opposed to the overall public’s right to know as articulated in the current rules.

5. **Sealing records does not expunge them.** Sealing merely restricts access to court records. Sealing does not expunge court records like the complete expungement (erasure) under *In re Toth*, 1997-NMCA-079 ¶ 8, 11, for “extraordinary circumstances.” Merely because proceedings or court records are sealed does not mean that they did not occur, but the bill also would allow a resident to misrepresent whether an eviction had occurred as the bill also provides that, “A resident who is a party to an eviction in which a court

record is sealed pursuant to this section shall not be liable for failing to disclose the eviction in response to any inquiry from a third party.” (Section 1, E)

6. **Unclear if sequestered proceedings are required, which would increase cost.** If eviction court records are sealed from the public, it is unclear if the intent of the bill would be that the trials, hearings, and other court proceedings also would be sequestered, or closed to the public. If the court proceedings were not closed to the public, then it would be challenging to conduct court proceedings where the entire court record is sealed and yet these sealed documents would necessarily be discussed in open court or displayed on a court monitor or to those participating online. If these hearings, trials, and other court proceedings remain public, but the court records are sealed, then it could increase the amount of time for each of these proceedings in order to ensure that records that have been sealed by this bill would not be disclosed or discussed in a manner that would violate the statute and restrictions on public access during any court proceeding. It is difficult to quantify the amount of any increase in hours per week and the potential cost to the courts as the courts do not have experience with this scenario.

If the intent of the bill is to close hearings, trials and other proceedings to the public, then that would further necessitate additional court staff in each courtroom. For example, in each of the Metropolitan Court’s four (4) civil courtrooms additional staff would need to ensure that only the parties to the proceeding and their attorneys are present in the courtroom during each hearing or trial or other court proceedings brought under UORRA or MHPA. Each of the four (4) courtrooms would also require an additional four (4.0) FTE court staff (judicial specialists) to manage the check-in of the litigants and their attorneys in the hallway at the entrance to each of the courtrooms to ensure that the parties and attorneys from one case or members of the public or the media not enter a courtroom during a closed session in another case.

It would also increase the time needed to conduct hearings. In the Metropolitan Court, for example, the civil judges each currently allocate a minimum of twelve (12) hours per week for restitution hearings, but the judges will each schedule from five (5) to ten (10) restitution hearings at a time, generally allocating roughly fifteen (15) minutes per hearing with packed courtrooms to ensure that they are being efficient with the management of their dockets. While some matters can be resolved in a few minutes, others can take as much as forty-five (45) minutes or more. If these hearings, trials, and other court proceedings are closed and now all have to be scheduled separately, with roughly fifteen (15) minutes allocated for each (but knowing that this will not be sufficient time for all cases), the roughly twelve (12) hours per Judge per week currently allocated for restitutions would increase and could potentially even double the amount of time that would need to be allocated.

7. **Recordings omitted from definition of “court records.”** Per NM Supreme Court Order, all proceedings whether record or non-record are recorded. However, the definition of “court record” in the bill does not include “recordings.” As such, the recording of a hearing, which is a public record under the Inspection of Public Records Act, would not be sealed and could be made available to a requestor under IPRA, but the

pleadings and other documents would not be available to a requestor as they would be sealed.

8. **Potential for access issues by self-represented litigants.** In the Metropolitan Court, both residents and owners are often self-represented and are not represented by counsel. As such, this bill may create obstacles to access to justice and court records for self-represented litigants who are calling the court or who do not have ID so that court staff can confirm that they are the parties to a case (either the resident or the owner) such that they would be allowed access to court records that have been sealed under the bill. Court staff would not even be able to confirm that a court hearing has been set or provide a self-represented litigant with information on the date and time a hearing is being held if they cannot confirm the identity of the person who has called, emailed, or come in person to the court. None of the steps could be easily automated to reduce error or alleviate clerk work.
9. **Collection of Judgments:** A judgment for restitution also includes a money judgment, which if sealed would likely impede an owner's rights to collect on that judgment. It is also unclear if a case were sealed whether an owner would be able to garnish or pursue other collection efforts or if the owner would even be able to report a judgment to a credit reporting agency or seek the assistance of a collections agency.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to HB 98, providing for the automatic expungement of eviction records after 5 years.

TECHNICAL ISSUES

For the sealing timeline, there is the potential for an inconsistent reading in Paragraphs C (1) and C (2). Paragraph C (1) provides that once an order on an eviction in favor of an owner is entered the record "unsealed no fewer than fifteen [15] days after the date of the order" upon "written request of the owner." This is followed by "and" directs that under the court record is "available to the public" under Paragraph C (2). It appears to be automatic. The court record cannot become "available to the public" under C (2) if it remains sealed under C (1).

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS