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## FISCAL IMPACT REPORT

SPONSOR Alcon LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/16/2023  
SHORT TITLE Civil Rights Act Statute of Limitations BILL NUMBER House Bill 333  
ANALYST Gray

### 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 substantial	Indeterminate but substantial		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Conflicts with HB109

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

General Services Department (GSD)

Municipal League

## SUMMARY

### Synopsis of House Bill 333

House Bill 333 contemplates changes to the notice and statute of limitations periods provided for in the New Mexico Civil Rights Act. Both the three-year statute of limitations period and the one-year notice period would begin only once a potential claimant has received legal advice regarding their ability to bring a claim. This effectively removes the statute of limitations for Civil Rights Act claims, because there is no limit on how long a claimant may wish to discuss their claim with an attorney. See significant issues for more discussion.

The bill also deletes portions of existing statute that establish an 18-month statute of limitations in a wrongful death claim and clarifies who may bring the claim.

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

The bill's contemplated changes would increase the required agency contributions of the General Services Department's (GSD) Risk Management Division (RMD). According to GSD analysis, the bill increases RMD's Incurred But Not Reported (IBNR) estimate in a manner that is difficult for the actuary to calculate. As a result, traditional insurance companies may be unable to underwrite the risk or IBNR, and the coverage would be limited to the policy reporting window. Under HB333, it is possible government entities may have no insurance for a claim reported outside their reporting window.

The associated costs may be substantial, but due to the actuarial estimate difficulty, the value is indeterminate.

This also presents costs to the legal system. New evidentiary questions may be raised that are difficult to litigate and may prove expensive for government litigation. Courts may also begin dealing with aged claims complicated by arguments about when the cause of action began. Further, evidence would need to be preserved for an indefinite period of time.

## SIGNIFICANT ISSUES

Analysis from GSD, the New Mexico Attorney General's office (NMAG), and the Municipal League all note HB333's contemplated changes effectively remove the statute of limitations for Civil Rights Act claims, greatly impacting insurance and risk management practices by local governments and the state.

NMAG analysis notes that the proposed change is unique in the U.S. Like most states, New Mexico recognizes the discovery rule, where a cause of action does not begin until the *facts* giving rise to the claim are known by the claimant. According to the NMAG analysis, it appears there is no jurisdiction where the cause of action begins when the *law* becomes known to the claimant.

The NMAG analysis goes on to state this runs counter to New Mexico jurisprudence regarding statutes of limitation. See *Gomez v. Chavarria*: "The purpose of a statute of limitations is to protect prospective defendants from the burden of defending against stale claims while providing an adequate period of time for a person of ordinary diligence to pursue lawful claims." 2009-NMCA-035, ¶ 17, 146 N.M. 46, 51, 206 P.3d 157, 162

GSD analysis notes the bill may also expand the statute of limitations on federal cases, because federal judges look to the most analogous state law in order to determine the statute of limitations, which is currently three years.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB333 conflicts with House Bill 109, which proposes to repeal the Civil Rights Act entirely.

## TECHNICAL ISSUES

HB333 amends Section 41-4A-7 NMSA 1978 to change the statute of limitations for a general

claim to being on the date on which the claimant “has received legal advice from a licensed attorney” (page 1 line 25 and page 2 line 1). The bill then amends Section 41-4A-13 NMSA 1978 to change the statute of limitations for a claim against a law enforcement office within one year after “consulting a licensed attorney” (page 2 lines 13-14). It is unclear why the language regarding legal advice is different and this may result in unnecessary ambiguity.

BG/rl/ne