

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/10/2025

Check all that apply:

Bill Number: HB 332

Original x Correction
Amendment Substitute

Sponsors Rep. Catherine J. Cullen
: Rep. Jonathan A. Henry
: Rep. Rod Montoya

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

Person Writing

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Short Title: Unlawful Squatting

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(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

HB 332 proposes to modify New Mexico’s criminal trespass jurisprudence. Through Sections 1 and 2, HB 332 would create and define the offense of “unlawful squatting. Section 3 would establish a procedural framework for citing and, if necessary, arresting an accused unlawful squatter. Section 4 (a) details the legal (judicial) proceedings to which an accused would be entitled; (b) sets forth the quantum of evidence required to demonstrate a meritorious claim; (c) describes the removal/ejection process; and (d) specifies available damages. These proposals are considered more fully below:

Section 1 as proposed would become a new section of Chapter 30, Article 14, “Trespass,” and would create the criminal offense of “unlawful squatting,” a fourth-degree felony. Unlawful squatting would differ from criminal trespass by prohibiting “enter[ing] . . . and resid[ing] on . . . real property” as opposed to “entering or remaining upon posted private property[.]” Further, whereas criminal trespass requires a knowing act, the proposed definition of unlawful squatting includes no *mens rea* element.

Section 2 proposes to modify existing Section 30-14-1.1, “Types of trespass; injury to realty; civil damages,” by adding subsection (E). Just as existing subsection (D) sets forth the liability to the landowner of an unauthorized individual who enters upon and damages or destroys property, proposed subsection (E) would do likewise with respect to an unlawful squatter who does the same. Liability under subsection (E), like under existing subsection (D), would be calculated at two times the amount of the appraised value of the damage or destruction. In all material respects, proposed subsection (E) tracks existing subsection (D).

Section 3 would create a new section of Chapter 31 and set forth the procedure to be followed in citing and, if necessary, arresting an accused unlawful squatter. In short, within three business days of receiving a citation, the accused may come forward with documentation authorizing his or her presence. If the accused fails to do so, he or she is subject to arrest. Section 3 also provides a non-exhaustive (“may include”) list of acceptable forms of documentation by which the accused can attempt to contest the citation.

Section 4 would appear as a new section of Chapter 42, “Actions and Proceedings Relating to Property.” Section 4 describes the judicial process that would be involved in adjudicating a good faith claims to the right to possess contested real property. Section 4 sets forth the procedure by which law enforcement may eject an alleged unlawful squatter, as well as circumstances

mandating preservation of the status quo pending the non-jury trial to which the accused is entitled. If a court determines by a preponderance of the evidence that the alleged unlawful squatter's claim is not meritorious, that person is to be ejected pursuant to a writ of possession. Damages may be awarded as part of this appealable decision.

Proposed HB 332 appears largely to track Georgia's "unlawful squatting" statute, Ga. Code Ann., § 16-7-21.1, which became effective April 24, 2024.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Trespass is already a crime under NMSA 1978, Section 30-14-1 and HB332 appears to turn trespass into a felony if a person "resides" on the real property. Elevating some types of trespass from a misdemeanor to a strict liability felony. Unlike the Georgia statute, HB332 does not have *any* mens rea requirement, nor a definition of "reside". This appears to target unhoused individuals, as "reside" is not defined. Without definition, it could apply to someone who sets up a tent or even a sleeping bag on land, who sleeps in an abandoned warehouse, or any number of other activities that are already covered by trespass. Burglary is already a felony in New Mexico law, either fourth-degree, or third-degree if committed in a residence. NMSA 1978, Section 30-16-3. It is unclear what this new crime will accomplish.

Sections 3 and 4 provide completely different remedies for the "unlawful squatting": an unusual criminal citation procedure and some sort of expedited civil judicial remedy. It is unclear how or when a peace officer would determine whether a person is committing "unlawful squatting" instead of a trespassing or burglary. Police can arrest someone on suspicion of a burglary or even trespass in many circumstances, and it is unclear how the "citation" process in Section 3 would affect that practice. Without explicit language, it is unclear if HB332 intends to *prevent* arrests for unlawful squatting without following this specific citation procedure. If that is the intent, then police may simply opt to arrest for trespassing or burglary to avoid the complication of the citation process.

The procedure in Section 3 also appears to require police to set up a procedure to essentially pre-adjudicate claims of property ownership prior to arrest. The proposed statute is also too vague as to what documents are acceptable. It appears to create a burden on the accused to demonstrate innocence by stating that if the "required" documentation is not presented, they shall be subject to arrest. This leads to a possible violation of the right to remain silent. Ultimately, a judge (or jury since this would be a felony) would need to sort through complexities of property law to make an appropriate determination of guilt, so there does not seem to be a benefit to having police act as an administrative tribunal. HB332 may also create a separation of powers issue, by attempting to legislate who is specifically "subject to arrest" when the judicial branch reviews arrests and arrest warrants based on constitutional principles.

Section 4 requires law enforcement to "turn the alleged unlawful squatter out of possession" based on an affidavit alone, if a counter-affidavit is not produced within three (3) days. This is very fast. This can create a way to evict an individual without ever involving the courts. This procedure is akin to a default judgment but without a judicial order, procedural protections, and the ability to appeal. HB332's proposed language appears to ignore the complexities of law surrounding property rights that are typically judicially ascertained.

As referenced in Section 4, ejectment is already a statutorily enshrined cause of action in the civil courts under NMSA 1978, Sections 42-4-1 to -30. NMSA 1978, Sections 35-10-1 to -6 allow an action for forcible entry and detainer for when “the defendant enter[s] and occupy[s] the lands and tenements of another against the will or consent of the owner and refuse[s] to vacate the premises after notice by the owner or his agent or attorney.” NMSA 1978, 35-10-1 (A)(1). The Uniform Owner-Resident Relations Act under NMSA 1978, Sections 47-8-1 to -52, extensively covers the relationship between residential tenants and property owners by stating, “[t]he laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act.” Section 47-8-49.

If a counter-affidavit *is* submitted, law enforcement must then file the documents with the court under this statute. Law enforcement normally only initiates proceedings in criminal cases, either by filing an arrest warrant, after a judge approves, or a complaint after an arrest. This strange procedure seems to conflate the civil and criminal processes. A statute cannot take away a right to jury trial that is guaranteed under the constitution. N.M. Const., art. II, § 12.

Subsection C appears to require law enforcement to turn the resident out of possession pursuant to a writ of possession as soon as a judge finds that their affidavit is “not meritorious.” HB332 appears to not provide an explanation of what that standard is.

Subsection E also requires a judge to issue a writ of possession after finding a verdict for the plaintiff (specifically referencing the existing statute for ejectment proceedings). There is no explanation of what the difference is between finding a verdict for the plaintiff and finding the affidavit from the person in possession to be “not meritorious” or how there could be two different points in the same proceeding that result in the same writ. HB332 appears to indicate that the court shall award costs and any other relief it awards.

Subsection D appears to allow value of rent to be awarded and allows a party to appeal the decision but is not subject to de novo review by the Supreme Court. HB332’s language is confusing without a right to appeal. HB332 appears to run into new Mexico’s constitutional guarantees of the right to an appeal and the judiciary’s power to determine rules for appeals, which typically also include the determination of the correct standard to apply on appeal (as well as which appellate court can hear an appeal).

HB332 appears to be vague in the term “plaintiff.” Section 4, Subsections D and E appear to conflict in the term used as “plaintiff.” In addition, Subsection E states, “The plaintiff and the court shall be authorized to present the final order to law enforcement for investigation or prosecution.” This language is vague and can be confusing because an order is already a public document, and HB332 appears to already require a writ of possession to be issued and executed by law enforcement. The language as proposed could create issues with the right against self-incrimination since HB332 creates a new felony.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 309 and SB 359 create competing and incompatible methods for removing alleged unlawful residents.

TECHNICAL ISSUES

Make language in proposed Section 2(E) (authorizing “damages in an amount equal to *two times* the amount of the appraised value. . .”) consistent with that in existing Section 2(D) (authorizing “damages in an amount equal to *double* the amount of the appraised value. . .”)

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A