



Proposed New Mexico Civil Rights Act advances in House

Walt Rubel

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LAS CRUCES - The New Mexico Civil Rights Act, which would remove the protection of qualified immunity for public employees, cleared its first committee Monday, Jan. 25, in the New Mexico House of Representatives.

House Bill 4 was approved along party lines on a 5-3 vote by the House State Government, Elections and Indian Affairs Committee. Republicans Greg Nibert, Bill Rehm and Martin Zamora voted against the bill. Democrats voting in favor were Georgene Louis, D Wonda Johnson, Gail Chasey, Daymon Ely and Kristina Ortez. It now goes to the House Judiciary Committee, which must give its approval before it can be heard on the House floor.

The bill was first proposed by a nine-member state Civil Rights Commission led by former New Mexico Supreme Court Justice Richard Bosson. The commission was created by the Legislature during a special session last June, at the request of Gov. Michelle Lujan Grisham. It was formed in response to protests calling for police reform and social justice following the death of George Floyd, a black man who was killed by police in Minnesota.

The bill would prohibit the use of qualified immunity in civil court lawsuits alleging a violation of constitutional rights filed against the state or any city or county.

Qualified immunity is described in the staff analysis on the bill as a “judicially created defense allowed in federal civil rights courts” that shields government actors from liability unless their

conduct violates “clearly established federal statutory or constitutional rights about which a reasonable person would know.”

“It essentially tells every government actor, feel free to flagrantly violate people’s rights. You are no longer accountable, as long as you are the first person to violate those rights in exactly that way,” bill sponsor Brian Egolf, D-Santa Fe, said. Egolf is speaker of the New Mexico House.

He noted that even in a case where foster parents were found guilty in a criminal court of abusing the children in their care, they were protected by qualified immunity in civil court. That meant the victims were unable to receive compensation.

Mark Baker, vice chairman of the Civil Rights Commission, said groups as diverse as the American Civil Liberties Union and the CATO Institute are calling for removal of qualified immunity.

Egolf stressed that qualified immunity is entirely an invention of the courts.

“For those who are concerned about judicial activism, this is literally the best example in the entire history of the law of judicial activism,” he said. “There is no statute anywhere. This was created entirely out of whole cloth by the courts.”

He said the original intention in the 1950s was to protect police officers who were abusing the civil rights of blacks, and it has expanded from there.

Under the proposed bill, individuals would still be protected, but the government agency or entity they work for would be held liable for their conduct.

Nibert, R-Roswell, said he was concerned that the bill would result in increased insurance costs for cities and counties throughout the state, and could result in some losing their ability to re-insure.

“If counties and cities and other government entities cannot get reinsurance, then they will have less money available to pay awards,” he said. “That may defeat the whole purpose.”

The top request of insurance companies was that the bill not allow for punitive damages. Baker said the bill does not allow for punitive damages, meeting the insurance companies’ request.

Legislative staff analysis estimates that the bill would increase costs for state and local governments by about \$7 million a year. It projects that the number of civil rights cases would increase by about 50 percent, and settlements and judgements would more than double, from \$3.6 million to \$8.1 million.

The analysis predicted that a person with a civil rights claim would be more likely to file in state court than federal court, where the immunity still applies. And, New Mexico’s Constitution may protect civil rights more broadly and include rights that do not exist in federal law, providing additional opportunities for lawsuits. Costs are also increased by the fact that the bill has no cap on damages and allows for attorney’s fees.

In its final report, the Civil Rights Commission acknowledges concerns about increased costs, but said it would not be possible to accurately predict what they would be. And, it argues the costs are justified, noting that those whose rights are violated now have no recourse.

The Legislature, “has to consider whether it wants to continue saving money by forcing those harmed by government misconduct to bear the cost,” the report said.