

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(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: Jan. 28, 2025 **Check all that apply:**
Bill Number: SB146 **Original** **Correction**
Amendment **Substitute**

Sponsor: Sen. Muñoz, George
Short Civil Rights Act Claim Changes
Title:

Agency Name and Code State Ethics Commission (410)
Number:
Person Writing Connor G. Woods
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	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

BILL SUMMARY

Synopsis:

Becoming law in 2021 the New Mexico Civil Rights Act (“CRA”) allows New Mexican citizens to sue state government officials acting under the color of state law for deprivations of their rights established under the New Mexico constitution. It further eliminates qualified immunity from being used as a defense by the government actor. Senate Bill 146 seeks to clarify language in the CRA, provide an exception to the elimination of qualified immunity, and change the limits governing recovery of costs related to a deprivation of state constitutional rights.

Section 1 of the bill expands the definition of “public body” to include “a person acting on behalf of, under color of or within the course and scope of the authority of a public body.” Accordingly further references in other sections of the bill to “public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body” have been omitted.

Section 2 first changes the conduct giving a rise to a claim under the CRA from “acts or omissions” to “an act or deliberate indifference.” Next, it provides that an individual cannot recover damages under the CRA and the New Mexico Tort Claims Act for the same conduct by a government official.

Section 3 provides an exception to the legislative ban on qualified immunity, providing that the defense may be used if the government actor “had an objectively good faith belief that the conduct at issue did not violate the law.”

Section 4 substantially rewrites the limits a plaintiff would have on recovering damages from a deprivation of state constitutional rights. Specifically, it limits recovery up to \$200,000 for damages to property for a single deprivation; \$300,000 for all medical expense arising from a single deprivation; and \$400,000 for all other types of damages. Section 4 further caps the total amount recoverable at \$750,000 for a single deprivation of constitutional rights. In calculating recoverable damages, interest “shall accrue at a rate equal to two percentage points about the prime rate as published in the *Wall Street Journal* on the date of the entry of judgement and shall be computed from the date of judgement until the date of payment.”

Section 4 further bans the award of exemplary and punitive damages, and well as interest accrual prior to judgement.

Section 5 reduces the statute of limitations from 3 to 2 years.

Section 6 merely reflects the definitional change in section 1.

Finally, Section 7 substantially rewrites the CRA’s notice provisions, requiring that notice of an alleged violation of the CRA be given at most 90 days after the alleged deprivation. Unless notice is given within that time frame, the claim cannot be filed, and the courts do not have jurisdiction.

Section 7 provides two exceptions to the 90-day notice requirement. First, if the claimant is injured and they cannot notice a claim because of their injury, the claimant is allowed to have up to 90 days to recover before the 90-day notice period begins tolling. Meaning, a severely injured claimant has, at maximum, 180 days to notice a claim. Second, if the CRA claim is for wrongful death, the deceased person's estate or personal representative has up to 6 months to notice a possible claim. But, if the decedent noticed a claim before dying, and the notice was given within the 90-day notice period, the wrongful death claim may be brought without additional notice.

FISCAL IMPLICATIONS

SB 146 poses no fiscal implications for the State Ethics Commission.

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

Section 3:

The exception permitting a qualified immunity defense if the government actor "had an objectively good faith belief that the conduct at issue did not violate the law" is unclear.

Typically, the defense of qualified immunity applies so long as the government actor's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (citing *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). In evaluating whether the right is "clearly established," courts look toward "whether the contours of the right were 'sufficiently clear that a reasonable person would [have understood] that what he is doing is violating the right,'" *id.* (quoting *Saucier v. Katz*, 533 U.S. 19, 201 (2001)), and whether the government actor had "fair notice" that they are acting unconstitutionally. *Id.* (citing *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)). To put another way, if the government actor could not have reasonably known that their actions were unconstitutional, they are entitled to a qualified immunity defense.

SB 146 "objectively good faith belief" language likely produces a more demanding, but similar test. To be availed of a qualified immunity defense, the government actor must be able to point to the law, statute, or practice that justifies their actions.

Section 4:

Interest accruing on damage calculations does not trigger scrutiny under the Anti-Donation Clause. Compensating an individual for losses caused by the government are not considered "donations." See *Battaglini v. Town of Red River*, 1983-NMSC-067, ¶ 10. The accrual of interest goes to justly compensating an individual injured by the government, and likely falls within this consideration.

Section 7:

Notice provisions, generally, are helpful for government agencies in heading off potentially

expensive and prolonged litigation. Requiring that notice be given before a court has jurisdiction over a potential claim is, further, protective of state agencies, and allows an opportunity to discuss prelitigation settlement before getting the courts involved.

However, the notice provision in section 7 appears a little harsh for an injured claimant. Allowing a claimant only 90 days to recover from an injury before the 90-day notice period may not be adequate. If a claimant is in injured so severely that they are unable to notice a claim 180 days after receiving the injury, they likely have large medical bills that are now unrecoverable through the CRA (though potentially still recoverable through the Torts Claims Act).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS