

Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 11th day of February 2021, the following proceedings were had and entered of record.

RESOLUTION 21-16

A RESOLUTION OPPOSING HOUSE BILL 4

WHEREAS, in Laws 2020, 1st Special Session, Chapter 1 (HB 5) and in response to certain high-profile civil rights violations by law enforcement officers in other states, the New Mexico Legislature created the New Mexico Civil Rights Commission (Commission) to develop policy proposals for laws for the creation of a civil right of action for the deprivation, by a public body or a person acting on behalf of or under the authority of a public body, of any right, privilege or immunity secured by the Constitution of New Mexico; and

WHEREAS, a divided Commission voted 5-4 to recommend that the Legislature create a new State law cause of action for violations of the New Mexico Constitution that:

would NOT include a cap on compensatory damages, which is a break from the long-standing balance struck in the New Mexico Tort Claims Act (NMTCA) between compensating those harmed by government action and the public good; and

WOULD mandate the award of litigation expenses and attorney fees for prevailing plaintiffs, which can exceed the damages awarded to plaintiffs and are based upon hourly rates over \$450/hour; and

WHEREAS, the Commission's recommended legislation was largely introduced into the First Session of the 55th Legislature of the State of New Mexico as House Bill 4 (HB 4); and

WHEREAS, a new cause of action is unnecessary to address New Mexico constitutional deprivations by law enforcement officers (including detention officers at county jails), since the NMTCA already waives sovereign immunity for such claims and qualified immunity is not a defense to such claims (NMSA 1978, §41-4-12); and

WHEREAS, the NMTCA allows plaintiffs to recover damage awards up to \$1,050,000 and does not allow for the recovery of litigation expenses and attorney fees; and

WHEREAS, the NMTCA balances compensating those damaged by government action and the public good, since insurance premiums and uninsured claim costs take away money that would otherwise be available for essential government services; and

WHEREAS, research by New Mexico Counties presented to the Commission demonstrated that New Mexico – one of the poorest states in the Union – already allows for some of the highest damage awards in the Country for State law claims against law enforcement officers; and

WHEREAS, eliminating caps and mandating the award of litigation expenses and attorney fees will increase the costs of claims and will likely encourage more claims to be filed; and

WHEREAS, New Mexico Counties and other governmental entities also demonstrated that a new cause of action would cause reinsurance and other insurance coverage to no longer be available to the New Mexico County Insurance Authority; and

WHEREAS, the unavailability of reasonably-priced insurance will cause local governments to self-insure significant risk, which will divert scarce resources away from the very services that proponents of the new cause of action are trying to improve to individual claimants and their attorneys; and

WHEREAS, the new cause of action carries the risk of unintended, negative consequences, including the elimination of services or the privatization of services; and

WHEREAS, uninsured judgments that cannot be satisfied through existing resources will be paid by our citizens, through property taxes levied to meet the judgment (N.M. Const., Art. VIII, Section 7; NMSA 1978, §7-37-7(C)(3)); and

WHEREAS, many challenges faced by local law enforcement and county jails stem from substance abuse and mental health disorders in the population with which they interact; and

WHEREAS, instead of diverting resources to individual claims, the Legislature should be providing more resources to serve this population, which would minimize their interactions with law enforcement and keep them out of county jails; and

WHEREAS, information presented to the Commission demonstrated that the New Mexico Law Enforcement Academy needs additional resources to better train law enforcement officers and timely discharge its goal of investigating law enforcement officers accused of misconduct; and

WHEREAS, timely removing the certification of so-called “bad cops” would more effectively and quickly meet the goal of improving law enforcement by avoiding the recycling of such bad actors among law enforcement departments; and

WHEREAS, the proposed new cause of action would apply to any public body, defined as a “state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education” or person acting on its behalf; and

WHEREAS, such a broadly drawn cause of action could have far reaching ramifications in areas not considered by the Commission, including actions by former students against school districts for failing to provide an adequate education as required by NM Const., Art. XII, Section 1.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Luna County that:

It opposes House Bill 4 in its current form, since:

it is unnecessary because victims of State constitutional violations by law enforcement officers (including detention officers) can already bring lawsuits for money damages for violations of their New Mexico Constitutional rights under existing state law;

it will not address the root cause of many claims against local governments, namely the lack of adequate state resources to treat substance abuse and mental health disorders in our community;

it will further harden the public liability insurance market, requiring local governments to self-insure more risk and creating the real possibility that property taxes will need to be imposed to meet uninsured judgments;

it will be ineffective at driving reform or otherwise improving law enforcement or other services because it will divert resources away from law enforcement and detention officer recruitment, retention, and training and other critical services to claims; and

it will almost certainly have unintended, negative consequences, such as eliminating critical high risk services, reduction of resources to educate students, and a return to privatization of detention facilities to transfer risk to private companies.

If a new State law cause of action for the deprivation of New Mexico Constitutional rights is to be enacted, it urges the Legislature to:

enact caps on compensatory damages comparable to those in the NMTCA; and

not allow the award of litigation expenses and attorney fees to prevailing plaintiffs, which will increase the costs of all claims and will encourage more claims to be filed, including those with minimal damages.

It urges the Legislature to invest in:

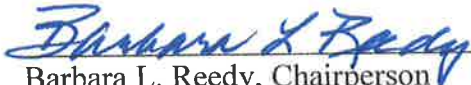
behavioral health prevention and treatment, to address the root cause of many law enforcement claims against local governments; and

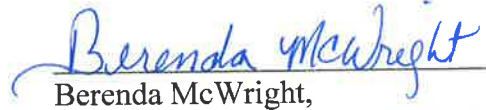
revamping and improving the operations of the New Mexico Law Enforcement Academy.

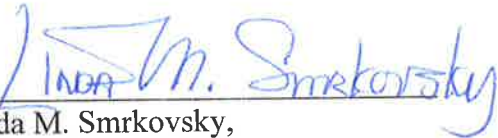
DONE THIS 11th DAY OF FEBRUARY, 2021

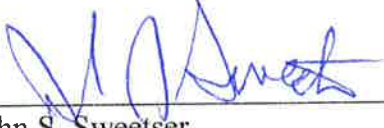
by the Board of County Commissioners of Luna County

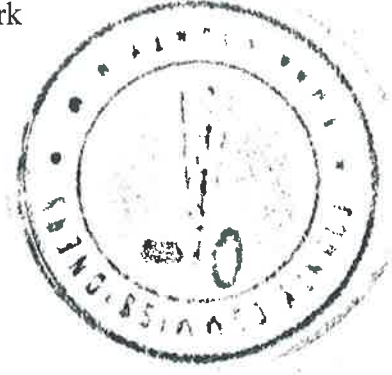
ATTEST:


Barbara L. Reedy, Chairperson
Commissioner, District 1


Berenda McWright,
County Clerk


Linda M. Smrkovsky,
Commissioner, District 2


John S. Sweetser,
Commissioner, District 3



REVIEWED FOR LEGAL SUFFICIENCY:


Charles C. Kretek,
County Attorney

