

**CHAVES COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING AGENDA**

February 4, 2021 – 11:00 a.m.

**Chaves County Administrative Center – Joseph R. Skeen Building
Commission Chambers - #1 St. Mary's Place**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

DETERMINATION OF QUORUM

PRESENTATION- *DR. DANIEL SOSIN*

MEDICAL EPIDEMIOLOGIST, EMERGING INFECTIONS PROGRAM, NMDOH

AGENDA ITEMS

1. Resolution R-21-006 Opposing HB4

**UNSCHEDULED COMMUNICATIONS LIMITED TO THREE MINUTES PER
VISITOR, AND SHALL NOT EXCEED A TOTAL OF 15 MINUTES
NO FORMAL ACTION TAKEN BY COMMISSION**

- ✓ **COUNTY MANAGER'S COMMUNICATIONS**
- ✓ **COMMISSIONER'S COMMUNICATIONS**
- ✓ **SIGNATURE OF DOCUMENTS**
- ✓ **ADJOURNMENT**

If you are an individual with a disability who is in need of a reader, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing of a meeting, please contact the County Commissioner's office at 575-624-6600. This should be done at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the County Commissioner's office if a summary or other type of accessible format is needed.

AGENDA ITEM: 1

Resolution R-21-006 Resolution Opposing HB4

MEETING DATE: February 4, 2021

STAFF SUMMARY REPORT

ACTION REQUESTED BY: Bill Williams, Interim County Manager

ACTION REQUESTED: Approve Resolution Opposing New Mexico HB4

ITEM SUMMARY:

This resolution requests that Legislators vote in opposition to New Mexico HB4 of the first session of the 55th Legislature. New Mexico Counties has requested that all counties send a resolution in opposition to this bill. The suggestions by the New Mexico Civil Rights Commission including, removing the cap on compensatory damages for civil rights violations by law enforcement officers has the potential to bankrupt Counties, Municipalities, and School Districts and does not address the root causes of these types of claims. Additionally, 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.

Staff recommends approval.

SUPPORT DOCUMENTS: Resolution R-21-006

SUMMARY BY: William B. Williams

TITLE: Interim County Manager

RESOLUTION R-21-006
OPPOSING HOUSE BILL 4 OF THE FIRST SESSION OF THE 55TH
LEGISLATURE AND URGING THE NEW MEXICO LEGISLATURE TO
PROVIDE MORE RESOURCES TO ADDRESS ROOT CAUSES OF CIVIL
RIGHTS CLAIMS AGAINST LOCAL GOVERNMENTS

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 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/or local governments at all or at reasonable rates; and

WHEREAS, the unavailability of reasonably-priced insurance will cause local governments to self-insure significant risk, which will divert scarce resources 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 (New Mexico Constitution Article 8, Section 7; NMSA 1978, §.7-37-7(C)(3)); and

WHEREAS, many challenges faced by local law enforcement and county jails stem from co-occurring 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 police officers 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 cops among law enforcement departments; and

WHEREAS, the new cause of action goes far beyond addressing police misconduct and 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 other areas not duly considered by the Commission, including actions by former students against school districts for failing to provide an adequate education as required by Article XII, Section 1.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Chaves County, New Mexico that:

1. It opposes HB 4 in its current form, since it:
 - A. Is unnecessary for victims of State constitutional violations by law enforcement officers (including detention officers) to be compensated in the manner proposed;
 - B. Will not address the root cause of many claims against local governments: the lack of State resources to treat substance abuse and mental health disorders in non-penal settings;
 - C. Will further undermine 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;
 - D. Will likely be ineffective at driving reform or otherwise improving law enforcement or other services, since it will divert resources from law enforcement and detention officer recruitment, retention, and training and other critical services to claims; and
 - E. May have unintended, negative consequences, such as eliminating services in areas of high risk, the privatization of services to offload risk to private companies, or reduction of resources to educate students.

2. 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:
 - A. Enact caps on compensatory damages comparable to those in the NMTCA; and
 - B. Not allow the award of litigation expenses and attorney fees to prevailing plaintiffs, which will increase the costs of all claims and will likely encourage more claims to be filed, including those with minimal damages.
 - C. Provide behavioral health prevention and treatment, to address the root cause of many law enforcement claims against local governments;
 - D. Revamp and improve the operations of the New Mexico Law Enforcement Academy; and
 - E. Reimburse local governments for uninsured settlements and judgments and the increased costs of obtaining insurance and other coverage.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2021.

BOARD OF CHAVES COUNTY COMMISSIONERS

William E. Cavin, Chairman

Jeff Bilberry, Vice-Chairman

ATTEST:

Dara Dana, Member

T. Calder Ezzell Jr, Member

Cindy Fuller
County Clerk

Richard C. Taylor, Member