

RESOLUTION NO. 2021-1782

A RESOLUTION OPPOSING HOUSE BILL 4 OF THE FIRST SESSION OF THE 55TH LEGISLATURE; URGING THE NEW MEXICO LEGISLATURE TO PROVIDE MORE RESOURCES FOR BEHAVIORAL HEALTH PREVENTION AND TREATMENT, SINCE BEHAVIORAL HEALTH ISSUES ARE THE ROOT CAUSE OF MANY CIVIL RIGHTS CLAIMS AGAINST LOCAL GOVERNMENTS; AND RECOMMENDING DAMAGE CAPS ON ANY NEW CIVIL RIGHTS CAUSES OF ACTION AS WELL AS FUNDING FOR ANY INCREASED COSTS ASSOCIATED WITH IT

WHEREAS, in laws 2020, 1st Special Session, Chapter 1 (HB5) 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:

- 1) 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 (NMCTA) between compensating those harmed by governmental action and the public good; and
- 2) Would mandate the award of litigation expenses and attorney fees for prevailing plaintiffs, which can exceed those damages awarded to the plaintiffs and are based upon hourly rates over \$450/hour on average; and

WHEREAS, the Commissions' recommended legislation was largely introduced into the First Session of the 55th Legislature of the State of New Mexico as House Bill 4 (HB4); and

WHEREAS, a new cause of action is unnecessary to address New Mexico constitutional deprivations by law enforcement officers, since the NMTCA already waives sovereign immunity for such claims and qualified immunity is not a defense to such claims (NMSA 1978 § 1-4-12); 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 governmental 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 laws claims against law enforcement officers; and

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

WHEREAS, the removal of caps on recovery will cause local governments such as the City of Farmington, to self-insure significant risk, which will divert scarce resources from the very services the 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. 8, Section 7; NMSA 1978 § 7-37-7(C)(3)); and

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

WHEREAS, rather than 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

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, the new cause of action, would apply to any public body, defined as "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 received 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 duly considered by the Commission, including actions by former students against school districts failing to provide adequate education as required under Article XII, Section 1.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the City of Farmington:

- 1) It opposes HB 4 in its current form for the following reasons:
 - a. It is unnecessary because victims of State constitutional violations by law enforcement officers can already bring lawsuits for money damages for violations of their New Mexico Constitutional rights under existing state law; and
 - b. 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; and
 - c. It will further harden the public liability insurance market, requiring local governments to self-insure more risk and creating real possibility that property taxes will need to be imposed to meet uninsured judgments; and
 - d. It will likely be ineffective at driving reform or otherwise improving law enforcement and other services, because it will divert resources from law enforcement recruitment, retention, and training and other critical services to claims; and
 - e. It may have unintended, negative consequences, such as eliminating critical high-risk services, reduction of resources to educate students, and a return to privatization of governmental services.
- 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 encourage more claims to be filed, including those with minimal damages.
- 3) It urges the Legislature to invest in:
 - a. Behavioral health prevention and treatment, to address the root cause of many law enforcement claims against local government; and

- b. Revamping and improving the operations of the New Mexico Law Enforcement Academy.

PASSED, SIGNED, APPROVED AND ADOPTED this 9th day of February, 2021.



Nate Duckett, Mayor

SEAL

ATTEST:



Andrea Jones, City Clerk