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FISCAL IMPACT REPORT

SPONSOR Cullen/Montoya/Henry LAST UPDATED _____
ORIGINAL DATE 3/10/25
BILL
SHORT TITLE Unlawful Squatting NUMBER House Bill 332
ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$28.2	At least \$28.2	At least \$56.4	Recurring	General Fund
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 153 and 228.

Conflicts with House Bill 309 and Senate Bill 359.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Law Offices of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)
Corrections Department (NMCD)
Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Council of Governments (COG)
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of House Bill 332

House Bill 332 (HB332) would criminalize unlawful squatting, establishes penalties for unlawful squatting, and allow property owners to seek damages for property harm. It also provides a process for removing those squatting, allows them to contest citations, and requires a trial to resolve property disputes.

Section 1 of HB332 would add a new section to Chapter 30, Article 14 NMSA 1978, the statute governing trespassing. The new proposed section would create a new criminal offense of

unlawful squatting, defined as someone who resides on another's property without the owner's, occupant's, or authorized representative's knowledge or consent. A person who commits unlawful squatting would be guilty of a fourth-degree felony.

Section 2 of HB332 would amend Section 30-14-1.1 NMSA 1978 to add civil damages for unlawful squatting if a person commits the offense of unlawful squatting and injures, damages or destroys any part of the realty or its improvements-including buildings, structures, trees, shrubs or other natural features.

Section 3 of HB332 would add a new section to Chapter 31 NMSA 1978, the statute governing criminal procedure. The new section would require a person who commits or is accused of unlawful squatting receive a citation advising that the person may present documentation that authorizes the person's entry to the head of the issuing law enforcement agency or the head's designee within three days of receiving a citation for unlawful squatting. If the person is unable to provide the required documentation, they would be subject to arrest for unlawful squatting. The bill further explains that the documentation needed for a citation can include a validly executed lease or rental agreement, proof of rental payments or a deed of real property. The section clarifies that nothing in the section shall be construed to prohibit a property owner, rightful occupant or authorized representative of the owner from shutting off utilities.

Section 4 outlines the process of removing an unlawful squatter from real property. A person claiming the right to possess the property can submit an affidavit to law enforcement in the county where the real property is located. Law enforcement must present it to the person committing unlawful squatting at least three days before removal, unless they submit a counter affidavit claiming legal possession. Other than the exception, law enforcement would remove the alleged unlawful squatter from the premises once three days have passed since the affidavit was exhibited. If the squatter submits a counter affidavit, both parties will remain in place while the case is filed for a nonjury trial in district court. If the court determines the squatter's claim is invalid, law enforcement will remove the squatter upon issuance of a writ of possession. The court may also award the plaintiff the fair market value of rent for the duration of the squatter's occupancy and other monetary relief. The decision can be appealed to the New Mexico Supreme Court but shall not be subject to de novo review. If the court rules in favor of the plaintiff, the clerk will issue a writ of possession (pursuant to Section 42-4-12 NMSA 1978) and law enforcement can investigate or prosecute as needed.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations.

The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY24 was \$59.3 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. HB332 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated. This analysis assumes that one additional individual will be incarcerated for the crime of unlawful squatting annually.

The court's financial impact will depend on the enforcement of unlawful squatting laws, the number of prosecutions, and the frequency of nonjury trials and appeals. The fiscal burden on the courts is reduced by the provision that HB332 decisions cannot be subject to de novo review by the Supreme Court. This helps prevent the Supreme Court from being overwhelmed with individual unlawful squatting appeals and limits unnecessary litigation by upholding lower court decisions. Because of this, the impact on the courts is indeterminate but minimal.

SIGNIFICANT ISSUES

The New Mexico Attorney General (NMG) provides the following:

Proposed HB 332 appears largely to track Georgia’s “unlawful squatting” statute, Ga. Code Ann., § 16-7-21.1, which became effective April 24, 2024.

Trespass is already a crime under NMSA 1978, Section 30-14-1 and HB332 appears to turn trespass into a felony if a person “resides” on the real property, elevating some types of trespass from a misdemeanor to a strict liability felony. Unlike the Georgia statute, HB332 does not have any mens rea requirement, nor a definition of “reside”. This appears to target unhoused individuals, as “reside” is not defined. Without definition, it could apply to someone who sets up a tent or even a sleeping bag on land, who sleeps in an abandoned warehouse, or any number of other activities that are already covered by trespass. Burglary is already a felony in New Mexico law, either fourth-degree, or third-degree if committed in a residence. NMSA 1978, Section 30-16-3. It is unclear what this new crime will accomplish.

Sections 3 and 4 provide completely different remedies for the “unlawful squatting”: an unusual criminal citation procedure and some sort of expedited civil judicial remedy. It is unclear how or when a peace officer would determine whether a person is committing “unlawful squatting” instead of a trespassing or burglary. Police can arrest someone on suspicion of a burglary or even trespass in many circumstances, and it is unclear how the “citation” process in Section 3 would affect that practice. Without explicit language, it is unclear if HB332 intends to prevent arrests for unlawful squatting without following this specific citation procedure. If that is the intent, then police may simply opt to arrest for trespassing or burglary to avoid the complication of the citation process.

The procedure in Section 3 also appears to require police to set up a procedure to essentially pre-adjudicate claims of property ownership prior to arrest. The proposed statute is also too vague as to what documents are acceptable. It appears to create a burden on the accused to demonstrate innocence by stating that if the “required” documentation is not presented, they shall be subject to arrest. This leads to a possible violation of the right to remain silent. Ultimately, a judge (or jury since this would be a felony) would need to sort through complexities of property law to make an appropriate

determination of guilt, so there does not seem to be a benefit to having police act as an administrative tribunal. HB332 may also create a separation of powers issue, by attempting to legislate who is specifically “subject to arrest” when the judicial branch reviews arrests and arrest warrants based on constitutional principles.

Section 4 requires law enforcement to “turn the alleged unlawful squatter out of possession” based on an affidavit alone, if a counter-affidavit is not produced within three (3) days. This is very fast. This can create a way to evict an individual without ever involving the courts. This procedure is akin to a default judgment but without a judicial order, procedural protections, and the ability to appeal. HB332’s proposed language appears to ignore the complexities of law surrounding property rights that are typically judicially ascertained.

As referenced in Section 4, ejectment is already a statutorily enshrined cause of action in the civil courts under NMSA 1978, Sections 42-4-1 to -30. NMSA 1978, Sections 35-10-1 to -6 allow an action for forcible entry and detainer for when “the defendant enter[s] and occupy[s] the lands and tenements of another against the will or consent of the owner and refuse[s] to vacate the premises after notice by the owner or his agent or attorney.” NMSA 1978, 35-10-1 (A)(1). The Uniform Owner-Resident Relations Act under NMSA 1978, Sections 47-8-1 to -52, extensively covers the relationship between residential tenants and property owners by stating, “[t]he laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act.” Section 47-8-49.

If a counter-affidavit is submitted, law enforcement must then file the documents with the court under this statute. Law enforcement normally only initiates proceedings in criminal cases, either by filing an arrest warrant, after a judge approves, or a complaint after an arrest. This strange procedure seems to conflate the civil and criminal processes. A statute cannot take away a right to jury trial that is guaranteed under the constitution. N.M. Const., art. II, § 12.

Subsection C appears to require law enforcement to turn the resident out of possession pursuant to a writ of possession as soon as a judge finds that their affidavit is “not meritorious.” HB332 appears to not provide an explanation of what that standard is.

Subsection E also requires a judge to issue a writ of possession after finding a verdict for the plaintiff (specifically referencing the existing statute for ejectment proceedings). There is no explanation of what the difference is between finding a verdict for the plaintiff and finding the affidavit from the person in possession to be “not meritorious” or how there could be two different points in the same proceeding that result in the same writ. HB332 appears to indicate that the court shall award costs and any other relief it awards.

Subsection D appears to allow value of rent to be awarded and allows a party to appeal the decision but is not subject to de novo review by the Supreme Court. HB332’s language is confusing without a right to appeal. HB332 appears to run into New Mexico’s constitutional guarantees of the right to an appeal and the judiciary’s power to determine rules for appeals, which typically also include the determination of the correct

standard to apply on appeal (as well as which appellate court can hear an appeal).

HB332 appears to be vague in the term “plaintiff.” Section 4, Subsections D and E appear to conflict in the term used as “plaintiff.” In addition, Subsection E states, “The plaintiff and the court shall be authorized to present the final order to law enforcement for investigation or prosecution.” This language is vague and can be confusing because an order is already a public document, and HB332 appears to already require a writ of possession to be issued and executed by law enforcement. The language as proposed could create issues with the right against self-incrimination since HB332 creates a new felony.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG points out that HB332 conflicts with House Bill 309 and Senate Bill 359 because both create competing and incompatible methods for removing alleged unlawful residents. The Law Offices of the Public Defender (LOPD) mentions that HB332 is related to Senate Bill 153 due to the bill proposing a new home invasion crime which would consist of unlawful entering of another dwelling occupied by another person. LOPD also points out that HB332 relates to Senate Bill 228 because the bill expands the definition of “burglary” to include entering a retail establishment when not authorized.

TECHNICAL ISSUES

NMAG provides the following:

Make language in proposed Section 2(E) (authorizing “damages in an amount equal to two times the amount of the appraised value. . .”) consistent with that in existing Section 2(D) (authorizing “damages in an amount equal to double the amount of the appraised value...”).

OTHER SUBSTANTIVE ISSUES

The New Mexico Sentencing Commission (NMSC) provides the following:

Section 30-14-1.1 is charged rarely. Since 2007, there have been 6 cases with a violation of 30-14-1.1, the most recent instance in 2018. None of these cases had that charge as the lead offense