

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Aragon DATE TYPED: 02/28/01 HB _____
 SHORT TITLE: Permit Non-Commercial Communication at SB 162/aSPAC/aSJC/aSFI #1
Malls ANALYST: Hayes

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| | | | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Attorney General's Office
 Memorandum from Freedman, Boyd, Daniels, Hollander, Goldberg & Cline, P.A.

According to the Administrative Office of the Courts (AOC), this bill has no impact on the AOC or the courts.

SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor Amendment number 1 makes a single technical adjustment, striking the “substantially” on line 1, page 2 of the bill, meaning that non-commercial speech and solicitation activities can not interfere with mall business or its tenants.

Synopsis of SJC Amendment

The Senate Judiciary Committee strikes Amendment #2 of the Senate Public Affairs Committee. In its replacement, new language was inserted that not only protects mall owners from liability for damages, compensation or tort claims as a result of their reasonable compliance with the provisions of this bill, but extends those provisions to managers, employees or independent contractors of the mall owner. In addition, the SJC amendment states that these parties are not liable for “loss or damages to a person that is caused by the negligence or intentional acts of a third person while that person is engaged in conduct the mall is required to permit [certain non-commercial speech and solicitation activities].

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment allows for certain non-commercial speech and solicitation activities at privately-owned shopping malls whose leasable commercial space and common areas total one hundred thousand (100,000) square feet. The square footage was reduced by the amendment from 500,000 square feet, thereby making the provisions of this bill applicable to several shopping malls in New Mexico.

In addition, a new section regarding liability was inserted in the bill. It states that “under no circumstances shall a mall or an owner, partner or shareholder of an entity that owns the mall, collectively or individually, be subject to a civil action, tort claim or other court action for damages or compensation of any kind as a result of its compliance or attempts to comply with a provision of this section.”

Synopsis of Original Bill

SB162 confers certain rights for non-commercial speech and solicitation activities in public areas of privately-owned shopping malls whose leasable commercial space and common areas total 500,000 square feet or more.

The number of malls in New Mexico that would be affected by this bill is four (4).

Significant Issues

There are four issues addressed by SB162 whose intent is to grant certain freedom of speech rights to individuals wanting to express themselves or to solicit at a shopping mall, but also to balance those rights between mall owner and solicitor if the latter’s activities interfere with mall business operations:

1. Allows for varied types of communication to be expressed and specified activities to be conducted, without discrimination, as long such activities do not interfere with shopping mall business or its tenants. For example, enactment of this bill will permit non-commercial activities such as conducting voter registration drives, petition-signing, distributing leaflets/literature and campaigning. Currently, most mall owners do not allow such activities because they are viewed as “political” or controversial and, therefore, bad for business. Yet, activities such as health and fitness displays, Toys for Tots drives and college fairs are considered acceptable activities because they are perceived as “good” for the public and for business; they are non-controversial.
2. Permits mall owners to impose reasonable restrictions on the time, place and manner of engaging in non-commercial activities such as those described above. Restrictions may be imposed to prevent substantial interference with businesses and tenants in the mall.
3. Prevents mall owners from collecting fees from individuals as a condition of exercising their right to free speech and engaging in non-commercial activities at the shopping mall.
4. Excludes distribution of materials on shopping mall property that would not be protected by the first amendment to the United States Constitution if distributed on a public sidewalk.

FISCAL IMPLICATIONS

There are no fiscal implications of this bill.

TECHNICAL ISSUES

A distinction or clarification between protected “non-commercial” and “commercial” communications may be necessary in order to avoid confusion and possible constitutional void-for-vagueness challenges, according to the Attorney General’s Office.

OTHER SUBSTANTIVE ISSUES

By not enacting this bill, the parameters of protected free speech in the context of privately-owned shopping malls will remain unclear. Moreover, without legislation, it will continue to allow *ad hoc* determinations by mall owners regarding the type of expressive activities permitted in their malls and further allow them to discriminate on the basis of whether they believe an activity is good or bad for business.

POSSIBLE QUESTIONS

1. Why are New Mexico mall owners legally allowed to prevent certain individuals, groups or organizations from engaging in expressive non-commercial communication or solicitation?
2. Does this bill permit “hate groups” to engage in expressive, non-commercial activities at a mall as long as they do not interfere with businesses and tenants?
3. How does this bill define “reasonable restrictions?” In what circumstances would mall owners impose restrictions? In what circumstances would be they challenged?

CMH/njw:ar:pr