

LFC Requester: Scott Sanchez

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 01FEB2024
Bill No: SB 248

Sponsor: Senator Leo Jaramillo **Agency Name and Code** 790-Department of Public Safety
Person Writing Joan M. Waters

Short Title: Unsafe Use of Public Roadways & Spaces Act

Phone: 505.365.3531 **Email:** Joan.waters2@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

SB 248 limits solicitation sometimes referred to as “panhandling” (approaching passers by and requesting money) in public roadways and spaces; creates a new misdemeanor offense of “aggressive solicitation.”

- Makes solicitation unlawful outside of a limited public forum within a right of way, a limited public forum within a parking lot, except from one-half hour after sunset until one-half hour before sunrise;
- Makes solicitation unlawful in “a nonpublic forum within a right of way” or “in a nonpublic forum within a public parking lot”;
- Makes it unlawful for an occupant of a vehicle to offer money or other items of value to a solicitor who is in violation of the section

AGGRESSIVE SOLICITATION. Defined as someone asking for money who comes closer than three feet to the person being solicited, unless the person being solicited “indicates an intention to make a donation,” purchase “or otherwise communicates with the solicitor.” Makes it unlawful to impede the entrance (presumably of one being solicited) to the entry of any structure or vehicle; continuing to solicit from or follow behind, ahead or alongside a person being solicited after the solicited person has declined the solicitation by words or actions; Threatening a person being solicited by word or gesture or direct abusive language.

Definitions:

“solicitor” means a person who engages in solicitation.

"traditional public forum" means a pedestrian area within a right of way that is not a limited public forum within a right of way, a limited public forum within a public parking lot, a nonpublic forum within a public parking lot or a nonpublic forum within a right of way.

“solicit” and “solicitation” means a request by a person through words, signs or actions for donations of money or other items of value, appeals for support of persons, policies or projects and offers to sell products or services

"right of way" means the entirety of a public roadway, including the traveled surface, sidewalks, trails, medians and other adjoining spaces separating the traveled roadway from adjoining

properties.

"public roadway" means a publicly owned street, road, highway or other traveled route intended for vehicular traffic;

“pedestrian walkway" means a sidewalk, path, trail or other area intended for use by pedestrians;

"nonpublic forum within a right of way" means traffic lanes, turn lanes, on-street parking spaces within a roadway and medians thirty-six inches or less in width;

“nonpublic forum within a public parking lot" means vehicular aisles and parking spaces in a parking lot.

“median” means any area within a traveled roadway, including a bordering curb, that is elevated or otherwise physically separated from traffic lanes or turning lanes and that is intended to create a physical separation between lanes of traffic, regardless of direction;

"limited public forum within a right of way" means: a paved median greater than thirty-six inches in width; and a paved or unpaved pedestrian walkway immediately adjacent to traffic or turning lanes, including a curb.

"limited public forum within a public parking lot" means a pedestrian walkway not within vehicular aisles or parking spaces of a parking lot.

FISCAL IMPLICATIONS

None for DPS

SIGNIFICANT ISSUES

DPS is confident SB 248 will withstand legal challenge, as it is careful to narrowly tailor the restrictions on speech. For example, the restrictions on solicitation in limited public fora apply only after dark. The restrictions labeled “aggressive solicitation” are aimed at ensuring an individual may get into and out of his/her vehicle and go into and out of any place of business without interference. DPS believes this will have a positive impact on traffic safety as well as overall public safety by restricting the time and location of panhandling.

Restrictions on solicitation have always been viewed as restrictions on protected speech, but jurisprudence on the subject has not eliminated the ability to reasonably enact such restrictions. In *Martin v. City of Albuquerque*, 396 F.Supp. 3d 1008, 1019 (USDC DNM 2019), the court found the City had presented “a truly content-neutral justification” for its ordinance by “proffering the public safety justification.” However, the court also found the ordinance not sufficiently narrowly tailored to serve the substantial governmental interest. *Id.* at 1028. SB 248 attempts to narrowly tailor its restrictions; DPS believes it succeeds in this.

In *Martin*, the United States District Court agreed with the parties that the activities of passively soliciting donations by holding signs on medians and exit and entrance ramps, providing donations from a vehicle while stopped in traffic and handing out informational leaflets to motorists, all constitute speech protected by the First Amendment to the United States Constitution. The court noted that “in most First Amendment challenges to regulations covering streets, sidewalks and

even medians, courts have found them to be, without question and without particularized analysis, traditional public fora.” *Id.* at 1020. “The most important consideration [in determining whether property is a traditional public forum is] whether the property shares physical similarities with more traditional public for[a], whether the government has permitted or acquiesced in broad public access to the property and whether expressive activity would tend to interfere in a significant way with the uses to which the government has as a factual matter dedicated the property.” *Id.* at 1022.

In *Martin*, the court concluded that the “travel lanes” as defined in the City of Albuquerque ordinance were not traditional public fora. Therefore, restrictions on individuals standing in the travel lanes were constitutional so long as “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.* at 1023. However, the other areas on which the City was placing restrictions – “within six feet of a travel lane”, “within any median not suitable for pedestrian use” defined as “less than six feet in width”, within a roadway with a posted speed of thirty miles per hour or more or located within twenty-five feet of an intersection with such a roadway”, in a landscaped area or “otherwise identified by signage as not suitable for pedestrian use . . . based on identifiable safety standards” – were traditional public fora. In the traditional public fora, the government restrictions had to be content neutral time, place and manner restrictions that 1) serve a significant government interest; 2) are narrowly tailored to advance that interest; and 3) leave open ample alternative channels of communication. *Id.* at 1023-24.

DPS does not know whether SB 248 will withstand challenge, but notes there are efforts to narrowly tailor the restrictions on speech. For example, the restrictions on solicitation in limited public fora apply only after dark. The restrictions labeled “aggressive solicitation” are aimed at ensuring an individual may get into and out of his/her vehicle and go into and out of any place of business without interference.

DPS will be called upon to enforce these restrictions.

PERFORMANCE IMPLICATIONS

This legislation could have an impact on DPS relating to an increase in calls for service, however, many of these calls occur due to pedestrians along interstate on-ramps. Current NM Statutes restrict the ability of a pedestrian to utilize these spaces. If passed, DPS will continue to enforce laws that are statutorily required.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

Not at this time