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## FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/08/01 HB 241/HJCS  
 SHORT TITLE: Right to Petition Government and Free Speech SB \_\_\_\_\_  
 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  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of HJCS Bill

The House Judiciary Committee substitute for HB241 also enacts new sections of NMSA 1978 to provide protection for a defendant in a civil lawsuit arising from conduct or speech that has as its primary purpose to inform, influence, communicate with or participate in governmental processes connected with a public issue. In addition, the bill provides for a special motion to dismiss a lawsuit by a defendant and requires a trial court to hear such motion on an expedited basis.

The committee substitute also clarifies some of the ambiguity regarding procedures and sanctions, plus adds a Section C which further defines types of “conduct” and “speech” to which this legislation is addressing.

#### Significant Issues

There are two significant issues addressed by HB241/HJCS:

1. First, the intent of the bill is to eliminate certain frivolous lawsuits against public participation in government processes -- lawsuits such as those referred to as “SLAPPS.” A typical SLAPP, for example, is a lawsuit brought by a real estate developer against environmental activists or neighborhood associations who have circulated petitions, testified in public hearings or participated in the governmental process in opposition to the developer’s plans. Oftentime, the plaintiff’s intent behind the SLAPP is not resolution of the underlying claims, but is to

punish or retaliate against citizens who have spoken against the plaintiff in the political arena and to intimidate those who would otherwise oppose the plaintiff in the future.

In essence, the legislation encourages continued public participation in matters of public significance and participate in the political process with fear of litigation.

2. Secondly, the bill allows dismissal of these types of lawsuits in the following manner:
  - < Special motions to dismiss would be considered on an expedited basis by the trial court, and discovery would be suspended while the motion and appeal thereof is pending. It would be incumbent on the respondent of the motion to show that the moving party's exercise of free speech "was devoid of any reasonable factual support and any arguable basis in law; and ... caused actual injury to the responding party."
  - < The moving party would also have the right to an expedited interlocutory appeal upon the denial of the special motion to dismiss or failure to receive an expedited ruling to the original motion.
  - < The party that prevails in the special motion to dismiss may seek attorney's fees and costs. Furthermore, if the motion to dismiss is ordered, the bill authorizes sanctions and disciplinary action for attorneys who initiate this type of lawsuit.
  - < This bill does not preclude other remedies, and the provisions in this section are severable insofar as, if one provision is held invalid, it does not nullify the other provisions.

### **FISCAL IMPLICATIONS**

\*No direct fiscal impact on revenue or appropriation needs. However, fiscal implications on the judiciary will parallel the amount of litigation that is generated or avoided by enactment of HB241/HJCS. To the extent this bill reduces the number of court filings, it may also reduce litigation and court costs.

### **ADMINISTRATIVE IMPLICATIONS**

The expedited reviews provided for by this bill would necessitate courts getting involved in the case at an early state in the litigation requiring expedited scheduling, hearings and adjudication.

CMH/ar