

LFC Requester:

Helen Gaussoin

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/13/2025

Check all that apply:

Bill Number: HB153

Original

Correction

Amendment X

Substitute

Sponsor: Rep. Sarah Silva, Rep. Javier
Martínez, Sen. Peter Wirth

**Agency Name and
Code Number:** 305 – New Mexico
Department of Justice

**Short
Title:** PROTECT REPORTERS
FROM EXPLOITIVE
SPYING ACT

Person Writing

Analysis: Blaine N. Moffatt

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill 153 ("HB153") proposes to prohibit a New Mexico state entity (the "state entity") from compelling journalists and providers of telecommunications services (e.g., phone and internet companies) to disclose certain protected information, except in limited circumstances such as to prevent terrorism or imminent violence.

Amendments:

"state entity" means an entity or employee of the legislative or executive branch of the state government or an administrative agency of the state government with the power to issue a subpoena or issue other compulsory process.

SECTION 3. [NEW MATERIAL] LIMITS ON COMPELLED DISCLOSURE FROM COVERED JOURNALISTS.--In any matter arising under state law, a state entity shall not compel a covered journalist to disclose protected information unless a court in the judicial district in which the subpoena or other compulsory process is, or will be, has been issued determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to the covered journalist, that:

A. In any matter arising under state law, a state entity shall not compel a covered service provider to provide testimony or any document consisting of any record, information or other communications stored by a covered provider on behalf of a covered journalist, including testimony or any document relating to a personal account of a covered journalist or a personal technology device of a covered journalist, unless a court in the judicial district in which the subpoena or other compulsory process is, or will be, has been issued determines by a preponderance of the evidence that there is a reasonable threat of imminent violence unless if the testimony or document is not provided and issues an order authorizing the state entity to compel the disclosure of the testimony or document

SECTION 5. [NEW MATERIAL] LIMITATION ON CONTENT OF INFORMATION.--The content of A subpoena for any testimony, document or protected information that is sought to be compelled pursuant to Sections 3 and 4 of the Protect Reporters from Exploitative State Spying Act, and the extent of any information ordered to

be disclosed in proceedings to enforce such a subpoena.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The proposed amendments do not change the proposed issues in this section.

HB153 as proposed could likely be found unconstitutional. Section 7 and 8 of HB153 propose to repeal and essentially replace NMSA 1978, Section 38-6-7. The New Mexico Supreme Court held in 1976 that NMSA 1978, Section 38-6-7 was unconstitutional as written as held in *Ammerman v. Hubbard Broad., Inc.* More specifically, the New Mexico Supreme Court held that:

“Under the [New Mexico] Constitution, the legislature lacks the power to prescribe by statute rules of practice and procedure, although it has in the past attempted to do so. Certainly statutes purporting to regulate practice and procedure in the courts cannot be made binding, for the constitutional power is vested exclusively in this court.”

Ammerman v. Hubbard Broad., Inc., 1976-NMSC-031, ¶ 8, 89 N.M. 307, 310, 551 P.2d 1354, 1357.

HB153 as proposed creates a very broad definition of journalists and could create unintended consequences. As stated in Section 2(A), a “covered journalist” means “a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, investigates, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.” While HB153 creates in Section 6 an opportunity for investigation of suspected journalists from criminal, terroristic, and foreign influence and intelligence, it does not create a functional distinction separating an investigative blogger from internet accounts serving as an anonymous commentator propagating falsehoods and disinformation or groups seeking to create danger or harm. HB153’s proposed inclusion of such expansive definitions could provide protection to individuals whose activities are serving interests other than those promoted by the First Amendment.

HB153 proposes to repeal and replace an already existing similar statute found in NMSA 1978, Section 38-6-7 News sources and information; mandatory disclosure prohibited; definitions; special procedure for prevention of injustice issue. This current regulation protects information from disclosure in a similar manner.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A