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FISCAL IMPACT REPORT

SPONSOR <u>Reps. Silva and Martinez, J./Sen. Wirth</u>	LAST UPDATED <u>2/15/2025</u>	ORIGINAL DATE <u>2/8/2025</u>
SHORT TITLE <u>Protect Reporters From Exploitative Spying</u>	BILL NUMBER <u>House Bill 153/aHCPAC</u>	ANALYST <u>Gaussoin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 State Ethics Commission (SEC)

Agency Declined to Comment

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HCPAC Amendment to House Bill 153

The House Consumer and Public Affairs Committee amendment to House Bill 153 (HB153) cleans up language throughout the bill and makes no substantive changes. It adds the Legislature and legislative agencies to those entities prohibited from compelling a journalist to reveal a source or other information related to publishing a story.

Synopsis of House Bill 153

House Bill 153 repeals the existing press “shield” law that protects news reporters from being compelled to reveal their sources with a new law—the Protect Reporters from Exploitative State Spying Act, or PRESS Act—updated for current technology and practices.

The bill broadly defines a “covered journalist” as 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.”

The bill would prohibit a “state entity,” defined as an agency in the executive branch or an administrative agency of the state with subpoena or other compulsory powers, to compel a journalist to reveal any information identifying a source or the contents of any communications or documents related to putting together or publishing a story. The state entity would also be prohibited from compelling a cell phone carrier or other similar electronic communications service providers to provide testimony or any document stored on behalf of a covered journalist. A district court could order a journalist or service provider to reveal information if it finds, from “a preponderance of the evidence,” the information is necessary to identify a terrorist or prevent an act of terrorism or act of violence.

If compelled, the information provided would be limited to verifying published information or describing circumstances relevant to the accuracy of published information and tailored so it did not include any nonessential or speculative information.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

This bill is likely to have little financial impact. The Administrative Office of the Courts (AOC) reports it would have some administrative costs to update, distribute, and document any statutory changes statewide and notes any new law has the potential to result in additional court cases. However, existing court rules addressing media confidential sources and the near nonexistence of New Mexico cases over press protections suggest no new cases would result from this legislation.

SIGNIFICANT ISSUES

Parts of New Mexico’s existing shield law were found to be unconstitutional in 1976 under *Ammerman v. Hubbard Broadcasting* and “the statute’s current significance is largely historical,” according to a New Mexico lawyer writing for Reporters Committee for Freedom of the Press.¹

The State Ethics Commission reports news media confidential source privilege is, instead, addressed through New Mexico Rule of Evidence 11-514, most recently updated in 2013. The commission says HB153 does not directly address reporter privilege but does dictate court processes and deadlines and outlines the burden of proof on the district court: “It is likely that the bill as written will not raise constitutionality issues or conflict with Rule 11-514, but these issues must be kept in mind as the bill is amended through the legislative process.”

However, the New Mexico Attorney General (NMAG) disagrees and says the bill conflicts with Rule 11-514 and, by legislating rules of evidence or procedure, violates the constitution in the same way as *Ammerman*. Similarly, the bill’s provision that requires a court to hold a hearing within 45 days of an action intended to compel disclosure from a covered service provider is an unconstitutional setting of a timeline for the court. NMAG quotes the *Ammerman* decision: “The time within which this court must consider a matter before it is for this court to determine.”

¹ <https://www.rcfp.org/privilege-compendium/new-mexico/>

Finally, NMAG raises a concern that the broad definition of journalists in the bill “could create unintended consequences...The reach of the definition does not appear to create a functional distinction separating an investigative newspaper reporter from a social media influencer or from a hobbyist blogger.”

AOC reports HB153 is substantially similar to the federal PRESS Act, which unanimously passed the U.S. House of Representatives but died in the U.S. Senate in December 2024. It notes the U.S. Supreme Court has declined to interpret the First and Fourth amendments in the context of a reporter’s privilege, leaving it to the states to provide protections. AOC notes the bill requires a judge to limit the content disclosed if the request is “overbroad, unreasonable, or oppressive,” but this language does not mirror any current legal standard and will to be interpreted by the judge.

TECHNICAL ISSUES

NMAG points out the court may order disclosure to prevent “a threat of imminent violence, significant bodily harm or death, including specified offenses against a minor,” but those offenses are never specified.

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