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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}

Date Prepared: 1/29/25 *Check all that apply:*
Bill Number: HB 169 Original Correction
 Amendment Substitute

Sponsor: Rep. Andrea Romero **Agency Name and Code:** AOC
Short Title: Public Expression Protection Act **Number:** 218
Person Writing: Kathleen Sabo **Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| None | None | Rec. | General |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------|---------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| Unknown | Unknown | Unknown | Rec. | General |
| | | | | |

(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 | Unknown | Unknown | Unknown | Unknown | Rec. | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 169 enacts the “Public Expression Protection Act,” (PEPA) to standardize the approach used to limit the detrimental effects of “Strategi Lawsuits Against Public Participation,” or SLAPPs, by setting out a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner.

HB 169, Section 2(A) provides that, except as otherwise provided in Subsection B, the PEPA applies to a cause of action asserted in a civil action against a person based on the person’s: (1) communication in a legislative, executive, judicial, administrative or other governmental proceeding; (2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative or other governmental proceeding; or (3) exercise of the right of freedom of speech or of the press, the right to assemble or petition or the right of association, guaranteed by the United States constitution or the constitution of New Mexico, on a matter of public concern.

Subsection B provides that the PEPA does not apply to a cause of action asserted:

(1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity; (2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or (3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

HB 169, Section 3, permits a party to file a special motion for expedited relief to dismiss a cause of action or part of a cause of action to which the PEPA applies, not later than 60 days after a party is served, or at a later time on a showing of good cause.

HB 169, Section 4, provides for a stay of proceedings upon the filing of a Section 3 special motion, until the court adjudicates the motion and the moving party’s appellate rights with respect to the motion are exhausted. During a stay, the court for good cause may hear and rule on: (1) a motion unrelated to the motion pursuant to Section 3 of the Public Expression Protection Act; and (2) a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

HB 169, Section 5, requires the court to hear a motion pursuant to Section 3 of the PEPA not later than 60 days after the filing of the motion, unless the court orders a later hearing: (1) to allow discovery pursuant to Subsection D of Section 4 of the Public Expression Protection Act; or (2) for other good cause.

HB 169, Section 6, requires the court, in ruling on a motion, to consider the pleadings, the motion, any reply or response and any evidence that could be considered in ruling on a motion to dismiss, motion for judgment on the pleadings or motion for summary judgment.

HB 169, Section 7, requires the court, in ruling on a motion pursuant to Section 3, to dismiss with prejudice a cause of action or part of a cause of action under specified circumstances. The PEPA provides that a voluntary dismissal without prejudice of a responding party's cause of action or part of a cause of action that is the subject of a motion pursuant to Section 3 of the Public Expression Protection Act does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees and expenses pursuant to Section 10 of that act. A voluntary dismissal *with* prejudice of a responding party's cause of action or part of a cause of action that is the subject of a motion pursuant to Section 3 of the Public Expression Protection Act establishes for the purpose of Section 10 of that act that the moving party prevailed on the motion.

HB 169, Section 8, requires the court to rule of a motion pursuant to Section 3 of the PEPA not later than 60 days after a hearing pursuant to Section 5.

HB 169, Section 9, permits a moving party to appeal as a matter of right from an order denying, in whole or in part, a motion pursuant to Section 3, and requires the appeal to be filed not later than 30 days after entry of the order.

HB 169, Section 10, describes the circumstances under which the court is required to award court costs, reasonable attorney fees and reasonable litigation expenses related to the motion, to the prevailing party, whether moving or responding party.

HB 169, Section 11, requires the PEPA to be broadly construed.

HB 169, Section 12, requires that in applying and construing the PEPA, consideration be given to the need to promote uniformity of the law.

HB 169, Section 13, provides that the PEPA applies to a civil action filed or cause of action asserted in a civil action on or after the effective date of the Act.

HB 169, Section 14, provides that the PEPA does not affect a cause of action asserted before the effective date of the Act in a civil action or a motion pursuant to Section 38-2-9.1 NMSA 1978.

HB 169, Section 15 repeals Sections 38-2-9.1, governing a special motion to dismiss unwarranted or specious lawsuits, procedures, sanctions and severability, and 38-2-9.2 NMSA 1978, detailing findings and purpose.

The effective date of the Act is July 1, 2025.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced and required hearings, rulings, motions and orders. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The PEPA requires expedited hearings to be held. It is possible that the courts would need to hire more personnel to meet the expedited deadlines for hearings and rulings under the Act, while still meeting obligations under other laws.

SIGNIFICANT ISSUES

- 1) Although the Uniform Law Commission proposed the “Uniform Public Expression Protection Act” (UPEPA) in 2020, HB 169 is proposed as the “Public Expression Protection Act,” and its progress is being tracked on the Uniform Act’s webpage at <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1&5f3d6ce4-bbc3-44da-ac7d-7c92de9acbfa=eyJsaWJyYXJ5Zj50cnkiOiIxYTJIZTU0Mi00YjJhLTQxNDgtYTQyYS0wMzQ2NjFIZDRiNDMifQ%3D%3D#LegBillTrackingAnchor> .

In the Prefatory Note to the UPEPA, the Uniform Law Commission explains

In the late 1980s, commentators began observing that the civil litigation system was increasingly being used in an illegitimate way: not to seek redress or relief for harm or to vindicate one’s legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation. These kinds of abusive lawsuits are particularly troublesome when defendants find themselves targeted for exercising their constitutional rights to publish and speak freely, petition the government, and associate with others. Commentators dubbed these kinds of civil actions “Strategic Lawsuits Against Public Participation,” or SLAPPs.

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To limit the detrimental effects SLAPPs can have, 32 states, as well as the District of Columbia and the Territory of Guam, have enacted laws to both assist defendants in seeking dismissal and to deter vexatious litigants from bringing such suits in the first place. An Anti-SLAPP law, at its core, is one by which a legislature imposes external change upon judicial procedure, in implicit recognition that the judiciary has not itself modified its own procedures to deal with this specific brand of abusive litigation. Although procedural in operation, these laws protect substantive rights, and therefore have substantive effects. So, it should not be surprising that each of the 34 legislative enactments have been performed statutorily—none are achieved through civil-procedure rules.

...

[T]he precise ways in which different states have constructed their laws are far from cohesive. This degree of variance from state to state—and an absence of protection in 18 states—leads to confusion and disorder among plaintiffs, defendants, and courts. It also contributes to what can be called “litigation tourism”; that is, a type of forum shopping by which a plaintiff who has choices among the states in which to bring a lawsuit will do so in a state that lacks strong and clear anti-SLAPP protections. Several recent high-profile examples of this type of forum shopping have made the need for uniformity all the more evident. The Uniform Public Expression Protection Act seeks to harmonize these varying approaches by enunciating a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner. In doing so, the Act actually serves two purposes: protecting individuals’ rights to petition and speak freely on issues of public interest while, at the same time, protecting the rights of people and entities to file meritorious lawsuits for real injuries. See the PDF of the Final Act for additional notes and comments.

The few differences between the Uniform Act at

<https://www.uniformlaws.org/viewdocument/final-act-110?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1&tab=librarydocuments> are as follows:

- a. HB 169, Section 2(C), describing the intention of the PEPA to confer substantive immunity from suit and not merely immunity from liability, does not exist in the UPEPA. On p. 18 of the PDF of the UPEPA, which includes comments, comment #4 provides

Anti-SLAPP laws “do not insulate defendants from any liability for claims arising from protected rights of petition or speech. [They] only provide[] a procedure for weeding out, at an early stage, meritless claims arising from protected activity.” *Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co.*, 434 P.3d 1152, 1157 (Cal. 2019) (emphasis original) (citations omitted).

- b. The UPEPA, Section 15, contains a severability clause. HB 169 does not.

NOTE: the Uniform Law Commission link provides access to both a PDF of the UPEPA, containing comments, and a clean word doc of the Act.

- 2) See <https://www.ifs.org/expert-analysis/an-open-letter-in-support-of-the-uniform-law-commissions-uniform-public-expression-protection-act/> for an open letter in support of the Uniform Public Expression Protection Act from the Institute for Free Speech.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS