

LFC Requester:

Felix Chavez

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: January 29, 2025

Check all that apply:

Bill Number: HB169

Original X Correction
Amendment Substitute

Sponsor: Rep. Andrea Romero,
Rep. Eleanor Chávez,
Rep. Harold Pope

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

Person Writing

Analysis: Eduardo Ugarte

Short Title: Public Expression Protection
Act

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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 169 (“HB169”), The Public Expression Protection Act, would (1) confer substantive immunity from suit, and not merely immunity from liability, for any cause of action concerning protected speech or communication pursuant to the act and (2) repeal NMSA 1978, Sections 38-2-9.1 and 38-2-9.2 the existing Anti-SLAPP laws.

Section 1 defines the act as the Public Expression Protection Act.

Section 2 of the act defines the scope of protected speech or communication as a 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 U.S. or New Mexico constitution, on a matter of public concern.

The act would not apply to a cause of action (1) against essentially a public body or an employee of a public body; (2) by a public body or employee of a public body acting to enforce a law to protect against and imminent threat to public health or safety; or (3) against a person in the business of selling or leasing goods or services if the cause of action relates to the person’s business.

Section 3 defines the special motion for expedited relief.

Section 4 defines the stay triggered by a motion pursuant to Section 3 of the act.

Section 5 defines the hearing triggered by a motion pursuant to Section 3 of the act.

Section 6 defines the proof that a court shall use in ruling on a motion pursuant to Section 3 of the act.

Section 7 defines conditions and consequences of a dismissal of a cause of action in whole or in part.

Section 8 defines when the court shall issue its ruling on a motion pursuant to Section 3 of the act.

Section 9 defines the moving party's right to appeal from an order denying a motion pursuant to Section 3 of the act.

Section 10 defines the costs, attorney fees and expenses which the court shall award on a motion pursuant to Section 3 of the act.

Section 11 sets out that the act shall be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition and the right of association, guaranteed by the constitutions of the U.S. and New Mexico.

Section 12 sets out that in applying and construing the act consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 13 defines the applicability of the act to a civil action filed or cause of action asserted in a civil action.

Section 14 clarifies that the act does not affect a cause of action asserted before the effective date of the act.

Section 15 repeals Sections 38-2-9.1 and 38-2-9.2 NMSA (Anti-SLAPP).

Section 16 defines the effective date of the act as July 1, 2025.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

HB169 appears to protect peoples right to speech or the press. HB169 appears to codify and provide a special form of recourse, in the avenue of dismissal, for any suit brought against a public individual by a for communication in front of the legislature, executive, judicial, or other governmental proceeding. Both the United States Constitution and the Constitution of New Mexico provide the right to free speech and affiliation. HB169 might be considered redundant in some respects but HB169 is more specific in providing certainty recourse avenues.

HB169 also appears to further protect individuals in the same manner as the Anti-SLAPP statutes already in place in New Mexico under NMSA 1978, 38-2-9.1 and 38-2-9.2. Section 15 of HB169 proposes to repeal the Anti-SLAPP statutes NMSA 1978, 38-2-9.1 and 38-2-9.2. These statutes were enacted "with the policy goal of protecting its citizens from lawsuits in retaliation for exercising their right to petition and to participate in quasi-judicial proceedings." *Cordova v. Cline*, 2017-NMSC-020, ¶ 19, 396 P.3d 159, 165.

Federally, the Noerr-Pennington doctrine provides First Amendment protections for citizens who petition the government. *See Noerr*, 365 U.S. 127, 81 S.Ct. 523; *Pennington*, 381 U.S. 657, 85 S.Ct. 1585. *Id.* Under the Noerr-Pennington doctrine, those who engage in conduct aimed at influencing the government, including litigation, are shielded from retaliation provided their conduct is not a sham. *Id.* The New Mexico Supreme Court has followed the outline process, expedited timelines, and the federally required heightened scrutiny of the Noerr-Pennington doctrine when evaluating the SLAPP suits in New Mexico. Although, to be entitled to such first amendment protection, the activity must be genuine and not a sham.

HB169 appears to provide avenues for dismissal of claims that might currently fall under the New Mexico Anti-SLAPP Statutes (see above) and possibly the New Mexico Tort Claims Act, NMSA 1978, 41-4-1 to -30 and the New Mexico Civil Rights Act, NMSA 1978, 41-4A-1 to -13. HB169 also appears to provide avenues for dismissal of claims that might fall under the federal Noerr-Pennington doctrine. Although the New Mexico Court of appeals has held that Anti-SLAPP only applies to “affirmative speech-based defenses for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding.” *Valenzuela v. My Way Holdings, LLC*, 2024-NMCA-009, ¶ 23, 541 P.3d 191, 199 (internal quotations omitted).

HB169 language appears to provide an avenue for dismissal of such a claim but does not specify what court can hear such causes of action, whether it is the jurisdiction of the court where such suit is filed or another court.

Additionally, HB169 proposes that such a dismissal motion may be appealed. The proposed language does not specify which court would have jurisdiction to hear such an appeal.

In Section 10, HB169 proposes that attorneys’ fees may be collected by the individual moving party or the responding governmental party. The responding party may only recover if they can show such motion was frivolous or with intent to delay a proceeding. As proposed HB169 does not indicate where the funds should come from. Should the motion be filed against the legislature, it is not known whether the legislature has funds directly set aside for legal fees, or whether any immunity might bar the government from paying such fees. Furthermore, it is unclear whether such a governmental body would be allowed to recover legal fees for such actions against individuals of New Mexico. In comparison, under the Anti-SLAPP statutes, attorney fees were determined to be sanctions and not damages by the New Mexico Court of Appeals. *Cordova v. Cline*, 2021-NMCA-022, ¶ 13, 489 P.3d 957, 962.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None yet.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None yet.