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FISCAL IMPACT REPORT

SPONSOR <u>House Judiciary Committee</u>	LAST UPDATED <u>02/26/2025</u> ORIGINAL DATE <u>02/07/2025</u>
SHORT TITLE <u>Public Expression Protection Act</u>	BILL NUMBER <u>CS/House Bill 169/HJCS</u>
ANALYST <u>Chilton</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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)
 Legal Office of the Public Defender (LOPD)

Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the District Attorneys (AODA)
 Court of Appeals (CoA)

SUMMARY

Synopsis of HJC Substitute for House Bill 169

The House Judiciary Committee substitute for House Bill 169 (HB169) creates the Uniform Public Expression Protection Act, concerning civil actions against person have testified before any government proceeding, communicated about a governmental proceeding, or exercised freedom of speech, press, assembly, or petition as guaranteed by the U.S. and New Mexico Constitutions. The act is not to be applied to suits against government units or employees in their official capacity or against a salesperson related to communication regarding goods or services sold or leased.

Section 2 of the bill states its purpose: to protect the First Amendment rights of the public against baseless civil lawsuits and avoid the downstream consequences of those lawsuits.

Section 3 allows for motions for expedited action made by parties who believe that the Public Expression Protection Act applies to their case (Section 6 gives requirements for proof of the

need for expedited action). Section 4 provides for a stay to be issued, halting all action between those parties and the other party with the exception of limited discovery if necessary to support the stay. Motions for costs, attorney fees, and expenses are not subject to the stay, nor are motions dealing with matters unrelated to public expression or matters related to imminent threats to public safety.

Section 5 requires that the court rule on the applicability of the Public Expression Act no more than sixty days after the motion has been filed unless more time is needed for discovery or for other “good cause.”

Section 7 requires the court to dismiss with prejudice a cause of action if it determines that the Public Expression Protection Act applies or if the responding party cannot establish that the act does not apply. Voluntary dismissal without prejudice does not affect the moving party’s right to a ruling and cost. Voluntary dismissals with prejudice establish that the moving party prevailed.

Section 10 allows for an award of costs, attorney fees related to motions made under the act, to the moving party if it prevails and to the responding party if the court finds the filing to be frivolous. Moving parties may appeal an adverse ruling within thirty days of the entry of a court’s order.

Section 11 states that the right of freedom of expression should be broadly construed and should, as stated in Section 12, consider uniformity of application of this right among jurisdictions.

Sections 13 and 14 of the act indicate that its provisions apply to all actions initiated after July 1, 2025, but not to actions initiated before that date.

Section 15 of the bill repeals the following sections of NMSA 1978 dealing with “Truth and mitigating circumstances in action for libel or slander”:

- 38-2-9.1, Special motion to dismiss unwarranted or specious lawsuits; procedures; sanctions; severability.
- 38-2-9.2, Findings and purpose

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

FISCAL IMPLICATIONS

There is no appropriation in House Bill 169. The Administrative Office of the Courts (AOC) indicates that, “There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.” However, this is likely to be more than negated by fewer SLAPP cases brought as a result of this legislation.

SIGNIFICANT ISSUES

AOC notes that the Uniform Law Commission proposed a “Uniform Public Expression Protection Act” (UPEPA) in 2020, and this bill is being proposed in place of that act. AOC quotes the Uniform Law Commission in explaining the necessity for the “Uniform Public Expression Act”:

In the Prefatory Note to 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....

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.

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)