

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: 01/29/2025

Check all that apply:

Bill Number: HB153

Original Correction
Amendment Substitute

Sponsor: Rep. Sarah Silva, Rep. Javier Martinez, and 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 repeal legislation and enact a new act entitled Protect Reporters from Exploitative State Spying Act (Section 1) that would 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.

SECTION 2 generally provides definitions pertinent to the Act.

HB153 proposes the definition of “state entity” in Section 2(H) as “an entity or employee of the executive branch or an administrative agency of the state government with the power to issue a subpoena or issue other compulsory process.”

HB153 proposes to protect anyone who engages in journalism. This would extend to unconventional journalists and outlets. HB153 in Section 2(A) defines “covered journalist” to mean “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.”

SECTIONS 3 and 4 (limits on compelled disclosure from covered journalists and covered service providers, respectively)

HB153 protects from disclosure any information identifying a source, as well as any records, contents of a communication, documents, or information obtained or created by journalists in the course of their work except for those instances where a court finds by a preponderance of the evidence such information should be disclosed. HB153 requires notice and a right to a hearing should a court determine disclosure is warranted.

HB153 proposes to protect specified third parties, such as telecommunications carriers or social media companies, from being compelled to provide testimony or any document consisting of a record, information, or other communication that is stored by the third party on behalf of a journalist, except where a court determines by a preponderance of the

evidence that there is a reasonable threat of imminent violence unless the testimony or document is provided. HB153 requires notice and a right to a hearing should a court determine disclosure is warranted.

SECTION 5

HB153 proposes to limit the production of such information by narrowly tailoring the disclosure in subject matter and period of time covered so as to avoid compelling the production of peripheral, nonessential, or speculative information.

SECTION 6

HB153 proposes that the proposed language does not prevent the state in certain circumstances from investigating journalists that are suspected of criminal activity, witnesses unrelated to journalism, suspected of terrorism or otherwise of participating in foreign intelligence.

SECTIONS 7 and 8

HB153 proposes to repeal NMSA 1978, Section 38-6-7 and have an effective date of July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

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.” 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. HB153, then restricts when a court may order a disclosure from a covered journalist to instances related to preventing or investigating terrorism, or “prevent[ing] a threat of imminent violence, significant bodily harm or death, including specified offenses against a minor.” (Note, no offenses against a minor appear to be specified in the bill.)

More significantly, because Sections 3 and 4 both indicate that they apply to “any matter arising under state law,” and, as a result, HB153 conflicts with Rule 11-514 NMRA, which establishes the evidentiary privilege available to journalists. The New Mexico Supreme Court, in *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, 89 N.M. 307, found Section 38-6-7 NMSA 1978, a statute similar to HB153, to be unconstitutional when it conflicted with rules of evidence. In *Ammerman*, the Court held that the Legislature lacked the constitutional authority to legislate rules of evidence or procedure.

Concerns regarding HB153’s constitutionality are reinforced by the bill’s attempts to

establish timeframes for the court. In Section 4(D), the bill specifies that a hearing to compel disclosure from a covered service provider “may be delayed for not more than forty-five days.” The bill goes on in Section 4(E) to state that the forty-five-day period “may be extended by the court for additional periods of not more than forty-five days” if certain conditions are met. The Court in *Ammerman* makes it clear that the Legislature may not legislate the court’s timeframes, stating, “[t]he time within which this court must consider a matter before it is for this court to determine.” *Ammerman*, ¶ 23.

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