

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 153 seeks to repeal § 38-6-7 and replace it with a new section entitled the “Protect Reporters from Exploitative State Spying Act.” Section 2 provides all new definitions that look to update the law to include new technology that has been developed since the original law was enacted. For example, ““personal technology device of a covered journalist” means a handheld communications device, laptop computer, desktop computer or other internet-connected device used by a covered journalist that is not provided or administered by the employer of the covered journalist.”

Section 3 provides for limits on compelled disclosure from covered journalist which prohibits a **state entity** (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) from compelling a covered journalist to disclosure protected information unless a court in the judicial district in which the subpoena or other compulsory process is or will be issued determines by a preponderance of the evidence after notice and hearing that disclosure is necessary to prevent or identify a perpetrator of an act of terrorism or to prevent the threat of imminent violence, significant bodily harm or death.

Section 4 provides additional limits on compelled disclosure from **covered service providers** (a person that, by an electronic means, stores, processes or transmits information in order to provide a service to customers of the person, including telecommunications carrier and provider, interactive computer service and information content provider, remote computing service and an electronic communication service provider to the public) to provide testimony or any document consisting of any record, information or other communications stored by a covered provider on behalf of a covered journalist, including testimony or any document relating to a personal account of a covered journalist or a personal technology device of a covered journalist, unless a court in the judicial district in which the subpoena or other compulsory process is, or will be, issued determines by a preponderance of the evidence that there is a reasonable threat of imminent violence unless the testimony or document is provided and issues an order authorizing the state entity to compel the disclosure of the testimony or document. Additionally, section 4 provides limits on when a court may authorize a state entity to compel testimony or production of document only after the state entity provides the covered journalist with 1) notice of subpoena or compulsory request; 2) an opportunity to be heard before the court prior to compulsion of testimony or document. Section 4 also provides a time limit for notice and opportunity to be heard of 45 days, however, the 45 days may be extended if the court makes a new and independent finding based on clear and convincing evidence that providing notice would pose a clear and substantial threat to the integrity of a criminal investigation or an imminent risk of death or serious bodily harm.

Section 5 limits the content of information compelled to not be overbroad, unreasonable or oppressive and shall be limited to the purpose of verifying or determining the accuracy of

published information.

Section 6 prevents this law from being construed to prevent the state from pursuing an investigation of a covered journalist or organization (organization is not defined in this bill) that is suspected of A) committing a crime; B) a witness to a crime unrelated to engaging in journalism ("journalism" means gathering, preparing, collecting, photographing, recording, writing, editing, reporting, investigating or publishing news or information that concerns local, national or international events or other matters of public interest for dissemination to the public); C) being an agent of a foreign power (as defined in Section 101 of the federal Foreign Intelligence Surveillance Act of 1978; D) an individual or organization designated under Executive Order 13224 (50 U.S.C. 1701); F) a terrorist organization, as that term is defined in Section 212(a)(3)(B)(vi)(II) of the federal Immigration and Nationality Act.

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

FISCAL IMPLICATIONS

The bill does not appear to have any fiscal implications for the State Ethics Commission.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The law to be repealed § 38-6-7 replaced a law 20-1-12.1 NMSA (1953) that was found to be unconstitutional under the NM Constitution as it created separation of power issues. The court reasoned that the law was an evidentiary rule, and under the state constitution, only the judiciary—not the legislature—could create rules of evidence. *See Ammerman v. Hubbard Broadcasting* 1976-NMSC-031. The NM Supreme Court addressed this issue by enacting NM Rule of Evidence 11-514 which addresses new media-confidential source of information privilege. Rule 11-514 was most recently updated in 2013 and many of the changes make updates as to available technology. While this law does not address privileges per se, it does dictate to the court processes and deadlines. It also provides specific burdens of proof a district court must apply. 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.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

At the date this analysis was written there were no other bills addressing this issue.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS