

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0467
Prime Sponsor(s): Sen. Herpin
 Rep. Szabo

Date: January 10, 2014
Bill Status: Senate Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: STRENGTHEN PRESS SHIELD LAW

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	Minimal workload increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill raises the standard for enforcing a subpoena against a newsperson. Current law requires a party seeking to enforce such a subpoena establish three elements by a preponderance of the evidence. This bill modifies and expands the elements to be established and raises the standard of proof to clear and convincing evidence. Under the bill, the new elements are:

- the newsperson did not obtain the information in confidence;
- the news information is highly material and relevant to a substantial issue involved in the proceeding;
- the news information is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue; and
- the news information is not obtainable from any alternative source.

Background

Under current law, a subpoena requires establishing a preponderance of evidence that the:

- information is directly relevant to a substantial issue in the proceeding;
- information cannot be obtained by any other reasonable means; and
- interest of the party seeking the subpoena outweighs the first amendment interests of the newsperson not responding.

The Judicial Branch does not track data on the number of subpoenas issued to newspersons or the number of motions to quash such subpoenas that are filed each year. However, anecdotally, both are thought to be infrequent.

State Expenditures

Overall, this bill could increase state workload by a minimal amount. To the extent that the new standards increase litigation, workload in courts and for the Office of the State Public Defender could increase. Because the number of subpoenas and motions to quash subpoenas against newsmen are assumed to be very low, the fiscal note assumes any increase in workload will be minimal and not require an increase in appropriations.

Local Government Impact

Similar to the state, workload for district attorneys could increase as a result of any litigation related to the new standard. The fiscal note assumes any such increase will be minimal.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

District Attorneys

Judicial