FISCAL IMPACT REPORT

SPONSOR	Reps. Chávez, E., Anyanonu, Gurrola and Silva/Sen. Duhigg	**LAST UPDATED**	2/24/2025
		ORIGINAL DATE	1/24/2025
SHORT TITLE	Employee Free Speech Act	**BILL NUMBER**	House Bill 84/aHJC
		ANALYST	Gygi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/ Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund/Other State Funds from court fees

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Court (AOC)
General Services Department (GSD)
New Mexico Attorney General (NMAG)
Higher Education Department (HED)
State Personnel Office (SPO)
Workforce Solutions Department (WSD)

SUMMARY

Synopsis of HJC Amendment to House Bill 84

The House Judiciary Committee (HJC) amendment to House Bill 84 adds an additional exception for "a political organization, political party organization, [or] caucus organization with tax exempt status pursuant to Section 501(c)(4), 501(c)(5) or 501(c)(6) of the Federal Revenue Code of 1986" to allow activities "for the purpose of communicating the employer's political tenets or purposes."

Synopsis of House Bill 84

House Bill 84 (HB84) creates the Employee Free Speech Act, which would protect employees from coercion and retaliation regarding participation in employer-mandated or endorsed political and religious activities and provides remedies for violations of the act by employers. The act would protect employees from "captive audience" speeches but not restrict the employer's right to express opinions or invite employees to political or religious meetings during work hours. The act would:

- Apply to individuals and entities, with one or more employee, and specifically includes "the state or any political subdivision of the state."
- Prohibit employers from retaliating against employees because of an employee's refusal to listen to, or attend, meetings featuring employer speech on "political matters."
- Define "political matters" to include not only topics about elections, political parties, and support for political organizations but also topics related to "legislative proposals," "rule or regulation change proposals," and decisions to join or support "political," "civic" and "community" organizations, including fraternal or labor organizations;
- Provide exceptions for communications required by law for an employer; necessary for job performance; part of academic coursework or other academic programming; part of work performed by certain government, non-profit or church employers; or part of casual conversation;
- Provide for enforcement through a civil suit, in which attorney fees and punitive damages are available;
- Allow an employee to bring action in any court of competent jurisdiction.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

While aggrieved employees may bring civil suits, with attorney fees and punitive damages available to them, the Administrative Office of the Courts (AOC) does not anticipate any significant fiscal impact for the judicial branch.

The State Personnel Office (SPO) notes that civil suits brought by state employees would potentially have a negative but undetermined impact on the individual employer agency. SPO also notes that HB84 grants attorney fees and costs to successful plaintiffs, potentially causing a rise in litigation regarding violations of this act, with associated administrative costs.

However, AOC, the General Services Division (GSD), and the Higher Education Department (HED) note the provisions in HB84 are consistent with current state personnel policies regarding free speech (for judicial branch, state, and postsecondary employees respectively). Thus, they do not anticipate additional administrative or operating costs. AOC states most New Mexico public employers, as well as schools and universities, have enacted policies restricting the direct or indirect coercion or influence over an employee related to a political party, committee, or organization, or similar activities.

The Workforce Solutions Department (WSD) has determined it has no role in enforcement of the act so there would be no additional fiscal impact on the department. However, as noted by the WSD analysis of the similar House Bill 245 introduced in 2023, this determination assumes that employees would find remedy directly through the court systems and would not pursue an administrative claim first with the department's Labor Relations Division or Human Rights Board. Increased administrative claims could increase WSD's administrative burden.

SIGNIFICANT ISSUES

According to the Administrative Office of the Courts (AOC), as of April 2024, 18 states had

enacted legislation to protect workers from offensive or unwanted political and religious speech unrelated to job tasks and performance. AOC reports other states have found that such legislation lowers the risk of employee complaints and simultaneously improves productivity in the workplace.

The New Mexico Attorney General (NMAG) notes, although corporate speech is protected, this is distinct from mandating other people listen to this speech, which can constitute harassment. A major intent of the exceptions in Section 3 of HB84 is to preempt potential constitutional challenges, particularly from religious institutions and from employers (including governmental and nonprofit employers, trade associations, and advocacy groups) whose missions and purposes focus on legislation, policymaking, and regulatory matters. As noted by AOC and NMAG, laws regulating political speech are often subject to the highest level of constitutional scrutiny, and corporate entities have free-speech rights that may provide another basis on which to challenge this law (*see, e.g., Citizens United v. F.E.C.*, 558 U.S. 310, 2010).

According to AOC, the Supreme Court's 1988 ruling in *Frisby v. Schultz* affirmed that individual states have the authority to legislate to protect individuals from unwanted speech. Further, this act would reinforce current federal labor rules prohibiting captive audience meetings. AOC and NMAG report the National Labor Relations Board (NLRB) recently ruled that captive audience meetings (particularly anti-union meetings) violate the National Labor Relations Act (*Amazon.com Services LLC*, 373 NLRB No. 136, 2024). Federal law previously allowed employers to mandate attendance at these meetings and discipline employees who do not attend the meetings. New NLRB requirements:

- Employers must provide employees reasonable advance notice of the meeting.
- Attendance must be voluntary.
- No attendance records may be kept (to reduce the potential for retaliation).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB84 is similar to the amended version of House Bill 245 introduced in the 2023 legislative session.

TECHNICAL ISSUES

Several agencies comment on the definitions in Section 2. AOC notes there is no definition for "captive audience" or for "religious matters" (referenced in Section 3's exceptions):

> Typically, captive audience meetings have been defined nationally as employer-sponsored mandatory meetings that discuss religious or political matters, including union representation. … A possible definition for "religious matters" may be religious matters related to (1) religious affiliation and practice and (2) decisions to join or support a religious organization or association.

AOC also suggests including language in Section 2A relating to religious matters.

NMAG and SPO indicate the broad definition of "political matters" and "matters relating" raise questions of interpretation and scope.

OTHER SUBSTANTIVE ISSUES

AOC notes the act does not provide a mechanism for employers to inform employees of their rights or to ensure employers are aware of the act's provisions. AOC suggests if HB84 is enacted that mandatory posting be required, similar to other labor law posters provided to employers for free by WSD.

KG/rl/hg/sgs