

LFC Requester:

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### 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: 1/21/2025

Check all that apply:

Bill Number: HB 84

Original  Correction   
Amendment  Substitute

Sponsor: Eleanor Chavez and Katy M. Duhigg and Janelle Anyanonu and Yanira Gurrola

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

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Short Title: Employee Free Speech Act

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#### 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
<b>Total</b>						

(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:

HB84 is an act proposing to protect speech rights of employees by preventing “captive audience” situations. It would apply to any employer—including individuals and entities— with one or more employee, and it specifically includes “the state or any political subdivision of the state.” It would prohibit employers from retaliating against employees because of an employee’s refusal to listen to, or attend meetings featuring, employer speech on “political matters.” It defines “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. The enforcement mechanism would be civil suit, in which attorney fees and punitive damages are available. There are exceptions for employer communications that are required by law, that are “necessary” for employees to perform their jobs, for post-secondary educational purposes, for religious organizations communicating religious matters, as well as for “casual conversation” and for requirements aimed only at manager level employees.

**FISCAL IMPLICATIONS**

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 broad definition of “political matters” presents questions of interpretation and to what extent certain activity may fall under the vague scope of what “matters relating” includes.

At first glance, HB 84 may appear to face constitutional challenges, particularly from religious institutions and from employers (including governmental and nonprofit employers) whose missions and purposes focus on legislation, policymaking, and regulatory matters. 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).* An analysis of a very similar bill two years ago (2023 HB 245) reached this conclusion. The bill subsequently died. However,

these constitutional concerns are, at this time, less serious than previously thought.

While speech, including corporate speech, is protected, this is distinct from mandating that other people listen to this speech. For instance, certain types of speech may be protected in the abstract, but may be considered harassment in the employment context, where employees are a “captive audience.” See, e.g., *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763, 809 (S.D. Ind. 2003). While decisions along this line tend to focus on harassing speech, the bill at issue concerns employer actions that go beyond simply comments made in the workplace to outright mandating that the employees listen to the speech in question. One analogous situation is that in which an employer forces employees to listen to anti-union arguments. The National Labor Relations Board (NLRB) recently ruled that the National Labor Relations Act (NLRA) prohibits employers from mandating attendance at meetings where the employer expresses such views. *Amazon.com Services LLC*, 373 NLRB No. 136 (2024). If the statute, interpreted in that manner, is constitutional, then the bill at issue is also very likely constitutional. In its decision, the NLRB described “American law’s more general focus on protecting the ‘unwilling listener’s interest in avoiding unwanted communication,’ despite the communicators’ wish to express their views.” 373 NLRB No. 136, at 14 (citing *Hill v. Colo.*, 530 U.S. 703, 716-17 (2000)).

Given the above, and especially considering the exceptions made for religious organization and speech required for an organization’s mission, it is more likely that this proposed statute passes constitutional muster.

#### **PERFORMANCE IMPLICATIONS**

None known.

#### **ADMINISTRATIVE IMPLICATIONS**

None known.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None at this time. As noted above, a very similar bill was introduced two years ago.

#### **TECHNICAL ISSUES**

None identified

#### **OTHER SUBSTANTIVE ISSUES**

None identified

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

#### **AMENDMENTS**

None at this time