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FISCAL IMPACT REPORT

SPONSOR Egolf **ORIGINAL DATE** 02/02/12 **HB** 114
LAST UPDATED
SHORT TITLE No Corporation Influence on Elections **SB** _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 113, HB 207, HJR 16, SB 11, SB 12, SB 103, SB 105, SB 116 & SB 117

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 114 amends the Business Corporation Act to prohibit corporations that are organized under the laws of New Mexico, both foreign and domestic, from making expenditures to influence state, county or local elections.

FISCAL IMPLICATIONS

The SOS claims that they will not have oversight of the provisions in this bill since it comes under the Business Corporation Act. Regulation appears to be under the jurisdiction of the PRC.

The PRC does not currently regulate the conduct of corporations. The PRC only registers corporations and their agents.

The PRC claims there is no fiscal impact for them.

SIGNIFICANT ISSUES

The SOS notes this bill only includes for-profit corporations, but not partnerships, limited

liability partnerships, and limited liability companies (LLCs) or non-profit corporations.

The AGO provided the following legal issues:

This bill copies the same limitation that Congress has placed on non-profit corporations under 26 USC 501(c)(3).

This bill extends the logic underlying the US Supreme Court’s First Amendment rulings in *Regan v. Taxation with Representation*, and *Cammarano v. United States*, in which the court held that the legislature can place conditions on tax exempt status even when it touches on First Amendment speech

Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual’s contributions.

Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.

Early in our history, Mr. Chief Justice Marshall described the status of a corporation in the eyes of federal law: A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of creation confers upon it, either expressly, or as incidental to its very existence.

This approach has been upheld by the courts in many other contexts. Most notably, under the Hatch Act, federal employees—as a condition of their employment—have to surrender many of their First Amendment rights to participate in elections.

Likewise, under the Implied Consent act, in order to apply for a driver’s license, a driver has to waive his Fourth Amendment right and consent to taking a breathalyzer test in the absence of probable cause. Similarly, many businesses have to waive their Fourth Amendment rights and consent to warrantless administrative searches of their premises. And roadblocks have been upheld as constitutional on the grounds that drivers are using roads that have been created at taxpayer expense. Airline passengers have to surrender their Fourth Amendment rights and consent to warrantless searches in order to travel on a commercial airline.

ADMINISTRATIVE IMPLICATIONS

The PRC will have oversight of the provisions in this bill.

The PRC plans to change application forms to include a statement of agreement that the corporation will not engage in any political funding. They may also change the reporting requirements to require a statement of compliance.

RELATIONSHIP

HB 114 relates to:

HB 113, Voter ID Requirements
HB 207, Voter Identification Requirements
HJR 16, Corporations from PRC to Sec. of State, CA
SB 11, Campaign Reporting & Definitions
SB 12, Campaign Public Financing Changes
SB 103, No Legislator Lobbying for One Year
SB 105, Public Campaign Financing
SB 116, Use of Legislative Campaign Funds
SB 117, Elections Commission Act

OTHER SUBSTANTIVE ISSUES

The AGO further noted:

This bill appears to be in conflict with *First Nat'l Bank v. Bellotti* which struck down a ban on corporate expenditures in referendum elections and *Citizens United v. FEC* which struck down a ban on corporate expenditures in electoral elections.

However, the statutes struck down in both cases were campaign statutes that regulated First Amendment speech and carried criminal penalties. In contrast, HB 114 is a civil statute, the Business Corporation Act. Therefore, by amending the Business Corporation act, this bill avoids campaign regulation of First Amendment speech by instead making this one of the conditions for a license to do business in New Mexico.

POSSIBLE QUESTIONS

How intensive should the PRCS oversight activities be?

DW/lj