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FISCAL IMPACT REPORT

SPONSOR <u>HLVMC</u>	LAST UPDATED <u>3/10/23</u> ORIGINAL DATE <u>2/6/2023</u>
SHORT TITLE <u>Employee Free Speech Act</u>	BILL NUMBER <u>CS/House Bill 245/HLVMCS/aHJ C</u>
ANALYST <u>Hanika-Ortiz</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			General Fund/Court Fees

Parenteses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses to Original HB245 Received From
 Workforce Solutions Department (WSD)
 New Mexico Attorney General (NMAG)
 Higher Education Department (HED)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment to HLVMC Substitute for HB245

The House Judiciary Committee amendment to HB245/HLVMCS replaces the term “legislative proposals” with an attempt to influence legislation as one of the matters that fall under the definition for “political matters,” as used in the act; by twice striking the term “the employer’s opinion concerning” in Section 3(A), prevents retaliatory action against an employee for their refusal to discuss, listen, or view communications about **any** political matters, not just those of their employer; strikes language that would have said the remedies in the act are not exclusive, with regards to an employee bringing certain action against an employer; and clarifies nothing in this act shall prevent **any** corporation, entity, association, educational institution, or society from communicating about religious matters with their employees.

Synopsis of Original HLVMAC Substitute for House Bill 245

The House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 245 enacts the employee free speech act to protect employees’ free speech from “captive audience” speeches concerning political matters; and provides remedies for violations by employers.

More specifically,

- Section 1 and Section 2 cite the title and provide definitions including for “employee” to include part-time, seasonal or temporary employee; “employer,” to include those with one or more employees; and “retaliatory action,” to mean taking any discriminatory or adverse employment action against an employee.
- Section 3 prohibits retaliatory action against an employee because of refusal to listen to speech, view emails/letters, or attend meetings to communicate an employer’s opinion regarding political matters. Employees may sue for lost wages and position reinstatement if retaliated against. There are exceptions for communications that are: required by law for an employer; necessary for job performance; part of academic coursework; part of casual conversation; or part of work performed by certain government, non-profit or church employers, which was added to create the substitute bill by the HLVMC.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Aggrieved employees may bring civil suit, with attorney fees and punitive damages available to them. However, AOC does not anticipate any significant fiscal impact for the judicial branch.

WSD assumes employees covered by this act would find their remedy directly through the court systems, and would not have standing or need to fulfill administrative requirements by pursuing a claim first with the department’s Labor Relations Division or Human Rights Board. Therefore, WSD has determined that there would be no additional fiscal impact for the department.

SIGNIFICANT ISSUES

NMAG provided the following comment, which was largely addressed by the substitute bill:

The bill does not appear to address the many employment situations in which the organization is engaged in political activity as part of a core mission, such as non-profits, trade associations, advocacy groups, or various other for-profit, non-profit, or governmental organizations that may necessitate employee engagement with matters that are broadly defined as “political matters” in the bill.

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.

The bill may 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).*

AOC explained the prohibitions described in HB245 (the original bill) align with judicial branch personnel rules which requires employees to remain neutral and not attempt to influence any other judicial employee to join any political organization or to take part in any political activity.

HED noted the bill would unlikely cause any significant change in institutional policies because most postsecondary institutions have free speech policies in place as a core value of education.

AHO/al/ne/hg