

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Egolf ORIGINAL DATE 02/10/11
LAST UPDATED _____ HB 154
SHORT TITLE No Election Expenditures from Corporations SB _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$55.0	\$55.0	\$110.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 155, HB 195 SB 164, SB 172, SB 181, SB 182 & SB 293

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Economic Development Department (EDD)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 154 amends the Business Corporation Act to forbid corporations registered in the State of New Mexico, both foreign and domestic, from making expenditures to influence the outcome of a state, county, or local election.

FISCAL IMPLICATIONS

The SOS's office estimates that one full time employee will be required to investigate the nature of the registration types of certain contributors listed under business names on campaign reports, since this legislation does not include mention of other types of for-profit entities such as partnerships, limited liability partnerships, and limited liability companies (LLCs), or non-profit corporations.

SIGNIFICANT ISSUES

The federal government along with 22 states bans campaign contributions by business entities to candidates.

The AGO has provided the following:

This bill runs up against case law which struck down a ban on corporate expenditures in referendum elections and 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 154 is a civil statute.

A United States Supreme Court's ruling has held that a legislature can place conditions on tax exempt status even when it touches on First Amendment speech. It is permissible to deny tax exempt status to an organization that wanted to engage in lobbying which is protected speech under the First Amendment. The Supreme Court stated the following:

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.

In taxation, even more than in other fields, legislatures possess the greatest freedom in classification and distinctions in tax statutes.

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. Like the Regan case, Business Corporation act grant corporations certain financial public privileges such as immunity from personal liability and perpetual existence which are not unlike a tax subsidy. As a condition for receiving these privileges, the bill places limitations on a corporation's ability to influence elections.

This approach has succeeded in many other contexts. For example, 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. Roadblocks have been upheld as constitutional on the grounds that drivers are using roads created at taxpayer expense—just as corporate status has been created by statute. And finally, airline passengers have to surrender their Fourth Amendment rights and consent to warrantless searches in order to travel on a commercial airline.

The SOS offers the following:

- This bill does not apply to partnerships, limited liability partnerships, limited liability companies or non-profit corporations
- Certain corporations may attempt to form political action committees in order to circumvent this law. There is no provision disallowing this from occurring.
- A corporation may choose to make campaign contributions through the employment of a lobbyist. Although lobbyists are prohibited from making campaign contributions during

the prohibited period per Section 2-8-11.1 of the Lobbyist Regulation Act, they would be permitted to do so during the remainder of the year.

ADMINISTRATIVE IMPLICATIONS

The SOS's office will require one full time employee to investigate and oversee complaints that allege the conduct prohibited by this measure.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 154 relates to the following ethics and elections bills:

- HB 155, Disclosure of Funds for Election Advocacy
- HB 195, State Ethics Commission Act
- SB 164, State Ethics Commission Act
- SB 172, State Ethics Commission Act
- SB 181, Contributions from State Contractors
- SB 182, Limit Contributions in Certain Elections
- SB 293, State Ethics Commission Act

DW/mew