

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: January 29, 2025

Check all that apply:

Bill Number: HB143a

Original Correction
Amendment X Substitute

Sponsor: Rep. Sarah Silva; Sen. Jeff Steinborn

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

Short Title: Lobbying Activity Reports

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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
Total						

(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

House Floor Amendment Synopsis:

Section One

Section One of the Amended Bill largely reflects Section One of the Original Bill. Section 1(A) removes language requiring the lobbying activity report to be filed “[p]rior to the adjournment of a legislative session and requires the report to identify both the lobbyist’s position and the lobbyist’s employer’s position. Section 1(D) changes language to require that the lobbying activity report be filed within forty-eight hours after commencing lobbying activity.

Section Two

Section Two of the Amended Bill adds new material not in the Original Bill. Section 2 would create a new section of the Lobbyist Regulation Act, Chapter 2, Article 11, NMSA 1978. Section 2(A) prohibits lobbyists and their employers from making expenditures on gifts, food, beverages, or entertainment for the benefit of elected officials or their staffs during the prohibited period (as defined in the Election Code) or an aggregate amount greater than \$50 per recipient per day outside of the prohibited period. Section 2(B) creates an exemption to the prohibition in Section 2(A) for expenditures during the prohibited period that are open to the public and not exclusively for elected officials or their staffs and an exemption for political contributions made in compliance with the Campaign Reporting Act.

Section Three

Section Three of the Amended Bill amends Section 2-11-6 of the Lobbyist Regulation Act concerning expenditure reports to be filed with the Secretary of State. Section 3(A)(1) and (2) of the Amended Bill would change the threshold amounts for the two categories of expenditure reports from \$100 to \$50. With this change, the Section 3(A)(1) would require a cumulative total of all individual expenditures less than \$50, while Section 3(A)(2) would require each individual expenditure of \$50 or more, including the amount spent and a description of the expenditure.

Section Four

Section Four of the Amended Bill is the same as Section Two of the Original Bill.

Section Five

Section Five of the Amended Bill is the same as Section Three of the Original Bill.

Original Synopsis:

House Bill (the “Bill”) 143 seeks to amend the Lobbyist Regulation Act (the “Act”), Chapter 2, Article 11, NMSA 1978.

Section One

Section One of the Bill creates a new section of the Act that would require a lobbyist or their employer who is required to file an expenditure report or registration statement to also file a lobbying activity report with the Secretary of State prior to the end of the legislative session detailing 1) the specific legislation lobbied; 2) the lobbyist’s or their employer’s support, opposition, or other position on the legislation and whether it changed (and each change in position should be separately reported); and 3) the name of the lobbyist’s employer that lobbied on the legislation (either directly or through the lobbyist). Section One additionally contains a provision extending the deadline if lobbying is conducted after the adjournment of the legislative session (extending to the deadline for the Governor to act on legislation). Section One additionally would require the lobbying activity report for each piece of legislation to be included or linked to the Legislature’s website for that bill.

Section Two

Section Two of the Bill amends NMSA 1978, Section 2-11-7 to reflect the addition of lobbying activity reports to the provision of the Act requiring that the Secretary of State publish reports filed by lobbyists under the Act.

Section Three

Section Three of the Bill creates an effective date for the legislation as January 1, 2027, accompanying the swearing-in date for the 58th Legislature.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

Amendment:

Section Two of the Amended Bill—limiting the amount of money that may be spent by lobbyists or their employers on gifts, food, beverages, or entertainment for elected officials—may incur challenge as to its constitutionality under the First Amendment of the United States Constitution. However the legislation is likely to withstand judicial scrutiny nevertheless. The Constitution protects both freedom of expression and the right to petition the government for redress of grievances. *See* U.S. Const. amend. I. The right to freedom of expression has been interpreted by the U.S. Supreme Court to include spending money in support of one’s cause. *See Buckley v. Valeo*, 424 U.S. 1, 16 (“Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment.”). Courts have regularly held that limits on campaign finance contributions—an analogous proposition to limits on lobbying expenditures—are constitutionally sound. *See id.* at 23 (upholding a limit on the amount of money an individual may contribute to a candidate for federal office). Additionally, the prohibitions of Section Two are somewhat analogous to the prohibitions within the federal Lobbyist Disclosure Act, as amended in 2007 by the Honest Leadership and Open Government Act. These analogous prohibitions on gifts by lobbyists to members of Congress or their staffs remain in effect today.

Original:

The Bill requires that the lobbying activity report includes the disclosure of lobbying activity on the development of legislation prior to its introduction in a legislative session. The bill is silent, and therefore ambiguous, on whether such disclosure is required if no legislation is ultimately introduced. For example, it is unclear whether a lobbyist would still have to include such activity in a report if the lobbyist 1) engages in significant lobbying to develop legislation that is ultimately never introduced, or 2) engages in significant lobbying to prevent legislation from being introduced and is successful in that endeavor.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related Legislation

SB90, introduced by Sen. Harold Pope, creates an additional, separate section of the Act, which would establish a “cooling off” period for former legislators, prohibiting them from acting as paid lobbyists for a period of two years following their service. SB90 additionally amends a section of the Act not contemplated by HB143.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Adding a sentence or clause to Section 2(A) of the Bill to clarify the issue noted above would avoid the noted ambiguity.