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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/16/09

**SPONSOR** Sanchez, B. **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Election Definition of Political Committee **SB** 535

**ANALYST** Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate See Below	Indeterminate See Below	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate See Below	Indeterminate See Below		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 553, HB 614, HB 686, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 521, SB 555 & SB 557

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 535 amends five subsections of NMSA 1978, § 1-19-26 of the Campaign Practices and Reporting Act. Subsections (B) and (D) are amended to make them gender neutral, and subsection (L)(2) is amended to remove surplus verbiage. The substantive changes are to subsection (L) and subsection (M). The first removes the word "primarily" from the definition of "political committee," so that the statute will reach entities "organized or operated for a political purpose" rather than "organized or operated primarily for a political purpose." The

second substantive change inserts the words “directly or indirectly” into the definition of “political purpose” so that the law will now define “political purpose” as “directly or indirectly influencing or attempting to influence an election.”

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

This bill will increase the number of registration fees paid to the State. The SOS states that it is impossible to anticipate increase in the amount of registration, if any.

## **SIGNIFICANT ISSUES**

The AGO provided the following:

Section 1-19-26 is currently the subject of a federal lawsuit filed by New Mexico Youth Organized (NMYO) and the Southwest Organizing Project (SWOP). The lawsuit alleges that Section 1-19-26 unconstitutionally burdens the speech of entities like NMYO and SWOP that are not properly treated as political committees. Eliminating the word “primarily” from Section 1-19-26(L) does not address this concern; indeed, it creates additional ambiguity in an already vague statute.

There is a legal argument that if an organization is not *primarily* organized for a political purpose, it need neither register nor disclose its donors. Removing this language places even more emphasis on the definition of “political purpose,” which this bill expands to include indirectly influencing or attempting to influence the outcome of an election. The principal question presented by this bill is: how much work does an entity have to do in an attempt to influence an election before that entity is covered by the statute? If the answer is that *any* amount of such work triggers the registration and disclosure requirements of the statute, this bill may be subject to challenge in court.

## **ADMINISTRATIVE IMPLICATIONS**

It is not known whether or not the SOS can handle the additional registration duties with existing resources.

## **RELATIONSHIP**

Senate Bill 535 relates to other ethics bills as follows:

- HB 99, Prohibit Former Legislators as Lobbyists
- HB 151, State Ethics Commission Act
- HB 244, Prohibit Contractor Contribution Solicitation
- HB 252, Political Contributions to Candidates
- HB 253, Quarterly Filing of Certain Campaign Reports
- HB 272, Quarterly Campaign Report Filing

HB 495, Political Candidate & Committee Donations  
HB 535, Lobbyist Identification Badges  
HB 553, Disclosure of Lobbyist Expenses  
HB 614, State Ethics Commission Act  
HB 686, AG Prosecution of State Officer Crimes  
SB 49, Governmental Conduct Act For Public Officers  
SB 94, Prohibit Former Legislators as Lobbyists  
SB 116, Limit Contributions to Candidates & PACs  
SB 128, Require Biannual Campaign Reports  
SB 139, State Ethics Commission Act  
SB 140, State Ethics Commission Act  
SB 163, Prohibit Former Legislators as Lobbyists  
SB 258, Contribution from State Contractors  
SB 262, Political Contributions to Candidates  
SB 263, Contractor Disclosure of Contributions  
SB 269, State Bipartisan Ethics Commission Act  
SB 296, State Contractor Contribution Disclosure  
SB 346, Political Contributions to Candidates  
SB 521, Campaign Contributions in Certain Elections  
SB 555, Public Employee & Officer Conduct  
SB 557, State Ethics Commissions Act

### **ALTERNATIVES**

The AGO suggests that perhaps establishing a spending threshold, equal to a certain percentage of the entity's annual budget, above which an entity will need to register with the SOS and disclose its donors. Some other states have adopted this approach.

For individuals, the law could establish a dollar amount for spending, most likely based on the cost of political advertising, above which an individual will likewise need to register and file financial disclosures.

DW/svb