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FISCAL IMPACT REPORT

SPONSOR HVEC **ORIGINAL DATE** 02/25/11
LAST UPDATED 03/09/11 **HB** 155/HVECS

SHORT TITLE Disclosure of Funds for Election Advocacy **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		\$94.0	\$81.0	\$175.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 67, HB 195 SB 164, SB 172, SB 181, SB 182 & SB 293

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

The House Voters & Elections Committee substitute for House Bill 155 amends the Campaign Reporting Act by requiring the reporting of finances associated with express advocacy and the functional equivalent of express advocacy.

Individuals who participate in express advocacy or the functional equivalent of express advocacy will be required to add disclaimers to all broadcast, publications, etc. These disclaimers will be required to include the words "authorized by" along with the name, address, and phone number of a responsible officer who approved the communication, the words "paid for by" along with the name of the person who sponsored the communication and a statement as to whether the communication is or is not coordinated and authorized by any candidate or candidate's campaign committee.

In addition the bill requires reporting of finances associated with express advocacy and the functional equivalent of express advocacy. It defines "express advocacy" as communications that asks the recipient to vote for or against a specific candidate for state public office that is distributed by broadcast, cable, satellite, print or electronic media. The functional equivalent of

express advocacy is regarded as any communication that occurs thirty days before a primary election or sixty days before a general election and that, when taken as a whole, can have no reasonable interpretation other than as advocating the election or defeat of a candidate for state public office.

This legislation will require any individual engaging in express advocacy resulting in costs over \$500 and occurring during an election year for the office sought by the candidate the communication is referring to, to submit a report to the Secretary of State (SOS). This report will require the name and address of the individual producing the communication, the name and address of any responsible officer that authorized the communication, a digital or print copy of the communication, the source of funds for production, a detailed description of each individual expenditure over \$500, the date the expenditure was made and first broadcast or published, the amount of the expenditure, and the name and the desired office of the candidate the express advocacy refers to. These reports will be due within two business days from the date that the communication was first distributed.

For special solicitations and other funds, if funding from a person has exceeded \$1,000 in the aggregate in one calendar year for the communication, the name and address of the person or, if the person is an individual, the name, address, occupation and employer of the person.

The bill defines "state public office" to mean the office of governor, lieutenant governor, attorney general, state treasurer, state auditor, secretary of state, commissioner of public lands, public regulation commissioner, state senator, state representative, magistrate court judge, district court judge, court of appeals judge, supreme court judge or county commissioner.

The effective date of the provisions of this act is July 1, 2011

FISCAL IMPLICATIONS

The SOS's office will require at least two additional FTEs to accommodate the provisions and duties within this legislation at an estimated cost of \$80,000.

In addition, materials for the process of reporting or upgrades to the current Campaign Finance Information System (CFIS) will be necessary. A new module of this type will cost an estimated \$14,000 to be created, as well as an additional annual maintenance cost of \$1,000. Although the bill does not require electronic submission of the reports, there will be a large initial cost with a relatively small annual maintenance fee thereafter.

SIGNIFICANT ISSUES

The SOS claims they will be unable to regulate this behavior without the receipt of specific complaints or actual knowledge of such activities. Any independent investigations will be unreasonable as there is no way of identifying all individuals who may engage in this type of advocacy.

There have been several court cases regarding express advocacy, often called electioneering activities. Most notable was the lawsuit between the New Mexico Youth Organized and the SOS

The SOS recommends clarifying the difference between express advocacy activities and campaigning.

The AGO provided the following:

This bill follows what 24 other states have done by requiring disclosure of “express advocacy” campaign communications. “Express advocacy” is a term of art developed by the US Supreme Court in *Buckley v. Valeo*. And “functional equivalent of express advocacy” is another term of art developed by the US Supreme Court in *F.E.C. v. Wisconsin Right to Life*.

After the US Supreme Court approved of this statutory language for Campaign Disclosure laws in *Buckley*, 24 states amended their statutes to come into compliance. And since the *Wisconsin Right to Life* was decided in 2007, many states have likewise amended their statutes to add the “functional equivalent of express advocacy”.

Accordingly, HB 155 defines both of these terms as delineated in *Buckley* and *Wisconsin Right to Life*.

The requirement to list all contributors over \$250 as part of the disclaimer could be unduly burdensome on First Amendment rights, especially in light of the fact that this information will already be publicly disclosed under the terms of this bill.

New Mexico has already experienced campaign “donations” being funneled through non-profit corporations for use in campaign communications.

Without a change to New Mexico’s laws, anonymous entities will continue to act as secret conduits for large campaign contributions, especially given that New Mexico just enacted the first ever limits on campaign contributions that go into effect this next election cycle.

ADMINISTRATIVE IMPLICATIONS

The SOS has no current system for the report of such activities. The SOS will need to develop a means of accounting for and submitting reports.

RELATIONSHIP

HB 155 relates to the following ethics and elections bills:

- HB 67, Prohibit Public Official Lobbying for 1 Year
- HB 154, No Election Expenditures from Corporations
- 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:bym