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FISCAL IMPACT REPORT

ORIGINAL DATE 03/09/15

SPONSOR HSCSC LAST UPDATED _____ HB 278/HSCACS

SHORT TITLE Campaign Finance Disclosure SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate, but Minimal			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to Senate Bill 384, Campaign Finance Disclosure

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Office of the Attorney General (AGO)
Secretary of State (SOS)

SUMMARY

Synopsis of HSCAC Substitute

House Bill 278 as substituted by the House Safety and Civil Affairs Committee amends, adds new material, and repeals sections of the Campaign Reporting Act (CRA) Sections 1-19-25 to 36, NMSA 1978. It brings the CRA into compliance with the relevant federal court decisions and Attorney Generals' opinions by repealing unconstitutional provisions of the Act. It also establishes constitutionally permissible provisions for independent expenditures and coordinated expenditures and creates reporting requirements for independent expenditures by some entities.

CS/HB 278 deletes "covered transfers" from Sections 1 and 3. Instead, it adds a new subsection to Section 1-19-34.3 of the Campaign Reporting Act aimed at persons or entities who seek to circumvent applicable reporting and disclosure requirements by making it unlawful to conceal the true source of contributions used for making independent expenditures.

CS/278 strikes new material in HB 278 that would have provided examples of coordination/coordinated expenditures.

It further revises several definitions in the Campaign Reporting Act.

CS/278 revises the definition of “advertisement” to add a threshold value of at least \$50 and remove the qualifier that it be seen by at least 500 persons. It removes the same qualifier from the definition of “coordinated expenditure.”

The definition of “advertisement” in the committee substitute means an expenditure of at least \$50. It does not include communication by a membership organization to its members (including a political party), a news story, a candidate debate or forum or nonpartisan voter guides issued by a 501(c)(3) organization.

CS/278 also deletes the requirement that “top three funders” be identified in advertisements. The committee sub provides that all political advertisements exceeding \$3000 (or \$3000 in the aggregate over 12 months) shall disclose the name of the candidate, committee or other person who authorized and paid for the ad. The disclaimer requirements do not apply to bumper stickers, pins, buttons, pens or other small advertising items. They also do not apply to sky writing, water towers, wearing apparel or other items where the disclaimer would be impractical.

The definition of a “coordinated expenditure” now includes a threshold of \$500 and includes advertisements that constitute express advocacy (issue-only ads).

It also amends the definition of “election” to mean any primary or general election in the state, including county and judicial retention elections, but would now exclude from the Act all federal, municipal, school board and special district elections.

CS/278 adds to the definition of “campaign committee” than a candidate may have only one such committee. It reinstates language that excludes certain administrative and solicitation expenses from the definition of “contribution.”

The definition of a “political committee” now includes traditional political action committees (whose primary purpose is to make contributions to candidates or political committees), political parties, and committees whose primary purpose is to make independent expenditures. There are no contribution limits on funds used to make independent expenditures.

CS/278 reinstates that subsection in Section 1-19-26.1 of the Campaign Reporting Act that excludes political committees registered with the federal election committee from certain registration and disclosure requirements.

It also reinstates the phrase “for a political purpose” on Section 1-19-34.1 relating to unlawful fundraising activity during legislative sessions.

CS/HB 278 would eliminate the distinction between persons and political committees with respect to contribution limitations, in Section 1-19-34.7. Under the committee substitute, the contribution limit from a person, including a political committee to any candidate, is \$5000 per election cycle.

All candidates would be on a two year election cycle, rather than the 4 year cycle that currently exists for state senators and statewide offices.

CS/278 effects changes to reporting requirements by various parties:

Section 1 addresses a person (or entity) who makes an “independent expenditure” that is “not otherwise required to be reported” under the Act. Under that section, a person who pays for an independent expenditure that exceeds \$1000, or \$1000 aggregate in a calendar year, to file a report of the independent expenditure with the SOS. Those entities are not required to register and file all required reports with the SOS, as is required for political committees. Instead, they file a report of the independent expenditure only.

If that independent expenditure is for \$3000 or more, and is made within 14 days of a statewide election, it must be reported in 24 hours. If it does not meet those conditions, it must be reported within 3 days. The report shall identify the person making the expenditure, the recipient, and the amount or a reasonable estimate of the amount. The report shall also identify all contributors who contributed over \$200 and earmarked the contribution or responded to a solicitation to fund independent expenditures.

If the expenditure is for over \$3000, then the report must also identify the name and address of all contributors to a segregated independent expenditure bank account or report the name and address of all contributors over \$5000 (if there is no segregated bank account), unless the contributor specifically requested that the contribution not be used to fund independent expenditures or political contributions.

Section 5 raises the filing threshold for political committees to \$1000 instead of the \$500 threshold found in existing statute.

It requires reports to be filed by midnight as opposed to 5 pm.

The committee substitute provides that contributions in excess of the limits are subject to forfeiture upon a finding by a district court (not the SOS, as exists in current statute).

CS/278 includes a temporary provision directing the Secretary of State, in consultation with the Attorney General, by December 31, 2015 to promulgate rules to implement its amendatory provisions.

FISCAL IMPLICATIONS

HB 278 carries no appropriation.

SOS analysis states that it will be required to develop a report to accommodate the provisions of section: “This is not expected to involve a significant fiscal impact. The removal of the provisions regarding “covered transfers,” and the other changes in the committee substitute, alleviate most of the fiscal impact to the SOS.”

AGO analysis states that CS/278 may result in indeterminate expenditures to the AGO, as the AGO is required to work with SOS on the promulgation of implementing regulations, and is authorized, with or without a referral for the Secretary of State, to institute a civil action for violations or to prevent violations of the Campaign Reporting Act.

SIGNIFICANT ISSUES

There are three main avenues for regulating campaign finance, the purpose of which is to minimize corruption or even the appearance of corruption, in elections. They are disclosure, contribution limits, and public financing. HB 278 and its substitute seek to improve upon the current statutes in the CRA with regard to disclosure and contribution limits.

CS/278 is less restrictive than the original bill. It no longer requires third-party independent groups, such as PACs, that make expenditures affecting election campaigns, to disclose contributions and expenditures in a manner consistent with the disclosures required of candidates and political parties.

The bill will require political committees, now including groups such as PACs that make independent expenditures, to appoint and maintain a treasurer and file a statement of organization within 3 days of receiving, contributing or expending \$1,000. However, political committees located in other states and registered with the Federal Election Commission in CS/278 are exempted from this filing requirement; they were required to do so in the original bill.

CS/278 increases contribution limits for some types of contributions. Under the committee substitute, the contribution limit from a person, including a political committee, for any candidate to a non-statewide office, is \$5000 per election cycle, up from \$2300 in the original bill. It does not provide a similar proportional increase to candidates for statewide office. However CS/278, by applying a two-year election cycle to all candidates, essentially doubles the allowable contributions to candidates running for the state senate as well as statewide offices (who were previously on a four-year cycle).

CS/278 also loosens reporting requirements. In the original bill, for example, names and addresses of contributors of independent expenditures of \$200 or more were required to be reported, if the expenditures were made from a segregated bank account; in CS/278, now only such contributions of \$5000 or more are required to be reported, but if the contributor has requested in writing that the contribution not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee, this contribution is exempt from the reporting requirement.

Political committees will need to disclose contributions of \$1000 or more; the original bill required reporting of contributions of \$500 or more.

In advertising disclosures, CS/278 is also less restrictive. For ads exceeding \$3000, only the name of the authorizing candidate, committee or other person who paid for the ad must be disclosed; in the original bill, a web address and phone number was required. Further, the original bill required the top three funders of any such ad to also be disclosed; this disclosure is no longer required in the committee substitute.

CS/278, by eliminating from section 3 of the original bill examples of behavior that would prove expenditure has been coordinated with a candidate, provides less clarity on what “coordination” means. The stated definition of “coordinated expenditure” remains the same as in the original bill, except that it now limits such expenditures to those of \$500 or more; there were no monetary restrictions in the original bill.

Like the original bill, CS/278 provides that all contributions in excess of the limits imposed will be deposited into the Public Elections Fund, upon the finding of a district court, as opposed to a finding by the SOS.

SOS analysis states that “the committee substitute removes ambiguous language and contains much clearer terms and bright-line definitions than the previous version of the bill, and creates far fewer administrative questions.”

CS/278 will address recent court decisions that have invalidated key parts of NM’s campaign reporting laws and does so with disclosure requirements that appear to be in conformity with applicable and relevant court rulings in the 10th Circuit and other jurisdictions around the country, according to the AGO.

The disclosure requirements in the bill seem designed specifically to address the controversial Citizens United decision of the U.S. Supreme Court, which allowed corporations and other entities to make election-related expenditures but also indicated that the best available safeguard to address such expenditures was to require full disclosure of their sources of funds.

SOS analysis in analysis of the original bill stated:

Repeal of Sections 1-19-16 and 1-19-17. The New Mexico Attorney General has opined these sections are unconstitutional and has declined to enforce those provisions for a number of years. The bill adds new disclaimer provisions for all political advertising, whether run by a candidate, political committee or person making independent expenditures. The provisions for verbal disclaimers may require too long of a disclaimer on 30 second ads, based on a recent ruling from Wisconsin.

Independent Expenditures and Coordinated Expenditures: Spending by entities who are independent from candidates has grown significantly since 2010, and under federal law, is not subject to contribution limits. In 2012, the SOS was enjoined from enforcing certain provisions of the CRA with regard to independent expenditures. The same injunctive order in Republican Party v. King determined that the CRA's contribution limits would apply to coordinated expenditures. In the absence of definitions of independent expenditures and coordinated expenditures within the existing CRA, the SOS does not have clear guidance regarding enforcement under either the CRA or the case law. This bill removes unconstitutional provisions from the CRA, replaces them with provisions based on the limitations established by the federal courts.

The bill also provides that with or without a referral of the SOS, the AGO or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation from occurring. Relief could include a permanent or temporary injunction, a restraining order or other appropriate order including a civil penalty of up to \$1,000 for each violation not to exceed \$20,000. Allowing the AGO to bring a civil action without referral by the SOS, thus avoids problems similar to the criminal case, State v. Block, 150 N.M. 598 (Ct. App. 2011), where the defendant claimed that the AGO needed a referral by the SOS to file a criminal case.

PERFORMANCE IMPLICATIONS

CS/278 requires AG to work with SOS on the promulgation of implementing regulations. May

result in increase to the civil caseload of the AGO if cases are referred by the Secretary of State or the AG determines that violations of the CRA have occurred or may occur.

RELATIONSHIP

SB 384 was a duplicate of this bill but no longer is.

TECHNICAL ISSUES

SOS analysis states that Section 1 discusses different reporting triggers that make the bill difficult to follow, further, the bill requires that the independent expenditures be reported, but it does not require a registration.

The aggregate limit for anonymous contributions for political committees also may need to be included.

The political committee statement of organization requires the identification of any bank account to be used by the committee be disclosed. The SOS suggests clarification on this requirement. The information contained in CFIS is public and no account number should be included.

OTHER SUBSTANTIVE ISSUES

The National Conference on State Legislatures (NCSL) in an overview of campaign finance reform states the following:

Disclosure: Disclosure is the most basic form of campaign finance regulation. All states require some level of disclosure from candidates, committees, and political parties of the amount and source of contributions and expenditures. The states vary in the detail required in disclosures, and in the frequency of reporting.

Example - Colorado's Disclosure Requirements

Candidates must file quarterly reports on January 15, April 15, July 15, and October 15.

Additional reports are required in election years - monthly reports beginning six months prior to the election

- biweekly reports beginning two months before the election
- A report two weeks after the election.

Reports must include information on all contributions and expenditures.

Contributions or expenditures greater than \$20 must be itemized, and include the name and address of the contributor or recipient of an expenditure, the amount, and the date of the transaction.

Independent Expenditures: Independent expenditures are political communications, such as television or radio advertisements, expressly advocating the election or defeat of a candidate. Unlike contributions and campaign-related expenditures, independent expenditures are not coordinated with a candidate's campaign. Due to the lack of coordination with candidates, the

U.S. Supreme Court has held that independent expenditures do not pose a corruptive threat and cannot be limited like contributions to candidates and campaign-related expenditures, irrespective of who is making the independent expenditure. As a result of the Court's rulings, an unprecedented surge of independent spending has occurred in recent years. The uptick in independent expenditures likely will continue for the foreseeable future as groups seeking to influence the political process capitalize on their ability to spend unlimited sums independent of a candidate's campaign.

While states cannot impose dollar limits on independent expenditures, courts have upheld laws requiring persons or groups to disclose independent expenditures on the basis that disclosure offers valuable electoral information to the public. 47 states necessitate some degree of independent expenditure reporting, with Indiana, South Carolina, and New Mexico being the exceptions.

Contribution Limits

Limiting the amount and source of campaign contributions is one of the most common tactics for regulating money in politics. Just four states place no limits on contributions. Limits vary widely from state to state and from office to office within a state. Nationwide, the limit on the average amount an individual can give to a gubernatorial candidate is about \$7,500 in an election cycle.

For legislative candidates, the limit is much lower, averaging about \$3,300 (for House candidates) to \$3,700 (for Senate candidates) per election cycle. All but four states also regulate corporate contributions--25 states have limits on the amounts corporations may contribute to candidates, and 21 states have an outright ban on corporate contributions.

Example - Delaware's Contribution Limits

Contributions to candidates from individuals, pacs, corporations and unions*

\$1,200/statewide candidate

\$600/other candidate

Both amounts are per election cycle

Contributions to candidates from political parties

\$75,000/gubernatorial candidate

\$5,000/senate candidate

\$3,000/house candidate

All amounts per election cycle

Contributions to political parties from individuals

\$20,000 per election cycle

*Current statute does not yet address Citizen's United decision that these contributions may not be limited.

See: <http://www.ncsl.org/research/elections-and-campaigns/campaign-finance-an-overview.aspx>

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