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FISCAL IMPACT REPORT

2/06/19
2/14/19

ORIGINAL DATE 2/06/19
LAST UPDATED 2/14/19

SPONSOR McQueen **HB** 310/aHSEIC/aSRC

SHORT TITLE Prohibited Fundraising Period Changes **SB** _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 407, HB 428, HB 462, SB 3, SB 4, SB 99

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Auditor's Office (OSA)
State Treasurer's Office (STO)
State Land Office (SLO)
New Mexico Attorney General (NMAG)
Secretary of State's Office (SOS)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment removes the bill's prohibition against accepting contributions governed by the Campaign Reporting Act during the prohibited period. The amendment reverts the prohibition to the existing law, which applies only to soliciting contributions.

Synopsis of HSEIC Amendment

The House State Government, Elections & Indian Affairs Committee amendment to House Bill 310 adds the Secretary of State to the elected officers and candidates prohibited from soliciting or accepting contributions governed by the Campaign Reporting Act.

Synopsis of Original Bill

House Bill 310 amends Section 1-19-34.1 of the Campaign Reporting Act, to make it unlawful, during the applicable prohibited period, for the attorney general, state treasurer, commissioner of

public lands or state auditor, or a candidate for or agent on behalf of those offices to knowingly solicit or accept a contribution governed by the Campaign Reporting Act. Under current law, the prohibition applies only to state legislators, and candidates for and agents acting on behalf of state legislators.

HB 310 makes it unlawful, during the applicable prohibited period, for the lieutenant governor or an agent on behalf of the lieutenant governor to knowingly solicit or accept a contribution governed by the Campaign Reporting Act. Under current law, the prohibition applies only to the governor or an agent acting on the governor's behalf.

SIGNIFICANT ISSUES

Section 1-19-34.1 currently applies to legislative session fundraising by legislators and the governor. The prohibited period for fundraising under the current law corresponds to the role each office plays in the legislative process. For legislators, the prohibited period starts on January 1 before a legislative session and ends on the date the session adjourns. For the governor, the prohibited period begins on January 1 and ends on the 20th day after the session adjourns, which is the last day a bill passed during the session may be approved by the governor or pocket vetoed.

According to NMAG, federal courts have invalidated broad bans on fundraising during legislative sessions under the First Amendment of the United States Constitution. For instance, in *Shrink Missouri Gov't PAC v. Maupin*, the court invalidated a state law providing that “no contribution shall be accepted by a person serving as a statewide elected official or serving as a member of the general assembly, or by a candidate for any statewide elected office or candidate for state senator or state representative, or by a committee acting on behalf of such an individual, during any regular session of the general assembly.” 922 F.Supp. 1413, 1415 (E.D. Mo. 1996). The court found that the restrictions imposed by Missouri law constituted “a severe impact not only on political association but also on political communication...” *Id.* at 1420. In finding the law unconstitutional, the court rejected the state's argument that it was necessary to prevent corruption or the appearance of corruption. *Id.* at 1422. Significantly, the court also found that the law cast too wide a net, i.e., the Missouri ban applied to offices “with no power to interfere with the integrity of the legislative process.” *Id.*

NMAG states that the federal court in the *Shrink Missouri* case relied on a case from the Florida Supreme Court striking down an analogous prohibition in that state. See *id.* at 1418, citing *State of Florida v. Dodd*, 561 So.2d 263 (Fla.1990). Although the *Shrink Missouri* decision found Missouri's ban on fundraising during legislative sessions unconstitutional, NMAG notes that there is judicial authority supporting similar state prohibitions. See *Arkansas Right to Life State Political Action Comm. v. Butler*, 983 F. Supp. 1209, 1234 (W.D. Ark. 1997) (upholding Arkansas' temporal prohibition on legislative session fundraising at summary judgment phase).

NMAG states that a noteworthy factual distinction between Missouri and New Mexico is that Missouri has longer legislative sessions. See *Shrink Missouri*, 922 F.Supp. at 1419 (“Four and one-half months is over one-third of every year in which a candidate is completely cut off from generating immediate funds for running his or her campaign.”). Thus, under the Missouri law examined in the *Shrink Missouri* case, the period of the First Amendment injury was greater and the injury arguably more profound.

RELATIONSHIP

Relates to:

HB 407 Election Laws 50-Year Tune-Up
HB 428 Sec. of State Candidates in Voter Action Act
HB 462 Sec. of State & A.G. in Voter Action Act
SB 3 Campaign Finance Reporting
SB 4 Campaign Public Financing Changes
SB 99 Appointment of PRC Members

BG/sb/gb/al