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FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 1/25/19
LAST UPDATED 3/04/19 HB _____

SHORT TITLE Campaign Finance Reporting SB 3/aSJC/aHJC

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 310, HB 407, HB 428, HB 462, SB 4, SB 99

Conflicts with HB 407

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State's Office (SOS)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HJC Amendments

The House Judiciary Committee Amendments to Senate Bill 3:

- add a definition of “legislative caucus committee” and includes a legislative caucus committee in the definition of “political committee” for purposes of the Campaign Reporting Act;
- amend Section 1-19-34.7, which governs campaign limitations, to prohibit contributions to a political party or legislative caucus committee that will cause the contributor’s total contributions to the political party or legislative caucus committee to exceed five times the limit imposed by the section during a primary or a general election cycle;
- provide that the limitations on contributions to candidates or campaign committees do not apply to the value of in-kind contributions from political parties or legislative caucus committees to candidates nominated by the parties in the general election;
- exclude contributions from candidates or campaign committees from the limitations on contributions to political parties or legislative caucus committees;

- limit a political party caucus to one legislative caucus committee in each chamber of the legislature; and
- provide for the designation of the political committee that is the legislative caucus committee in the House and Senate within 30 days after the bill’s effective date.

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to Senate Bill 3:

- replace the term “ballot measure” with “ballot question” in the bill’s title and throughout the bill;
- remove the cap of \$50 per occurrence on the value of the incidental use of a candidate’s personal property, home or business use for campaign purposes that is excluded from the definition of “contribution” for purposes of the Campaign Reporting Act;
- add a requirement that changes in a political committee’s statement of organization be reported to the secretary of state within 10 days;
- change the reporting schedule for reports of expenditures and contributions made on the first Monday in October during an election year to allow an extra day when the first Monday is a state holiday; and
- require a candidate, political committee or campaign committee to notify SOS within 10 days after a successor treasurer is appointed.

Synopsis of Original Bill

Senate Bill 3 revises the Campaign Reporting Act, NMSA 1978, §§ 1-19-15 to -26 (“CRA”), to define independent expenditures and coordinated expenditures, and includes specific reporting requirements of individuals or entities that make independent expenditures as defined by the bill. Significant amendments made by SB 3 include the following:

Section 1 adds a new section to the CRA relating to reporting requirements for “independent expenditures,” which SB 3 defines as expenditures made by a person other than a candidate or campaign committee for political advertisements. The bill requires a person making an independent expenditure in an amount that exceeds \$1,000 in non-statewide elections and \$3,000 in statewide elections to file a report with the SOS within specified time periods. The report must include the name and address of the person who made the independent expenditure, the name and address of the person to whom the independent expenditure was made, the amount, date and purposes of the independent expenditure, and the source of the contributions used to make the independent contribution.

Section 2 adds a new section to the CRA requiring that a person who spends more than \$1,000 for an advertisement ensures that the advertisement includes a disclaimer containing the name of the candidate, committee, or other person who authorized and paid for the advertisement. The bill excepts from the disclaimer requirement certain small items upon which the disclaimer cannot be conveniently printed or where inclusion of the disclaimer would be impracticable.

Section 3 revises the beginning and ending dates of an “election cycle,” a “general election cycle,” and a “primary election cycle,” as those terms are defined in the Election Code.

Section 4 amends Section 1-19-26 of the CRA to add new definitions for “advertisement,” “ballot measure”, “campaign expenditure”, “coordinated expenditure”, “independent expenditure”, and “political party.” It also amends the current definitions for “bank account”, “campaign committee”, “candidate”, “contribution”, “election”, “expenditure”, “political committee”, “political purpose”, and “proper filing officer”.

Section 5 amends Section 1-19-26.1 to remove the \$500 threshold on amounts a political committee received, contributed or expended before it was required to meet the registration and other requirements of the provision. As amended by SB 3, any political committee must meet the specified requirements before it may receive or make any contributions or make expenditures for a political purpose.

Section 7 amends Section 1-19-29, which governs the time and place of filing campaign expenditure and contribution reports. The bill revises campaign finance reporting deadlines and reporting thresholds and reporting requirements for independent and coordinated expenditures, and adds additional reporting after a statewide election for expenditures and contributions not otherwise previously reported. The bill also allows a political committee to cancel its registration after a period of no activity by filing a request with the SOS.

Section 9 amends Section 1-19-34 by increasing from \$15 to \$25 the cost of tickets sold (i.e., cash contributions) at special events that are exempt from the CRA’s anonymous contribution limits. The bill adds a proviso precluding a candidate from accepting contributions of more than \$25 in cash at a special event from any one contributor.

Section 10 amends Section 1-19-34.3 to prohibit a person from making contributions or expenditures with the intent to conceal the names of persons who are the true source of funds used to make independent expenditures or are the true recipients of the expenditures.

Section 11 amends Section 1-19-34.6, which relates to civil penalties, to increase the civil penalty for CRA violations to not more than \$1,000 for each violation, not to exceed a total of \$20,000.

Section 12 simplifies language in Section 1-19-34.7 by setting a flat limit on contributions to all candidates and political committees of \$5,000 per election cycle unless those contributions are from a candidate’s own personal funds or are made to a political committee and used only to make independent expenditures. SB 3 further specifies that a primary election candidate who does not move on to the general election shall remain subject to the primary election cycle contribution limits and shall not receive funds beyond those limits to pay for primary election expenditures. The bill changes the date on which contribution limits are increased from the day after the general election to January 1.

Section 15 directs SOS, in consultation with NMAG, to promulgate rules to implement the amendatory provisions of SB 3 by August 1, 2019.

SB 3 has an effective date of July 1, 2019.

FISCAL IMPLICATIONS

SOS states that the current campaign finance reporting system administered by the SOS will require significant modifications to accommodate the provisions of SB 3. SOS is currently

engaged in the procurement process to implement a new reporting system to replace the existing Campaign Finance Information System (CFIS). Additional funding for the project may become necessary.

NMAG states that SB 3 may have fiscal implications for the Office of the Attorney General, as SB 3 authorizes NMAG to institute civil actions in district court for violations or to prevent violations of the CRA and involves NMAG in the promulgation of rules to implement the bill's provisions.

SIGNIFICANT ISSUES

According to SOS, the provisions of SB 3 relating to independent and coordinated expenditures provide important guidance to affected individuals as well as the SOS, and align with SOS administrative rules currently in effect.

NMAG points out that SB 3's reporting requirements do not infringe on constitutional free speech rights. NMAG explains that recent decisions of the U.S. Supreme Court and the Court of Appeals for the Tenth Circuit hold that while independent campaign participants have a right to speak all they want and spend all they want, when they tell the voters how to vote through express advocacy or ads mentioning candidates or ballot measures right before an election, the voters have a right to know who is paying for these ads and the state has the authority to enforce that right. See *Citizens United v. FEC*, 558 U.S. 310, 130 S.Ct. 876, 913-16 (2010), *Independence Institute v. Williams*, 812 F.3d 787 (10th Cir. 2016), and *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013).

NMAG also states that the CRA will continue to include unconstitutional provisions if the revisions proposed in SB 3 are not enacted. In 2012, following the *Citizens United* ruling, NMAG, SOS, and district attorneys were enjoined from enforcing the CRA's contribution limits as applied to contributions to political action committees for independent expenditures. The amendments in Section 12 of the bill would address the constitutional concerns by removing the improper contribution limits. NMAG notes that the amendments in Section 12 also would remove contribution limits as applied to political parties for the parties' independent expenditures (the definition of "political committee" in the CRA encompasses both PACs and political parties), which is a current subject of litigation in *Republican Party of N.M. v. Balderas*.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

HB 310 Prohibited Fundraising Period Changes
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 4 Campaign Public Financing Changes
SB 99 Appointment of PRC Members

Conflicts with: HB 407, which also amends Section 1-19-26 NMSA 1978

BG/gb/sb/gb