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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/2006

SPONSOR Feldman LAST UPDATED 2/12/2006 HB \_\_\_\_\_

SHORT TITLE Campaign Reporting Requirements SB 367/aSRC/aSFL#1/aSFL#2

ANALYST McOlash/Baca

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 379

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of SFL Amendment #2

Senate Floor Amendment #2 strikes the following campaign reporting requirements:

2) [the] every occupation [or type of] and the name of the business or businesses of [any] the person or entity making contributions [of two hundred fifty dollars (\$250) or more in the aggregate per election] or receiving expenditures;

(3) every employer of the person or entity making contributions or receiving expenditures;

(3)] (4) the amount of the expenditure or contribution or value thereof;

(5) the cumulative total of all contributions received from the person or entity making a contribution and the cumulative total of all expenditures made to the person or entity receiving an expenditure;

Synopsis of SFL Amendment #1

Senate Floor Amendment #1 the Secretary of State adds language stipulating the Secretary of State has the power to compel the production of records and other data pertinent to the enforcement of this act only **pursuant to an order from a district court**.

Synopsis of SRC Amendment

The Senate Rules Committee (SRC) amendment adds a new Section 5, I requiring that reports, including those filed electronically, must be subscribed, sworn to, or electronically authenticated by the candidate or the treasurer of the political committee. Electronic authentication shall be in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act.

The amendment also requires that independent expenditure reports must include opening and closing balances for the reporting individual's bank account for the reporting period and the amount of any unpaid debts and the person to whom the debt is owed in addition to names and addresses, expenditures, etc., of the committee, reporting individuals, and candidates.

Synopsis of Original Bill

Senate Bill 367 amends and adds new material to the Campaign Reporting Act [Sections 1-19-25 through 1-19-36 NMSA 1978] to:

- (1) add independent expenditures to the rubric of the state Campaign Reporting Act;
- (2) provide a definition for independent expenditures;
- (3) define a "political committee" as a person or organization who makes an independent expenditure over \$500;
- (4) exempt a political committee from outside New Mexico from the Act, unless it makes an independent expenditure over \$500;
- (5) require a political committee to file as an individual and list whom they support and how much has been expended in support;
- (6) require reporting individuals to file at least twice a year, listing name, occupation and name of business of contributors;
- (7) require the Secretary of State (SOS) to make electronic reports available within 10 days of filing and to provide a public electronic list of those who fail to file;
- (8) provide that a cash contribution from a single source cannot exceed \$100 in 24 hour period; and
- (9) allow the SOS to subpoena documents to investigate Campaign reporting Act violations.

**FISCAL IMPLICATIONS**

The AGO is one of the primary enforcers of the Campaign Reporting Act. This bill may create more enforcement actions and may require more AGO resources.

This bill will significantly change the Electronic Campaign Reporting Software. The Secretary of State is currently trying to get a price quote from the vender on the cost of this new software and how long it will take to write this new software. There will be an added burden on agency to track, train and provide support for the committees that must now file reports of expenditures.

Enforcement, monitoring and tracking effort will need to be made to keep committees in compliance with the law.

### **SIGNIFICANT ISSUES**

The bill's proposed requirement that the political committee, which has made an independent expenditure, list whom they support (candidate or constitutional ballot issue) and how much they expended for them is a provision commonly used in other states.

As with other controversial campaign contribution laws, this bill will likely be subject to strict scrutiny and possible challenge in court if it is enacted. See State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska Supreme Court 1999), cert denied 528 US 1153 (2000) (Alaska had a compelling interest that justifies applying restricting certain independent expenditures for or against candidates).

The bill's proposed idea that failure to cooperate with an investigation of the SOS is a violation per se of the Campaign Report Act may be problematic since a group may be exercising a legal right in resisting the investigation.

### **POSSIBLE QUESTIONS**

The bill's proposed requirement that the report has to list the name, occupation and name of business for every contributor is different from the current law (where only those who contributed over \$250). If one item is missing on a very small contribution, does this justify a Campaign Reporting Act violation?

Section 6(A)(3) requires a contributor to list "every employer" of the person making the contribution/receiving the expenditure—does that mean a private citizen has to list his employer when making a contribution?

How can the SOS know who to publish on "failure to file list" if a new independent expenditure group fails to file?

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BMC/LB:nt