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HOUSE BILL 118

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Jose A. Campos

AN ACT

RELATING TO ELECTIONS; PROHIBITING CERTAIN CONTRIBUTIONS AND SOLICITATIONS OF CONTRIBUTIONS BY LOBBYISTS, SEEKERS OF TARGETED SUBSIDIES, THE PRINCIPALS OF SEEKERS OF TARGETED SUBSIDIES, STATE CONTRACTORS AND THE PRINCIPALS OF STATE CONTRACTORS; PROHIBITING CERTAIN SOLICITATIONS OF CONTRIBUTIONS FROM LOBBYISTS, SEEKERS OF TARGETED SUBSIDIES, THE PRINCIPALS OF SEEKERS OF TARGETED SUBSIDIES, STATE CONTRACTORS AND THE PRINCIPALS OF STATE CONTRACTORS; PROHIBITING THE BUNDLING OF CONTRIBUTIONS BY LOBBYISTS, SEEKERS OF TARGETED SUBSIDIES, THE PRINCIPALS OF SEEKERS OF TARGETED SUBSIDIES, STATE CONTRACTORS AND THE PRINCIPALS OF STATE CONTRACTORS; REQUIRING DISCLOSURE OF CONTRIBUTIONS DIRECTED OR KNOWINGLY USED TO SUPPORT POLITICAL ADVOCACY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009; REPEALING LAWS 2009, CHAPTER 68, SECTION 2.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Campaign Reporting Act is enacted to read:

"[NEW MATERIAL] LOBBYISTS--CONTRIBUTIONS FOR CANDIDATES AND CERTAIN POLITICAL COMMITTEES PROHIBITED.--

A. A lobbyist that is subject to the Lobbyist Regulation Act shall not make a contribution to or solicit a contribution on behalf of or for the benefit of:

(1) a candidate for nomination or election to a state public office or a political committee established by the candidate; or

(2) a political committee if:

(a) the committee is established by a state public officer or an agent of the officer or in consultation with or at the request of the officer or agent of the officer;

(b) the committee is controlled by a state public officer or agent of the officer to aid or promote the nomination or election of one or more candidates for state public office; or

(c) the contributor knows or requests that the contribution will be used for the benefit of or given to a candidate for nomination or election to a state public office.

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1           B. A state public officer, candidate or political  
2 committee described in Subsection A of this section shall not  
3 accept or solicit a contribution prohibited by that subsection.

4           C. The provisions of this section shall not  
5 restrict a lobbyist from establishing a political committee for  
6 the lobbyist's own campaign or from soliciting contributions  
7 for that campaign from persons not prohibited from making  
8 contributions pursuant to this section.

9           D. The provisions of this section shall not  
10 preclude a lobbyist from making contributions or expenditures  
11 to promote the success or defeat of a ballot measure."

12           Section 2. A new section of the Campaign Reporting Act is  
13 enacted to read:

14           "[NEW MATERIAL] STATE CONTRACTORS--CONTRIBUTIONS FOR  
15 CANDIDATES AND CERTAIN POLITICAL COMMITTEES PROHIBITED.--

16           A. A state contractor or principal of a state  
17 contractor shall not make a contribution to or solicit  
18 contributions on behalf of or for the benefit of:

19                   (1) a candidate for nomination or election to  
20 a state public office or a political committee established by  
21 the candidate; or

22                   (2) a political committee if:

23                           (a) the committee is established by a  
24 state public officer or an agent of the officer or in  
25 consultation with or at the request of the officer or an agent

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1 of the officer;

2 (b) the committee is controlled by a  
3 state public officer or an agent of the officer to aid or  
4 promote the nomination or election of one or more candidates  
5 for state public office; or

6 (c) the contributor knows or requests  
7 that the contribution will be used for the benefit of or given  
8 to a candidate for nomination or election to a state public  
9 office.

10 B. A state public officer, candidate or political  
11 committee described in Subsection A of this section shall not  
12 accept or solicit a contribution prohibited by that subsection.

13 C. The provisions of this section shall not  
14 restrict a principal of a state contractor from establishing a  
15 political committee for the principal's own campaign or from  
16 soliciting contributions for that campaign from persons not  
17 prohibited from making contributions by this section.

18 D. The provisions of this section shall not  
19 preclude a state contractor or a principal of a state  
20 contractor from making contributions or expenditures to promote  
21 the success or defeat of a ballot measure.

22 E. The provisions of this section supplement and do  
23 not limit the provisions of other statutes or agency rules that  
24 may further limit contractor contributions."

25 Section 3. A new section of the Campaign Reporting Act is  
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1 enacted to read:

2 "[NEW MATERIAL] SEEKERS OF TARGETED SUBSIDIES--  
3 CONTRIBUTIONS FOR CANDIDATES AND CERTAIN POLITICAL COMMITTEES  
4 PROHIBITED.--

5 A. A seeker of a targeted subsidy or a principal of  
6 a seeker of a targeted subsidy shall not make a contribution to  
7 or solicit a contribution on behalf of or for the benefit of:

8 (1) a candidate for nomination or election to  
9 a state public office or a political committee established by  
10 the candidate; or

11 (2) a political committee if:

12 (a) the committee is established by a  
13 state public officer or an agent of the officer or in  
14 consultation with or at the request of the officer or agent of  
15 the officer;

16 (b) the committee is controlled by a  
17 state public officer or agent of the officer to aid or promote  
18 the nomination or election of one or more candidates for state  
19 public office; or

20 (c) the contributor knows or requests  
21 that the contribution will be used for the benefit of or given  
22 to a candidate for nomination or election to a state public  
23 office.

24 B. A state public officer, candidate or political  
25 committee described in Subsection A of this section shall not

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1 accept or solicit a contribution prohibited by that subsection.

2 C. The provisions of this section shall not  
3 restrict a principal of a seeker of a targeted subsidy from  
4 establishing a campaign committee for the principal's own  
5 campaign or from soliciting contributions for that campaign  
6 from persons not prohibited from making contributions pursuant  
7 to this section.

8 D. The provisions of this section shall not  
9 preclude a seeker of a targeted subsidy or a principal of a  
10 seeker of a targeted subsidy from making contributions or  
11 expenditures to promote the success or defeat of a ballot  
12 question."

13 Section 4. A new section of the Campaign Reporting Act is  
14 enacted to read:

15 "[NEW MATERIAL] BUNDLING OF CONTRIBUTIONS.--A person  
16 prohibited from contributing to or for the benefit of a  
17 candidate for state public office by the Campaign Reporting Act  
18 shall not facilitate the collection of contributions from legal  
19 contributors that the person is prohibited from making on the  
20 person's own behalf."

21 Section 5. A new section of the Campaign Reporting Act is  
22 enacted to read:

23 "[NEW MATERIAL] DISCLOSURE OF FUNDING USED FOR POLITICAL  
24 ADVOCACY.--

25 A. A person who engages in express advocacy or the

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1 functional equivalent of express advocacy shall report the  
2 details of the communication to the office of the secretary of  
3 state if:

4 (1) the total price of the communication,  
5 including production and distribution costs, is more than five  
6 thousand dollars (\$5,000) for a state race or five hundred  
7 dollars (\$500) for a local race; and

8 (2) the communication occurs within sixty days  
9 before a general election or thirty days before a primary  
10 election.

11 B. The report shall include the name and address of  
12 the person making the communication, a digital or print copy of  
13 the communication, the amount of the expenditure and the names  
14 and addresses of all contributors who requested that their  
15 contributions be used to fund the communication or who know  
16 that their contributions are to be used to fund the  
17 communication. The report must be received by the office of  
18 the secretary of state within five business days of the date on  
19 which a contract is signed to produce or distribute the  
20 communication.

21 C. Factors that may be considered in favor of a  
22 communication being determined to be express advocacy include  
23 the use of words such as "vote for", "elect", "support", "cast  
24 your ballot for", "vote against", "defeat" or "reject" in  
25 conjunction with a candidate's name.

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1           D. Factors that shall be considered in favor of a  
2 communication being determined to be the functional equivalent  
3 of express advocacy include that:

4                   (1) the communication mentions any election,  
5 candidacy, political party, opposing candidate or voting by the  
6 general public; or

7                   (2) the communication takes a position on any  
8 candidate's or officeholder's character, qualifications or  
9 fitness for office.

10           E. Factors that shall be considered against a  
11 communication being determined to be the functional equivalent  
12 of express advocacy include that:

13                   (1) the communication focuses on a public  
14 policy issue and either urges a candidate to take a position on  
15 the issue or urges the public to contact the candidate about  
16 the issue;

17                   (2) the communication proposes a commercial  
18 transaction, such as the purchase of a book, video or other  
19 product or service or the attendance, for a fee, at a film  
20 exhibition or other event; or

21                   (3) the communication includes a call to  
22 action or other appeal that, interpreted in conjunction with  
23 the rest of the communication, urges an action other than  
24 voting for or against or contributing to a clearly identified  
25 candidate or political party."

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1 Section 6. Section 1-19-26 NMSA 1978 (being Laws 1979,  
2 Chapter 360, Section 2, as amended) is amended to read:

3 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
4 Act:

5 A. "advertising campaign" means an advertisement or  
6 series of advertisements used for a political purpose and  
7 disseminated to the public either in print, by radio or  
8 television broadcast or by any other electronic means,  
9 including telephonic communications, and may include direct or  
10 bulk mailings of printed materials;

11 B. "anonymous contribution" means a contribution  
12 the contributor of which is unknown to the candidate or the  
13 candidate's agent or the political committee or its agent who  
14 accepts the contribution;

15 C. "bank account" means an account in a financial  
16 institution located in New Mexico;

17 D. "business entity" includes, whether organized  
18 inside or outside of New Mexico, a sole proprietorship, a  
19 partnership, a joint venture, a limited liability company, a  
20 corporation and any other association, organization or entity  
21 that is engaged in the operation of a business or profit-making  
22 activity;

23 [~~D.~~] E. "campaign committee" means two or more  
24 persons authorized by a candidate to raise, collect or expend  
25 contributions on the candidate's behalf for the purpose of

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1 electing the candidate to office;

2 ~~[E.]~~ F. "candidate" means an individual who seeks  
3 or considers an office in an election covered by the Campaign  
4 Reporting Act, including a public official, who either has  
5 filed a declaration of candidacy or nominating petition or:

6 (1) for a non-statewide office, has received  
7 contributions or made expenditures of one thousand dollars  
8 (\$1,000) or more or authorized another person or campaign  
9 committee to receive contributions or make expenditures of one  
10 thousand dollars (\$1,000) or more for the purpose of seeking  
11 election to the office; or

12 (2) for a statewide office, has received  
13 contributions or made expenditures of two thousand five hundred  
14 dollars (\$2,500) or more or authorized another person or  
15 campaign committee to receive contributions or make  
16 expenditures of two thousand five hundred dollars (\$2,500) or  
17 more for the purpose of seeking election to the office or for  
18 candidacy exploration purposes in the years prior to the year  
19 of the election;

20 ~~[F.]~~ G. "contribution" means a gift, subscription,  
21 loan, advance or deposit of money or other thing of value,  
22 including the estimated value of an in-kind contribution, that  
23 is made or received for a political purpose, including payment  
24 of a debt incurred in an election campaign, but "contribution"  
25 does not include the value of services provided without

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1 compensation or unreimbursed travel or other personal expenses  
2 of individuals who volunteer a portion or all of their time on  
3 behalf of a candidate or political committee, nor does it  
4 include the administrative or solicitation expenses of a  
5 political committee that are paid by an organization that  
6 sponsors the committee;

7 ~~[G.]~~ H. "deliver" or "delivery" means to deliver by  
8 certified or registered mail, telecopier, electronic  
9 transmission or facsimile or by personal service;

10 ~~[H.]~~ I. "election" means any primary, general or  
11 statewide special election in New Mexico and includes county  
12 and judicial retention elections but excludes municipal, school  
13 board and special district elections;

14 ~~[I.]~~ J. "election year" means an even-numbered year  
15 in which an election covered by the Campaign Reporting Act is  
16 held;

17 ~~[J.]~~ K. "expenditure" means a payment, transfer or  
18 distribution or obligation or promise to pay, transfer or  
19 distribute any money or other thing of value for a political  
20 purpose, including payment of a debt incurred in an election  
21 campaign or pre-primary convention, but does not include the  
22 administrative or solicitation expenses of a political  
23 committee that are paid by an organization that sponsors the  
24 committee;

25 L. "express advocacy" means any communication that

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1 asks the recipient to vote for or against a specific candidate  
2 for public office;

3 M. "functional equivalent of express advocacy"  
4 means any communication that is susceptible to no reasonable  
5 interpretation other than as an appeal to vote for or against a  
6 specific candidate for office and that is distributed via  
7 broadcast, cable, satellite or print media to voters living in  
8 the district the candidate seeks to represent;

9 [K-] N. "person" means an individual or entity;

10 [L-] O. "political committee" means two or more  
11 persons, other than members of a candidate's immediate family  
12 or campaign committee or a husband and wife who make a  
13 contribution out of a joint account, who are selected,  
14 appointed, chosen, associated, organized or operated primarily  
15 for a political purpose; and "political committee" includes:

16 (1) political parties, political action  
17 committees or similar organizations composed of employees or  
18 members of any corporation, labor organization, trade or  
19 professional association or any other similar group that  
20 raises, collects, expends or contributes money or any other  
21 thing of value for a political purpose;

22 (2) a single individual whose actions  
23 represent that the individual is a political committee; and

24 (3) a person or an organization of two or more  
25 persons that within one calendar year expends funds in excess

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1 of five hundred dollars (\$500) to conduct an advertising  
2 campaign for a political purpose;

3 ~~[M.]~~ P. "political purpose" means influencing or  
4 attempting to influence an election or pre-primary convention,  
5 including a constitutional amendment or other question  
6 submitted to the voters;

7 ~~[N.]~~ Q. "prescribed form" means a form or  
8 electronic format prepared and prescribed by the secretary of  
9 state;

10 R. "principal of a seeker of a targeted subsidy"  
11 means, in addition to the seeker of a targeted subsidy itself:

12 (1) a person who is a member of the board of  
13 directors of, or has an ownership interest in, a seeker of a  
14 targeted subsidy, except for a person who owns less than five  
15 percent of the shares of that seeker of a targeted subsidy that  
16 is a publicly traded corporation;

17 (2) a president, treasurer or executive or  
18 senior vice president of a seeker of a targeted subsidy that is  
19 a business entity;

20 (3) a person who is the chief executive  
21 officer of a seeker of a targeted subsidy;

22 (4) an employee of a seeker of a targeted  
23 subsidy who has managerial or discretionary responsibilities  
24 with respect to a targeted subsidy;

25 (5) the spouse or a dependent child of a

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1 person described in Paragraphs (1) through (4) of this  
2 subsection; or

3 (6) a political committee established by or on  
4 behalf of a person described in this subsection;

5 S. "principal of a state contractor" means, in  
6 addition to the state contractor:

7 (1) a person who is a member of the board of  
8 directors of, or has an ownership interest in, a state  
9 contractor, except for a person who owns less than five percent  
10 of the shares of a state contractor that is a publicly traded  
11 corporation;

12 (2) a person who is employed as president,  
13 treasurer, executive vice president or senior vice president of  
14 a state contractor that is a business entity;

15 (3) a person who is the chief executive  
16 officer of a state contractor;

17 (4) an employee of a state contractor who has  
18 managerial or discretionary responsibilities with respect to a  
19 state contract;

20 (5) the spouse or a dependent child of a  
21 person described in Paragraphs (1) through (4) of this  
22 subsection; or

23 (6) a political committee established by or on  
24 behalf of a person described in this subsection;

25 ~~[0.]~~ T. "proper filing officer" means either the

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1 secretary of state or the county clerk as provided in Section  
2 1-19-27 NMSA 1978;

3 ~~[P.]~~ U. "public office" means an office that is  
4 subject to an election covered by the Campaign Reporting Act;

5 V. "public officer" or "public official" means a  
6 person elected to an office in an election covered by the  
7 Campaign Reporting Act or a person appointed to ~~[an]~~ a public  
8 office; ~~[that is subject to an election covered by that act;~~  
9 and

10 ~~Q.]~~ W. "reporting individual" means every public  
11 official, candidate or treasurer of a campaign committee and  
12 every treasurer of a political committee;

13 X. "seeker of a targeted subsidy" means a person,  
14 including a business entity or nonprofit organization, that  
15 will directly benefit financially from a targeted subsidy;

16 Y. "state agency" means an office, department,  
17 board, council, commission, institution or other agency in the  
18 executive, legislative or judicial branch of state government;

19 Z. "state contract" means an agreement or  
20 transaction with a state agency or an instrumentality of the  
21 state having a value of twenty thousand dollars (\$20,000) or  
22 more, or a combination or series of such agreements or  
23 transactions having a value of twenty thousand dollars  
24 (\$20,000) or more, in a fiscal year for:

25 (1) the rendition of services, including

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1 professional services and financial services;

2 (2) the furnishing of any material, supplies  
3 or equipment;

4 (3) the construction, alteration or repair of  
5 any public building or public work;

6 (4) the acquisition, sale or lease of any land  
7 or building;

8 (5) a licensing arrangement;

9 (6) a loan or loan guarantee; or

10 (7) the purchase or sale of financial  
11 securities or instruments or the investment of public money;

12 AA. "state contractor" means a person, including a  
13 business entity or nonprofit organization, that enters into a  
14 state contract, which person shall be deemed to be a state  
15 contractor until the termination of the contract; but "state  
16 contractor" does not include the state or a political  
17 subdivision of the state or any full-time or part-time employee  
18 of the state or a political subdivision of the state in that  
19 person's capacity as an employee of the state or political  
20 subdivision of the state;

21 BB. "state public office" means the office of  
22 governor, lieutenant governor, attorney general, state  
23 treasurer, state auditor, secretary of state, commissioner of  
24 public lands, public regulation commissioner, state senator or  
25 state representative;

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1                   CC. "state public officer" means a person elected  
2 to or appointed to a state public office; and

3                   DD. "targeted subsidy" means a financial benefit,  
4 including a tax exemption, credit or reduction in taxes, that  
5 is conferred by proposed legislation or the enactment of law on  
6 an entity that is:

7                               (1) named in the legislation or law as its  
8 beneficiary; or

9                               (2) described in the legislation or law in a  
10 particularized manner that is the functional equivalent of  
11 naming the entity as its beneficiary."

12               Section 7. REPEAL.--Laws 2009, Chapter 68, Section 2 is  
13 repealed.

14               Section 8. SEVERABILITY.--If any part or application of  
15 this act is held invalid, the remainder of its application to  
16 other situations or persons shall not be affected.

17               Section 9. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is November 3, 2010.