

HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 118

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

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, PROSPECTIVE STATE CONTRACTORS, THE PRINCIPALS OF PROSPECTIVE STATE CONTRACTORS, STATE CONTRACTORS AND THE PRINCIPALS OF STATE CONTRACTORS; PROHIBITING THE BUNDLING OF CERTAIN CONTRIBUTIONS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009 BY REPEALING LAWS 2009, CHAPTER 68, SECTION 2.

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.--

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underscored material = new
[bracketed material] = delete

1 A. A lobbyist shall not make a contribution to or
2 solicit a contribution on behalf of:

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

6 (2) a political committee if:

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

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

15 (c) the contributor knows or requests
16 that the contribution will be given to a specific candidate for
17 nomination or election to a state public office.

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

21 C. The provisions of this section shall not
22 restrict a lobbyist from establishing a political committee for
23 the lobbyist's own campaign or from soliciting contributions
24 for that campaign from persons not prohibited from making
25 contributions pursuant to this section.

.181542.2

1 D. The provisions of this section shall not
2 preclude a lobbyist from making contributions or expenditures
3 to promote the success or defeat of a ballot measure.

4 E. The provisions of this section do not preclude a
5 lobbyist's employer from making contributions to a candidate or
6 expenditures for the benefit of a candidate."

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

9 "[NEW MATERIAL] PROSPECTIVE STATE CONTRACTORS AND STATE
10 CONTRACTORS--CONTRIBUTIONS FOR CANDIDATES AND CERTAIN POLITICAL
11 COMMITTEES PROHIBITED.--

12 A. A principal of a state contractor or principal
13 of a prospective state contractor shall not make a contribution
14 to or solicit contributions on behalf of:

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

18 (2) a political committee if:

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

23 (b) the committee is controlled by a
24 state public officer or an agent of the officer to aid or
25 promote the nomination or election of one or more candidates

.181542.2

1 for state public office; or

2 (c) the contributor knows or requests
3 that the contribution will be given to a specific candidate for
4 nomination or election to a state public office.

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

8 C. The provisions of this section shall not
9 restrict a principal of a state contractor or principal of a
10 prospective state contractor from establishing a political
11 committee for the principal's own campaign or from soliciting
12 contributions for that campaign from persons not prohibited
13 from making contributions by this section.

14 D. The provisions of this section shall not
15 preclude a prospective state contractor or a state contractor
16 from making contributions or expenditures to promote the
17 success or defeat of a ballot measure.

18 E. The provisions of this section supplement and do
19 not limit the provisions of other statutes or agency rules that
20 may further limit contributions from the principals of a
21 prospective state contractor or the principals of a state
22 contractor."

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

25 "[NEW MATERIAL] SEEKERS OF TARGETED SUBSIDIES--

.181542.2

1 CONTRIBUTIONS FOR CANDIDATES AND CERTAIN POLITICAL COMMITTEES
2 PROHIBITED.--

3 A. A seeker of a targeted subsidy or a principal of
4 a seeker of a targeted subsidy shall not make a contribution to
5 or solicit a contribution on behalf of:

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

9 (2) a political committee if:

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

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

18 (c) the contributor knows or requests
19 that the contribution will be given to a specific candidate for
20 nomination or election to a state public office.

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

24 C. The provisions of this section shall not
25 restrict a principal of a seeker of a targeted subsidy from

.181542.2

1 establishing a campaign committee for the principal's own
2 campaign or from soliciting contributions for that campaign
3 from persons not prohibited from making contributions pursuant
4 to this section.

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

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

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

17 Section 5. Section 1-19-26 NMSA 1978 (being Laws 1979,
18 Chapter 360, Section 2, as amended) is amended to read:

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

21 A. "advertising campaign" means an advertisement or
22 series of advertisements used for a political purpose and
23 disseminated to the public either in print, by radio or
24 television broadcast or by any other electronic means,
25 including telephonic communications, and may include direct or

.181542.2

1 bulk mailings of printed materials;

2 B. "anonymous contribution" means a contribution
3 the contributor of which is unknown to the candidate or the
4 candidate's agent or the political committee or its agent who
5 accepts the contribution;

6 C. "bank account" means an account in a financial
7 institution located in New Mexico;

8 D. "business entity" includes, whether organized
9 inside or outside of New Mexico, a profit-making entity
10 organized as a sole proprietorship, a partnership, a joint
11 venture, a limited liability company or a corporation and any
12 other association, organization or entity that is engaged in
13 the operation of a business or profit-making activity;

14 [~~D.~~] E. "campaign committee" means two or more
15 persons authorized by a candidate to raise, collect or expend
16 contributions on the candidate's behalf for the purpose of
17 electing the candidate to office;

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

22 (1) for a non-statewide office, has received
23 contributions or made expenditures of one thousand dollars
24 (\$1,000) or more or authorized another person or campaign
25 committee to receive contributions or make expenditures of one

.181542.2

1 thousand dollars (\$1,000) or more for the purpose of seeking
2 election to the office; or

3 (2) for a statewide office, has received
4 contributions or made expenditures of two thousand five hundred
5 dollars (\$2,500) or more or authorized another person or
6 campaign committee to receive contributions or make
7 expenditures of two thousand five hundred dollars (\$2,500) or
8 more for the purpose of seeking election to the office or for
9 candidacy exploration purposes in the years prior to the year
10 of the election;

11 [~~F.~~] G. "contribution" means a gift, subscription,
12 loan, advance or deposit of money or other thing of value,
13 including the estimated value of an in-kind contribution, that
14 is made or received for a political purpose, including payment
15 of a debt incurred in an election campaign, but "contribution"
16 does not include the value of services provided without
17 compensation or unreimbursed travel or other personal expenses
18 of individuals who volunteer a portion or all of their time on
19 behalf of a candidate or political committee, nor does it
20 include the administrative or solicitation expenses of a
21 political committee that are paid by an organization that
22 sponsors the committee;

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

.181542.2

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

5 ~~[F.]~~ J. "election year" means an even-numbered year
6 in which an election covered by the Campaign Reporting Act is
7 held;

8 ~~[J.]~~ K. "expenditure" means a payment, transfer or
9 distribution or obligation or promise to pay, transfer or
10 distribute any money or other thing of value for a political
11 purpose, including payment of a debt incurred in an election
12 campaign or pre-primary convention, but does not include the
13 administrative or solicitation expenses of a political
14 committee that are paid by an organization that sponsors the
15 committee;

16 L. "lobbyist" means:

17 (1) a person required to register as a
18 lobbyist pursuant to the Lobbyist Regulation Act;

19 (2) a business entity that is a lobbying firm
20 in which the lobbyist is a principal;

21 (3) a person who was registered as a lobbyist
22 in the twelve months prior to making a contribution; and

23 (4) the spouse and dependent children of a
24 lobbyist;

25 ~~[K.]~~ M. "person" means an individual or entity;

.181542.2

1 ~~[E.]~~ N. "political committee" means two or more
2 persons, other than members of a candidate's immediate family
3 or campaign committee or a husband and wife who make a
4 contribution out of a joint account, who are selected,
5 appointed, chosen, associated, organized or operated primarily
6 for a political purpose; and "political committee" includes:

7 (1) political parties, political action
8 committees or similar organizations composed of employees or
9 members of any corporation, labor organization, trade or
10 professional association or any other similar group that
11 raises, collects, expends or contributes money or any other
12 thing of value for a political purpose;

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

15 (3) a person or an organization of two or more
16 persons that within one calendar year expends funds in excess
17 of five hundred dollars (\$500) to conduct an advertising
18 campaign for a political purpose;

19 ~~[M.]~~ O. "political purpose" means influencing or
20 attempting to influence an election or pre-primary convention,
21 including a constitutional amendment or other question
22 submitted to the voters;

23 ~~[N.]~~ P. "prescribed form" means a form or
24 electronic format prepared and prescribed by the secretary of
25 state;

1 Q. "principal of a seeker of a targeted subsidy"
2 means, in addition to the seeker of a targeted subsidy itself:

3 (1) a person who is a member of the board of
4 directors of, or has an ownership interest in, a seeker of a
5 targeted subsidy, except for a person who owns less than five
6 percent of the shares of that seeker of a targeted subsidy that
7 is a publicly traded corporation;

8 (2) a president, treasurer or executive or
9 senior vice president of a seeker of a targeted subsidy that is
10 a business entity;

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

13 (4) an employee of a seeker of a targeted
14 subsidy who has managerial or discretionary responsibilities
15 with respect to a targeted subsidy;

16 (5) the spouse or a dependent child of a
17 person described in Paragraphs (1) through (4) of this
18 subsection; or

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

21 R. "principal of a state contractor or prospective
22 state contractor" means, in addition to the state contractor or
23 prospective state contractor itself:

24 (1) a person who is a member of the board of
25 directors of, or has an ownership interest in, a state

.181542.2

1 contractor or prospective state contractor, except for a person
2 who owns less than five percent of the shares of a state
3 contractor or prospective state contractor that is a publicly
4 traded corporation;

5 (2) a person who is employed as president,
6 treasurer, executive vice president or senior vice president of
7 a state contractor or prospective state contractor that is a
8 business entity;

9 (3) a person who is the chief executive
10 officer of a state contractor or prospective state contractor;

11 (4) an employee of a state contractor or
12 prospective state contractor who has managerial or
13 discretionary responsibilities with respect to a state
14 contract;

15 (5) an agent seeking a state contract for a
16 state contractor or prospective state contractor;

17 (6) the spouse or a dependent child of a
18 person described in Paragraphs (1) through (4) of this
19 subsection; or

20 (7) a political committee established by or on
21 behalf of a person described in this subsection;

22 [0.] S. "proper filing officer" means either the
23 secretary of state or the county clerk as provided in Section
24 1-19-27 NMSA 1978;

25 T. "prospective state contractor" means a person

1 that responds to a solicitation for or seeks a state contract,
 2 until the contract has been entered into or solicitation
 3 canceled; but "prospective state contractor" does not include
 4 the state or a political subdivision of the state or any
 5 full-time or part-time employee of the state or a political
 6 subdivision of the state, in that person's capacity as an
 7 employee of the state or a political subdivision of the state;

8 U. "public office" means an office that is subject
 9 to an election covered by the Campaign Reporting Act;

10 ~~[P.]~~ V. "public officer" or "public official" means
 11 a person elected to an office in an election covered by the
 12 Campaign Reporting Act or a person appointed to ~~[an]~~ a public
 13 office; ~~[that is subject to an election covered by that act;~~
 14 and

15 ~~Q.]~~ W. "reporting individual" means every public
 16 official, candidate or treasurer of a campaign committee and
 17 every treasurer of a political committee;

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

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

24 Z. "state contract" means an agreement or
 25 transaction with a state agency or an instrumentality of the

.181542.2

1 state having a value of twenty thousand dollars (\$20,000) or
2 more, or a combination or series of such agreements or
3 transactions having a value of twenty thousand dollars
4 (\$20,000) or more, in a fiscal year for:

5 (1) the rendition of services, including
6 professional services and financial services;

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

9 (3) the construction, alteration or repair of
10 any public building or public work;

11 (4) the acquisition, sale or lease of any land
12 or building;

13 (5) a licensing arrangement;

14 (6) a loan or loan guarantee; or

15 (7) the purchase or sale of financial
16 securities or instruments or the investment of public money;

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

1 BB. "state public office" means the office of
 2 governor, lieutenant governor, attorney general, state
 3 treasurer, state auditor, secretary of state, commissioner of
 4 public lands, public regulation commissioner, state senator or
 5 state representative;

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

8 DD. "targeted subsidy" means a financial benefit,
 9 including a tax exemption, credit or reduction in taxes, that
 10 is conferred by proposed legislation or the enactment of law on
 11 a person, including a business entity or nonprofit
 12 organization, that is named in the legislation or law as the
 13 beneficiary or described in the legislation or law in a
 14 particularized manner that is the functional equivalent of
 15 naming the person as the beneficiary; and "targeted subsidy"
 16 does not include a financial benefit provided to the general
 17 public, class of people, industry or type of business."

18 Section 6. REPEAL.--Laws 2009, Chapter 68, Section 2 is
 19 repealed.

20 Section 7. SEVERABILITY.--If any part or application of
 21 this act is held invalid, the remainder of its application to
 22 other situations or persons shall not be affected.

23 Section 8. EFFECTIVE DATE.--The effective date of the
 24 provisions of this act is November 3, 2010.