

1 HOUSE BILL 155

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ELECTIONS; REQUIRING DISCLOSURE OF THE SOURCES OF
12 FUNDS USED FOR EXPRESS ADVOCACY OR THE FUNCTIONAL EQUIVALENT OF
13 EXPRESS ADVOCACY; REQUIRING DISCLAIMERS ON COMMUNICATIONS THAT
14 CONSTITUTE EXPRESS ADVOCACY OR THE FUNCTIONAL EQUIVALENT OF
15 EXPRESS ADVOCACY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
16 SECTION OF LAW IN LAWS 2009.

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

19 SECTION 1. A new section of the Campaign Reporting Act is
20 enacted to read:

21 "[NEW MATERIAL] DISCLOSURE OF FUNDING USED FOR POLITICAL
22 ADVOCACY.--

23 A. A person, other than a candidate for state
24 public office, who engages in express advocacy or the
25 functional equivalent of express advocacy shall report the

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1 details of the communication to the office of the secretary of
2 state, on forms that the secretary of state shall develop by
3 rule, if:

4 (1) the total price of the communication,
5 including production and distribution costs, is more than five
6 hundred dollars (\$500); and

7 (2) the communication occurs during an
8 election year for the office sought by the candidate.

9 B. The report shall include, at a minimum, the
10 following information:

11 (1) the name and address of the person making
12 the communication;

13 (2) the name and address of a responsible
14 officer who authorized the communication;

15 (3) a digital or print copy of the
16 communication;

17 (4) the source of funds for the communication:

18 (a) including general treasury funds and
19 the name and address of businesses, unions, groups,
20 associations or other organizations using general treasury
21 funds for the communication; provided that if a business,
22 union, group, association or other organization undertakes a
23 special solicitation of its members or other persons for a
24 communication, or it otherwise receives funds that are used for
25 a communication, that entity shall report pursuant to

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1 Subparagraph (b) of this paragraph; and

2 (b) for special solicitations and other
3 funds, if funding from a person in the aggregate has exceeded
4 two hundred fifty dollars (\$250) for the communication, the
5 name and address of the person or, if the person is an
6 individual, the name, address, occupation and employer of the
7 person;

8 (5) a detailed description of each expenditure
9 of more than five hundred dollars (\$500);

10 (6) the date the expenditure was made and the
11 date the communication was first broadcast, transmitted,
12 mailed, erected, distributed or otherwise published;

13 (7) the amount of the expenditure;

14 (8) the name of each candidate clearly
15 identified in the communication, the office being sought by
16 each candidate and the amount of the expenditure attributable
17 to each candidate; and

18 (9) any other information the secretary of
19 state may require or exempt by rule in accordance with the
20 purposes of this section.

21 C. The report must be received by the office of the
22 secretary of state within two business days of the date on
23 which the communication is first distributed.

24 D. This section does not apply to:

25 (1) a voter guide allowed by the federal

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1 Internal Revenue Code of 1986 to be produced and distributed by
2 Section 501(c)(3) organizations; or

3 (2) communications appearing in a news story,
4 commentary or editorial distributed through print or electronic
5 media or the facilities of any broadcasting station, unless
6 such facilities or media are owned or controlled by any
7 political party, political committee or candidate."

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

10 "[NEW MATERIAL] DISCLAIMERS FOR POLITICAL ADVOCACY.--

11 A. A person, other than a candidate for state
12 public office, who makes a communication that constitutes
13 express advocacy or the functional equivalent of express
14 advocacy shall specify on the communication:

15 (1) the words "authorized by" and the name,
16 address and phone number of a responsible officer who
17 authorized the communication;

18 (2) the words "paid for by" and the name of
19 any person who contributed at least two hundred fifty dollars
20 (\$250) toward the funding of the communication and who
21 requested that the contribution be used to fund express
22 advocacy or the functional equivalent of express advocacy or
23 who contributed in response to a solicitation of funds to be
24 used for express advocacy or the functional equivalent of
25 express advocacy; and

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1 (3) a statement that the communication is not
2 authorized by any candidate or candidate's campaign committee.

3 B. Disclosure statements required by this section
4 shall be printed clearly and legibly on any printed or
5 electronic communications. If the communication is broadcast
6 on radio, the information shall be spoken at the end of the
7 communication. If the communication is broadcast on a
8 telecommunications system, the information shall be both
9 written and spoken at the end of the communication, except that
10 if the disclosure statement is written for at least five
11 seconds of a thirty-second advertisement broadcast or ten
12 seconds of a sixty-second broadcast, a spoken disclosure is not
13 required. If the communication is broadcast on a
14 telecommunications system, the written disclosure statement
15 shall be printed in letters equal to or larger than four
16 percent of the vertical picture height.

17 C. This section does not apply to:

18 (1) a voter guide allowed by the federal
19 Internal Revenue Code of 1986 to be produced and distributed by
20 Section 501(c)(3) organizations; or

21 (2) communications appearing in a news story,
22 commentary or editorial distributed through print or electronic
23 media or the facilities of any broadcasting station, unless
24 such facilities or media are owned or controlled by any
25 political party, political committee or candidate."

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1 SECTION 3. Section 1-19-26 NMSA 1978 (being Laws 1979,
2 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,
3 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended
4 to read:

5 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
6 Act:

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

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

17 C. "bank account" means an account in a financial
18 institution located in New Mexico;

19 D. "campaign committee" means two or more persons
20 authorized by a candidate to raise, collect or expend
21 contributions on the candidate's behalf for the purpose of
22 electing the candidate to office;

23 E. "candidate" means an individual who seeks or
24 considers an office in an election covered by the Campaign
25 Reporting Act, including a public official, who either has

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1 filed a declaration of candidacy or nominating petition or:

2 (1) for a non-statewide office, has received
3 contributions or made expenditures of one thousand dollars
4 (\$1,000) or more or authorized another person or campaign
5 committee to receive contributions or make expenditures of one
6 thousand dollars (\$1,000) or more for the purpose of seeking
7 election to the office; or

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

16 F. "contribution" means a gift, subscription, loan,
17 advance or deposit of money or other thing of value, including
18 the estimated value of an in-kind contribution, that is made or
19 received for a political purpose, including payment of a debt
20 incurred in an election campaign, but "contribution" does not
21 include the value of services provided without compensation or
22 unreimbursed travel or other personal expenses of individuals
23 who volunteer a portion or all of their time on behalf of a
24 candidate or political committee, nor does it include the
25 administrative or solicitation expenses of a political

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1 committee that are paid by an organization that sponsors the
2 committee;

3 G. "deliver" or "delivery" means to deliver by
4 certified or registered mail, telecopier, electronic
5 transmission or facsimile or by personal service;

6 H. "election" means any primary, general or
7 statewide special election in New Mexico and includes county
8 and judicial retention elections but excludes municipal, school
9 board and special district elections;

10 I. "election year" means an even-numbered year in
11 which an election covered by the Campaign Reporting Act is
12 held;

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

21 K. "express advocacy" means any communication that
22 asks the recipient to vote for or against a specific candidate
23 for state public office and that is distributed via broadcast,
24 cable, satellite, print or electronic media to voters living in
25 the district that the candidate seeks to represent; but

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1 "express advocacy" does not include communications from an
2 organization to its own members or to persons who have
3 requested that the organization send them information,
4 including information conveyed on an organization's web site;

5 L. "functional equivalent of express advocacy"
6 means any communication that, when taken as a whole, can only
7 be reasonably interpreted as advocating the election or defeat
8 of a candidate for state public office, taking into account
9 whether the communication mentions a candidate or a political
10 party, or takes a position on a candidate's character,
11 qualifications or fitness for office and that is distributed
12 via broadcast, cable, satellite, print or electronic media to
13 voters living in the district that the candidate seeks to
14 represent; but "functional equivalent of express advocacy" does
15 not include communications from an organization to its own
16 members or to persons who have requested that the organization
17 send them information, including information conveyed on an
18 organization's web site;

19 ~~[K-]~~ M. "person" means an individual or entity,
20 including a business entity, union or nonprofit organization;

21 ~~[L-]~~ N. "political committee" means two or more
22 persons, other than members of a candidate's immediate family
23 or campaign committee or a husband and wife who make a
24 contribution out of a joint account, who are selected,
25 appointed, chosen, associated, organized or operated primarily

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1 for a political purpose; and "political committee" includes:

2 (1) political parties, political action
3 committees or similar organizations composed of employees or
4 members of any corporation, labor organization, trade or
5 professional association or any other similar group that
6 raises, collects, expends or contributes money or any other
7 thing of value for a political purpose;

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

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

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

18 [~~N-~~] P. "prescribed form" means a form or
19 electronic format prepared and prescribed by the secretary of
20 state;

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

24 [~~P-~~] R. "public official" means a person elected to
25 an office in an election covered by the Campaign Reporting Act

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1 or a person appointed to an office that is subject to an
2 election covered by that act; [~~and~~

3 Q.] S. "reporting individual" means every public
4 official, candidate or treasurer of a campaign committee and
5 every treasurer of a political committee; and

6 T. "state public office" means the office of
7 governor, lieutenant governor, attorney general, state
8 treasurer, state auditor, secretary of state, commissioner of
9 public lands, public regulation commissioner, state senator or
10 state representative."

11 SECTION 4. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.