

HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 604

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

AN ACT

RELATING TO ELECTIONS; PROHIBITING CERTAIN CONTRIBUTIONS BY  
LOBBYISTS AND THE PRINCIPALS OF STATE CONTRACTORS AND  
PROSPECTIVE STATE CONTRACTORS; REDEFINING "POLITICAL COMMITTEE"  
IN THE CAMPAIGN REPORTING ACT; REQUIRING DISCLOSURE OF THE  
SOURCES OF FUNDS USED FOR EXPRESS ADVOCACY OR THE FUNCTIONAL  
EQUIVALENT OF EXPRESS ADVOCACY; REQUIRING DISCLAIMERS ON  
COMMUNICATIONS THAT CONSTITUTE EXPRESS ADVOCACY OR THE  
FUNCTIONAL EQUIVALENT OF EXPRESS ADVOCACY; RECONCILING MULTIPLE  
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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 CAMPAIGN COMMITTEES PROHIBITED.--

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underscoring material = new  
[bracketed material] = delete

1           A. A lobbyist shall not make a contribution to a  
2 candidate for nomination or election to a state public office,  
3 a campaign committee of a candidate for state public office or  
4 a state- or county-level political party committee.

5           B. The provisions of this section shall not:

6                 (1) restrict a lobbyist from establishing or  
7 contributing to a campaign committee for the lobbyist's own  
8 campaign; or

9                 (2) preclude a lobbyist's employer from making  
10 contributions to a candidate or making expenditures for the  
11 benefit of a candidate."

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

14           "[NEW MATERIAL] PRINCIPALS OF STATE CONTRACTORS AND  
15 PROSPECTIVE STATE CONTRACTORS--CONTRIBUTIONS FOR CANDIDATES AND  
16 CAMPAIGN COMMITTEES PROHIBITED.--

17           A. A principal of a state contractor or prospective  
18 state contractor shall not make a contribution to a candidate  
19 for nomination or election to a state public office, a campaign  
20 committee of a candidate for state public office or a state- or  
21 county-level political party committee.

22           B. The provisions of this section shall not  
23 restrict a principal of a state contractor or prospective state  
24 contractor from establishing or contributing to a campaign  
25 committee for the principal's own campaign.

1           C. The provisions of this section supplement, and  
2 do not limit, the provisions of other statutes or agency rules  
3 that may further limit contributions from a principal of a  
4 state contractor or prospective state contractor."

5           **SECTION 3.** A new section of the Campaign Reporting Act is  
6 enacted to read:

7           "[NEW MATERIAL] DISCLOSURE OF FUNDING USED FOR POLITICAL  
8 ADVOCACY.--

9           A. A person, other than a candidate, who engages in  
10 express advocacy or the functional equivalent of express  
11 advocacy within thirty days before a primary election or sixty  
12 days before a general election shall report the details of the  
13 communication to the office of the secretary of state, on forms  
14 that the secretary of state shall develop by rule, if the total  
15 price of the communication, including production and  
16 distribution costs, is more than two thousand dollars (\$2,000).

17           B. The report shall include, at a minimum, the  
18 following information:

19                   (1) the name and address of the person making  
20 the communication;

21                   (2) the name and address of a responsible  
22 officer who authorized the communication;

23                   (3) a digital or print copy of the  
24 communication;

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

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1 (a) including general treasury funds and  
2 the name and address of businesses, unions, groups,  
3 associations or other organizations using general treasury  
4 funds for the communication; provided that if a business,  
5 union, group, association or other organization undertakes a  
6 special solicitation of its members or other persons for a  
7 communication, or it otherwise receives funds that are used for  
8 a communication, that entity shall report pursuant to  
9 Subparagraph (b) of this paragraph; and

10 (b) for special solicitations and other  
11 funds, if funding from a person in the aggregate has exceeded  
12 two hundred fifty dollars (\$250) for the communication, the  
13 name and address of the person or, if the person is an  
14 individual, the name, address, occupation and employer of the  
15 person;

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

18 (6) the date the expenditure was made and the  
19 date the communication was first broadcast, transmitted,  
20 mailed, erected, distributed or otherwise published;

21 (7) the amount of the expenditure;

22 (8) the name of each candidate clearly  
23 identified in the communication, the office being sought by  
24 each candidate and the amount of the expenditure attributable  
25 to each candidate; and

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1           (9) any other information the secretary of  
2 state may require or exempt by rule in accordance with the  
3 purposes of this section.

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

7           D. This section does not apply to:

8           (1) a voter guide allowed by the federal  
9 Internal Revenue Code of 1986 to be produced and distributed by  
10 Section 501(c)(3) organizations;

11           (2) communications appearing in a news story,  
12 commentary or editorial distributed through print or electronic  
13 media or the facilities of any broadcasting station, unless  
14 such facilities or media are owned or controlled by any  
15 political party, political committee or candidate; or

16           (3) communications from an organization to its  
17 own members or to persons who have requested that the  
18 organization send them information, including information  
19 conveyed on an organization's web site."

20           **SECTION 4.** A new section of the Campaign Reporting Act is  
21 enacted to read:

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

23           A. A person, other than a candidate, who expends  
24 more than two thousand dollars (\$2,000) on a communication or a  
25 series of communications within thirty days before a primary

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1 election or sixty days before a general election that  
2 constitutes express advocacy or the functional equivalent of  
3 express advocacy shall specify on the communication:

4 (1) the words "authorized by" and the name,  
5 address and phone number of a responsible officer who  
6 authorized the communication;

7 (2) the words "paid for by" and the name of the  
8 person who paid for the communication; and

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

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

25 C. This section does not apply to:

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

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

9 (3) communications from an organization to its  
10 own members or to persons who have requested that the  
11 organization send them information, including information  
12 conveyed on an organization's web site."

13 SECTION 5. Section 1-19-26 NMSA 1978 (being Laws 1979,  
14 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,  
15 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended  
16 to read:

17 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
18 Act:

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

25 B. "anonymous contribution" means a contribution

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1 the contributor of which is unknown to the candidate or the  
2 candidate's agent or the political committee or its agent who  
3 accepts the contribution;

4 C. "bank account" means an account in a financial  
5 institution located in New Mexico;

6 D. "campaign committee" means two or more persons  
7 authorized by a candidate to raise, collect or expend  
8 contributions on the candidate's behalf for the purpose of  
9 electing the candidate to office;

10 E. "candidate" means an individual who seeks or  
11 considers an office in an election covered by the Campaign  
12 Reporting Act, including a public official, who either has  
13 filed a declaration of candidacy or nominating petition or:

14 (1) for a non-statewide office, has received  
15 contributions or made expenditures of one thousand dollars  
16 (\$1,000) or more or authorized another person or campaign  
17 committee to receive contributions or make expenditures of one  
18 thousand dollars (\$1,000) or more for the purpose of seeking  
19 election to the office; or

20 (2) for a statewide office, has received  
21 contributions or made expenditures of two thousand five hundred  
22 dollars (\$2,500) or more or authorized another person or  
23 campaign committee to receive contributions or make  
24 expenditures of two thousand five hundred dollars (\$2,500) or  
25 more for the purpose of seeking election to the office or for

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1 candidacy exploration purposes in the years prior to the year  
2 of the election;

3 F. "contribution" means a gift, subscription, loan,  
4 advance or deposit of money or other thing of value, including  
5 the estimated value of an in-kind contribution, that is made or  
6 received for a political purpose, including payment of a debt  
7 incurred in an election campaign, but "contribution" does not  
8 include the value of services provided without compensation or  
9 unreimbursed travel or other personal expenses of individuals  
10 who volunteer a portion or all of their time on behalf of a  
11 candidate or political committee, nor does it include the  
12 administrative or solicitation expenses of a political  
13 committee that are paid by an organization that sponsors the  
14 committee;

15 G. "deliver" or "delivery" means to deliver by  
16 certified or registered mail, telecopier, electronic  
17 transmission or facsimile or by personal service;

18 H. "election" means any primary, general or  
19 statewide special election in New Mexico and includes county  
20 and judicial retention elections but excludes municipal, school  
21 board and special district elections;

22 I. "election year" means an even-numbered year in  
23 which an election covered by the Campaign Reporting Act is  
24 held;

25 J. "expenditure" means a payment, transfer or

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1 distribution or obligation or promise to pay, transfer or  
2 distribute any money or other thing of value for a political  
3 purpose, including payment of a debt incurred in an election  
4 campaign or pre-primary convention, but does not include the  
5 administrative or solicitation expenses of a political  
6 committee that are paid by an organization that sponsors the  
7 committee;

8 K. "express advocacy" means any communication that  
9 asks the recipient to vote for or against a specific candidate  
10 and that is distributed via broadcast, cable, satellite, print  
11 or electronic media to voters living in the district that the  
12 candidate seeks to represent;

13 L. "functional equivalent of express advocacy"  
14 means any communication that, when taken as a whole, can have  
15 no reasonable interpretation other than as advocating the  
16 election or defeat of a candidate, taking into account whether  
17 the communication mentions a candidate or a political party, or  
18 takes a position on a candidate's character, qualifications or  
19 fitness for office and that is distributed via broadcast,  
20 cable, satellite, print or electronic media to voters living in  
21 the district that the candidate seeks to represent;

22 M. "lobbyist" means:

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

25 (2) a person who was registered as a lobbyist

1 at any time in the twelve months prior to making a  
 2 contribution; and

3 (3) the spouse or a dependent child of a person  
 4 described in Paragraph (1) or (2) of this subsection;

5 ~~[K.]~~ N. "person" means an individual or entity,  
 6 including a business entity, union or nonprofit organization;

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

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

19 ~~(2) a single individual whose actions represent~~  
 20 ~~that the individual is a political committee; and~~

21 ~~(3) a person or an organization of two or more~~  
 22 ~~persons that within one calendar year expends funds in excess~~  
 23 ~~of five hundred dollars (\$500) to conduct an advertising~~  
 24 ~~campaign for a political purpose] an association of two or more~~  
 25 persons, other than a candidate or campaign committee,

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1 organized or operated for the primary purpose of engaging in  
2 express advocacy or the functional equivalent of express  
3 advocacy or for the passage or defeat of a ballot question  
4 submitted to the voters in an election;

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

9 [N-] Q. "prescribed form" means a form or  
10 electronic format prepared and prescribed by the secretary of  
11 state;

12 R. "principal of a state contractor or prospective  
13 state contractor" means, in addition to the state contractor or  
14 prospective state contractor itself:

15 (1) a person who is a member of the board of  
16 directors of, or has an ownership interest in, a state  
17 contractor or prospective state contractor, except for a person  
18 who owns less than five percent of the shares of a state  
19 contractor or prospective state contractor that is a publicly  
20 traded corporation;

21 (2) a person who is employed as the chief  
22 executive officer, president or equivalent top management  
23 position of a state contractor or prospective state contractor;

24 (3) an agent seeking a state contract for a  
25 state contractor or prospective state contractor;

1           (4) the spouse or a dependent child of a person  
 2 described in Paragraphs (1) through (3) of this subsection; or

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

5           S. "prospective state contractor" means a person  
 6 that responds to a solicitation for or seeks a state contract  
 7 until the contract has been entered into or the solicitation  
 8 canceled; but "prospective state contractor" does not include  
 9 the state or a political subdivision of the state or any full-  
 10 time or part-time employee of the state or a political  
 11 subdivision of the state in that person's capacity as an  
 12 employee of the state or a political subdivision of the state  
 13 or a health care professional providing services under a  
 14 medicaid provider agreement;

15           ~~[O.]~~ T. "proper filing officer" means either the  
 16 secretary of state or the county clerk as provided in Section  
 17 1-19-27 NMSA 1978;

18           ~~[P.]~~ U. "public official" means a person elected to  
 19 an office in an election covered by the Campaign Reporting Act  
 20 or a person appointed to an office that is subject to an  
 21 election covered by that act; ~~and~~

22           ~~Q.]~~ V. "reporting individual" means every public  
 23 official, candidate or treasurer of a campaign committee and  
 24 every treasurer of a political committee;

25           W. "state agency" means an office, department,

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1 board, council, commission, institution or other agency in the  
2 executive, legislative or judicial branch of state government;

3 X. "state contract" means an agreement or  
4 transaction, other than a contract issued through a sealed bid  
5 process or a live auction, with a state agency having a value  
6 of fifty thousand dollars (\$50,000) or more or a combination or  
7 series of such agreements or transactions having a value of  
8 fifty thousand dollars (\$50,000) or more in a fiscal year for:

9 (1) the rendition of services, including  
10 professional services and financial services;

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

13 (3) the construction, alteration or repair of  
14 any public building or public work;

15 (4) the acquisition, sale or lease of any land  
16 or building;

17 (5) a licensing arrangement;

18 (6) a loan or loan guarantee; or

19 (7) the purchase or sale of financial  
20 securities or instruments or the investment of public money;

21 Y. "state contractor" means a person that enters  
22 into a state contract, which person shall be deemed to be a  
23 state contractor until the termination of the contract; but  
24 "state contractor" does not include the state or a political  
25 subdivision of the state or any full-time or part-time employee

1 of the state or a political subdivision of the state in that  
2 person's capacity as an employee of the state or political  
3 subdivision of the state or a health care professional  
4 providing services under a medicaid provider agreement; and

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

10 SECTION 6. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2011.

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