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HOUSE BILL 604

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

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO ELECTIONS; PROHIBITING CERTAIN CONTRIBUTIONS BY LOBBYISTS AND THE PRINCIPALS OF STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS; 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.--

A. A lobbyist shall not make a contribution to or

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1 solicit a contribution for the benefit of a candidate for  
2 nomination or election to a state public office, a campaign  
3 committee of a candidate for state public office or a state- or  
4 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.

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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 for state  
10 public office, who engages in express advocacy or the  
11 functional equivalent of express advocacy shall report the  
12 details of the communication to the office of the secretary of  
13 state if:

14                   (1) the total price of the communication,  
15 including production and distribution costs, is more than two  
16 thousand dollars (\$2,000); and

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

19           B. The report shall include the name and address of  
20 the person making the communication and the name and address of  
21 a responsible officer who authorized the communication, a  
22 digital or print copy of the communication, the amount of the  
23 expenditure and the names and addresses of all contributors who  
24 requested that their contributions be used to fund express  
25 advocacy or the functional equivalent of express advocacy or

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1 who contributed in response to a solicitation of funds to be  
2 used for express advocacy or the functional equivalent of  
3 express advocacy. The report must be received by the office of  
4 the secretary of state within five business days of the date on  
5 which the communication is first distributed.

6 C. This section does not apply to:

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

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

15 SECTION 4. A new section of the Campaign Reporting Act is  
16 enacted to read:

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

18 A. A person, other than a candidate for state  
19 public office, who makes a communication that constitutes  
20 express advocacy or the functional equivalent of express  
21 advocacy must specify on the communication:

22 (1) the words "authorized by" and the name of a  
23 responsible officer who authorized the communication;

24 (2) the words "paid for by" and the name of any  
25 person who contributed at least one thousand dollars (\$1,000)

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1 toward the funding of the communication and who requested that  
2 the contribution be used to fund express advocacy or the  
3 functional equivalent of express advocacy or who contributed in  
4 response to a solicitation of funds to be used for express  
5 advocacy or the functional equivalent of express advocacy; and

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

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

22 C. This section does not apply to:

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

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

6                   **SECTION 5.** Section 1-19-26 NMSA 1978 (being Laws 1979,  
7 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,  
8 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended  
9 to read:

10                   "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
11 Act:

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

18                   B. "anonymous contribution" means a contribution  
19 the contributor of which is unknown to the candidate or the  
20 candidate's agent or the political committee or its agent who  
21 accepts the contribution;

22                   C. "bank account" means an account in a financial  
23 institution located in New Mexico;

24                   D. "campaign committee" means two or more persons  
25 authorized by a candidate to raise, collect or expend

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1 contributions on the candidate's behalf for the purpose of  
2 electing the candidate to office;

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

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

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

21 F. "contribution" means a gift, subscription, loan,  
22 advance or deposit of money or other thing of value, including  
23 the estimated value of an in-kind contribution, that is made or  
24 received for a political purpose, including payment of a debt  
25 incurred in an election campaign, but "contribution" does not

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1 include the value of services provided without compensation or  
2 unreimbursed travel or other personal expenses of individuals  
3 who volunteer a portion or all of their time on behalf of a  
4 candidate or political committee, nor does it include the  
5 administrative or solicitation expenses of a political  
6 committee that are paid by an organization that sponsors the  
7 committee;

8 G. "deliver" or "delivery" means to deliver by  
9 certified or registered mail, telecopier, electronic  
10 transmission or facsimile or by personal service;

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

15 I. "election year" means an even-numbered year in  
16 which an election covered by the Campaign Reporting Act is  
17 held;

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

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1           K. "express advocacy" means any communication that  
2 asks the recipient to vote for or against a specific candidate  
3 for state public office and that is distributed via broadcast,  
4 cable, satellite, print or electronic media to voters living in  
5 the district that the candidate seeks to represent; but  
6 "express advocacy" does not include communications from an  
7 organization to its own members or to persons who have  
8 requested that the organization send them information,  
9 including information conveyed on an organization's web site;

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

24           M. "lobbyist" means:

25           (1) a person required to register as a lobbyist

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1 pursuant to the Lobbyist Regulation Act;

2 (2) a person who was registered as a lobbyist  
3 at any time in the twelve months prior to making a  
4 contribution; and

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

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

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

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

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

23 (3) a person or an organization of two or more  
24 persons that within one calendar year expends funds in excess  
25 of five hundred dollars (\$500) to conduct an advertising

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1 campaign for a political purpose;

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

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

9 R. "principal of a state contractor or prospective  
10 state contractor" means, in addition to the state contractor or  
11 prospective state contractor itself:

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

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

21 (3) an agent seeking a state contract for a  
22 state contractor or prospective state contractor;

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

25 (5) a political committee established by or on

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1 behalf of a person described in this subsection;

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

12           ~~[Θ.]~~ T. "proper filing officer" means either the  
13 secretary of state or the county clerk as provided in Section  
14 1-19-27 NMSA 1978;

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

19           ~~Q.]~~ V. "reporting individual" means every public  
20 official, candidate or treasurer of a campaign committee and  
21 every treasurer of a political committee;

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

25           X. "state contract" means an agreement or

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1 transaction with a state agency having a value of fifty  
2 thousand dollars (\$50,000) or more or a combination or series  
3 of such agreements or transactions having a value of fifty  
4 thousand dollars (\$50,000) 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 or  
8 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 Y. "state contractor" means a person that enters  
18 into a state contract, which person shall be deemed to be a  
19 state contractor until the termination of the contract; but  
20 "state contractor" does not include the state or a political  
21 subdivision of the state or any full-time or part-time employee  
22 of the state or a political subdivision of the state in that  
23 person's capacity as an employee of the state or political  
24 subdivision of the state or a health care professional  
25 providing services under a medicaid provider agreement; and

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1                   Z. "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                   SECTION 6. SEVERABILITY.--If any part or application of  
7 this act is held invalid, the remainder of its application to  
8 other situations or persons shall not be affected.

9                   SECTION 7. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2011.