

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 02/19/21
LAST UPDATED 03/15/21 HB _____
SHORT TITLE Segregated Bank Account SB 387/aSfI#1/ec
ANALYST Nichols

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

State Ethics Commission (SEC)

SUMMARY

Synopsis of SF1 #1 Amendment

The Senate Floor #1 amendment to Senate Bill 387 adds a new section to the bill proposing new material in the Election Code that would require a person serving in an office covered by the Campaign Reporting Act (CRA) who is also a candidate for federal office to file a report for every ten days of the prohibited period with the Secretary of State (SOS) disclosing individuals from whom campaign contributions were received or pledged for the federal office. Reports must be filed within two days of the end of each ten-day period.

The amendment also adds an emergency clause to the bill. The amended bill would take effect immediately upon signature by the governor.

The CRA prohibits elected officials, including legislators, from knowingly soliciting contributions during a prohibited period beginning January 1 prior to any regular session of the Legislature or, in the case of a special session, after the proclamation has been issued, and ending upon adjournment of the session. The act also prohibits the governor from knowingly soliciting contributions during a prohibited period beginning January 1 prior to any regular session of the Legislature or, in the case of a special session, after the proclamation has been issued, and ending 20 days after adjournment of the session.

It is not clear whether the new material would be part of the CRA or not, and SOS notes there is thus ambiguity as to whether the penalty and enforcement provisions of the CRA would apply. While the State Ethics Commission has jurisdiction over the CRA, it is not clear if it would have jurisdiction to investigate and enforce new provisions related to this bill. SOS also notes that the definition of a “candidate” is different under federal and state law, with federal candidates not required to register until an individual raises or spends \$5,000.

The amendment would require elected officials who are also candidates for federal office to report on campaign contributions during the prohibited period. However, the Ethics Commission notes that to the extent that state statute applies to fundraising activities for federal office, it could be subject to preemption by federal election laws, as state laws that place a limitation on fundraising for federal campaigns are unenforceable. The Ethics Commission points to a reading of the Federal Election Campaign Act by the United States Court of Appeals for the Eighth Circuit recognizing that “the statute [...] preempts laws governing ‘the behavior of candidates—including, for example, the filing of reports disclosing the names and occupations of campaign contributors.’” It is therefore unclear if a requirement for state officials running for federal office to file campaign contribution reports would be enforceable.

Synopsis of Original Bill

Senate Bill 387 would amend the Campaign Reporting Act to add a condition for exempting certain contributions from reporting requirements. To be exempt from reporting requirements, campaign contributions must be deposited in a segregated bank account that is not used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee.

FISCAL IMPLICATIONS

None anticipated.

SIGNIFICANT ISSUES

Under current statute, contributions are exempt from reporting requirements if the contributor requests in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee.

SB387 would require the funds also be deposited in a segregated bank account.

SOS notes the bill would provide protection for “hybrid” organizations that make campaign expenditures, which they are required to disclose, but also accept contributions from donors for nonpolitical purposes that they are not required to disclose. By allowing organizations to separate nonpolitical funds from political funds, entities would only be required to disclose political funding.

AN/al/sb/al/rl