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FISCAL IMPACT REPORT

SPONSOR Wirth/Smith, JE **ORIGINAL DATE** 2/12/16
LAST UPDATED 2/16/16 **HB** _____

SHORT TITLE Campaign Finance Disclosure **SB** 11/aSRC/aSFI#1

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal implications below.

Conflicts with HB80, 105, 124, 313 and SB 12, 69, 124, 261

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General’s Office (AGO)

Secretary of State (SOS)

SUMMARY

Synopsis of Senate Floor Amendment

The Senate Floor Amendment to Senate Bill 11 strikes the Senate Rules Committee Amendment and clarifies that election means any state or county election for a candidate or ballot measure, but excludes federal, municipal, school board and special district elections.

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 11 amends language to do the following: include primary, general, or statewide special elections in the definition of election and reflect this change throughout the bill; remove “made or” from the language regarding expenditure and contribution reporting to only leave requirements for reporting expenditures made or contributions received; and, remove language requiring reporting of independent expenditures at the earlier of two times, while maintaining both options.

Synopsis of Bill

Senate Bill 11 amends The Campaign Reporting Act (CRA), Section 1-19-25 NMSA 1978 et. seq., to:

- require reporting of independent expenditures (Section 1);
- require disclaimers in advertisements, revealing the name of the candidate, committee or other person who authorized and paid for the advertisement (Section 2);
- redefine “political committee” and “political purpose” (Section 3);
- define “advertisement”, “ballot measure”, “campaign expenditure”, “coordinated expenditure”, “independent expenditure”, and “political party” (Section 3);
- require all reporting individuals to file with the Secretary of State (SOS) reports of expenditures and contributions and statements of no activity when required by the CRA (Section 5);
- amend reporting requirements regarding timing (Section 6);
- amend reporting requirements regarding contribution amount (Sections 6 and 8), including excepting political committees that make only independent expenditures or contributions to political committees that are deposited in a segregated bank account that may only be used to make independent expenditures from limitations on contributions to political committees (Section 12(G));
- provide a \$25 limit on cash contributions at a special event (Section 8);
- prohibit a person from making contributions or expenditures to conceal the names of persons who are the true source of funds used to make independent expenditures (Section 10);
- permit the AG or DA to bring a civil action in District Court for a violation of the CRA or to prevent a violation of the CRA without a referral from the Secretary of State (SOS), and increases the civil penalty to up to \$1,000 for each violation, not to exceed \$20,000 (Section 11);
- require all contributions in excess of the total contribution limits to be deposited in the Public Election Fund upon a finding by a District Court, rather than the SOS, that the contribution limits have been exceeded; and
- require the SOS, in consultation with the AG, to promulgate rules to implement the SB 11 amendments to the CRA by December 31, 2016.

SB 11 repeals Sections 1-19-16 and 1-19-17 NMSA 1978 providing penalties for certain campaign practices.

The effective date of the Act is November 9, 2016.

FISCAL IMPLICATIONS

The SOS states that significant changes would need to be made to the campaign finance information system in order to implement the provisions of SB 11. In a fiscal impact report for House Bill 105, SOS estimated the cost of upgrading the current campaign finance information system to be approximately \$985 thousand with a recurring system maintenance cost of \$75 thousand.

In addition to costs incurred for IT system improvements, SB 11 requires the AGO and SOS to work together to promulgate rules necessary for the implementation of SB 11’s provisions. In

addition, AGO will be authorized to investigate and prosecute CRA violations without a referral from SOS. There is no appropriation contained for the AGO or SOS, so these increased costs will need to be absorbed in the operating budgets of the agencies.

SIGNIFICANT ISSUES

SOS writes:

The current Campaign Finance Information System (CFIS) does not have the capability to accommodate the provision outlined in section one as follows:

1. CFIS cannot accept reports of only expenditures as it works more like a bank account where you have to have a positive balance to draw upon before reporting expenditures. This would require a system design change to allow for an expenditure only report.
2. CFIS does not currently have the capability to enable reporting at differing and staggering due dates rather you must set up specific and static report due dates according to a specific reporting schedule. This would require a significant design change to allow for reporting on an as needed basis not on a specific filing schedule.
3. CFIS does not currently have the ability to allow entities not already pre-registered with the office as a reporting entity, such as a political committee, to file an electronic report. The system would be required to allow for online registration for a CFIS account.
4. CFIS does not allow for an expenditure to be reported that does not have a monetary value. Section 1, subsection B (2) of this bill would require system changes to allow for the reporting of a description of an independent expenditure that may not have an assigned monetary value.
5. CFIS was designed to “balance” all financial reports requiring the next filing report to have the same starting balance of the closing balance of the previous report. It is designed to show all debits and credits and function similar to a checking account record. This base system design does not support much of the needed changes outlined in this bill.

Section four requires the identification of any bank account to be used by the committee be disclosed. The information contained in CFIS is public and the requirement to obtain a bank account number would require additional security measures to protect this private information in a system otherwise used to disclose and disseminate public information. CFIS does not have the capability to list more than one bank account per committee, an enhancement will be required to allow for multiple account listings.

TECHNICAL ISSUES

AGO suggests combining subsections B and C will now apply to all violations of the of the Act, whereas in the current law the penalties differ for (i) unlawful solicitation and the making or acceptance of an unlawful contribution (current subsection B), and (ii) all other violations of the Act (current subsection C).

SOS suggests changing the effective dates to give agencies additional time to implement changes and promulgate rules:

“The SOS suggests changing the effective dates outlined in the bill. Section 14 requires the SOS and AG to promulgate rules to implement the provisions of this Act by December 31, 2016. This is only a month after the SOS will have completed the canvass of the results of the 2016 presidential election and won’t have the appropriate resources available to develop the rules. A more realistic target effective date would be sometime in 2017.

“Additionally, the effective date for the provisions of this act is listed as November 9, 2016. Again, the SOS will not have the resources to make the significant system changes required to accomplish these new reports. A suggested effective date is January 1, 2018 in order to accomplish all requirements or at least provide until October 2017 which is the unofficial start of the 2018 campaign cycle.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SOS states:

Status Quo. The current campaign reporting act will continue to have unconstitutional provisions and will continue to have serious holes in relation to addressing independent expenditures. Spending by entities who are independent from candidates has grown significantly since 2010, and under federal law, is not subject to contribution limits. In 2012, the SOS was enjoined from enforcing certain provisions of the Campaign Reporting Act with regard to independent expenditures. The same injunctive order in *Republican Party v. King* determined that the Act's contribution limits would apply to coordinated expenditures. In the absence of definitions of independent expenditures and coordinated expenditures within the existing Act, the SOS does not have clear guidance regarding enforcement under either the Act or the case law.

CJ/jle/jll/al