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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	<u>SJC</u>	<b>ORIGINAL DATE</b>	<u>1/26/17</u>
		<b>LAST UPDATED</b>	<u>3/14/17</u>
<b>SHORT TITLE</b>	<u>Campaign Finance Fixes</u>	<b>HB</b>	<u>96/SJCS/aSF1#1/aHJC/</u>
		<b>SB</b>	<u>HF1#1</u>
		<b>ANALYST</b>	<u>Esquibel/Daly</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$985.0	\$100.0	\$1,085.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

The SJC substitute for Senate Bill 96 relates to HB 119, Prohibited Period for Candidate Contribution, and conflicts with SB72, Public Accountability Act and HB10, Public Accountability Act.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts  
 Attorney General's Office  
 Secretary of State's Office

### SUMMARY

#### Synopsis of HF1#1

House Floor amendment #1 provides a new exemption to the definition of "contribution" for incidental use of a candidate's personal property, home or business office for campaign purposes subject to a fair market value cap of \$50 for each occurrence.

#### Synopsis of HJC Amendments

The House Judiciary Committee amendments to the Senate Judiciary Committee Substitute for Senate Bill 96:

- Reinstates existing subsection C in Section 1-19-26.1 NMSA 1978 as subsection D, which exempts political committees from other states from the requirements of that section if they are registered with the federal election commission, if they report on federal

reporting forms filed with that commission all expenditures for and contributions made to reporting individuals in New Mexico, and if they file with the SOS either the full report or the cover sheet and that portion that contains information on expenditures for and contributions to reporting individuals in New Mexico;

- Clarify that candidates cannot accept a contribution or more than \$25 in cash at a special event from any one contributor; and
- Provide an exception to the primary election cycle contribution limits to allow a person who has made the maximum primary election cycle contribution to make a contribution attributable to the general election as long as those funds are not used for any expenditures related to the primary election cycle, and directing the return of those funds to the persons who made those contributions or their deposit in the public election fund if the candidate is not on the general election ballot.

### Synopsis of SFL Amendment

Senate floor amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 96 changed the effective date of the bill from July 1, 2017 to January 1, 2018.

### Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 96 (SB96/SJCS) revises the Campaign Reporting Act to define independent expenditures and coordinated expenditures, and includes specific reporting requirements of individuals or entities that make independent expenditures as defined by the bill. Section 1 of SB96/SJCS removes duplicate language requiring independent expenditures to be reported electronically using software approved by the Secretary of State's Office (SOS), as the Act already requires entities to report electronically.

The definitions of "election cycle," "general election cycle," and "primary election cycle" are amended in section 1-1-3.1, and further sections of the bill are aligned to require reporting based upon these corresponding election cycles.

SB96/SJCS deletes Sections 1-19-16 and 1-9-17 NMSA 1978, as they have been declared unconstitutional based upon United States Supreme Court rulings and an opinion from the New Mexico Attorney General and replaces those sections with new material which requires constitutional disclaimers on certain campaign materials.

The bill deletes the definition of "advertising campaign" and replaces it with a specific definition of "advertisement." The bill also revises the definitions included within the Campaign Reporting Act including adding a definition of "campaign expenditure," changes the contribution thresholds of what constitutes a "candidate," and changes the definition of what constitutes a "political committee" and what they must disclose when filing a statement of organization with the Secretary of State's Office (SOS).

Section 1-19-29 is revised to clarify that reporting individuals are required to report their contributions and expenditures electronically to the Secretary of State. Campaign finance reporting deadlines are revised to be no later than the date of the deadline. SB96/SJCS moves the report normally due 30 days after the general election to instead be due no later than January 7. Also included are revisions to reporting thresholds and reporting requirements for independent and coordinated expenditures and additional reporting after a statewide election for expenditures

and contributions not otherwise previously reported. The bill also provides for an allowance for a political committee to cancel its registration after a period of no activity by filing a request with the Secretary of State.

The bill increases the ticket cost for special events from \$15 to \$25 and does not allow any person to contribute more than \$25 cash at a special event.

SB96/SJCS amends Section 1-19-34.3 explicitly prohibiting a person from concealing the true source of funds used to make independent expenditures.

The bill simplifies language in Section 1-19-34.7 setting a flat limit on contributions to all candidates and PACs to \$5,000 per election cycle unless those contributions are from a candidate's own personal funds or are related to an independent expenditure. SB96/SJCS further specifies a primary election candidate who does not move on to the general election shall remain subject to the primary election cycle contribution limits and shall not receive funds beyond those limits to pay for primary election expenditures. The bill changes the date in which contribution limits are increased from the day after the general election to January 1.

The bill allows the Attorney General (AG) or a District Attorney (DA) to bring a civil action in District Court for a violation of the Campaign Reporting Act without a referral from the SOS and increases the civil penalty.

The bill requires the Secretary of State's Office to promulgate rules in consultation with the Attorney General's Office by August 1, 2017.

## **FISCAL IMPLICATIONS**

The bill does not include an appropriation.

The Secretary of State's Office (SOS) indicates the current campaign finance reporting system administered by the SOS will require significant modifications to accommodate the provisions of this bill. The SOS submitted an information technology (IT) special appropriation request for \$985 thousand for consideration during this legislative session to replace the current Campaign Finance Information System (CFIS) to accommodate the system modifications mandated in HB105 passed during the 2016 session. If this special appropriation is approved, the SOS would be able to also accommodate the requirements of SB96/SJCS in the new system design. Once implemented, the CFIS would need annual maintenance, repairs and upgrades which have an additional fiscal impact of approximately \$100 thousand annually based on current IT systems at the Secretary of State's Office.

The LFC recommendation for FY18 IT systems does not including funding for CFIS.

## **PERFORMANCE IMPLICATIONS**

The Secretary of State's Office (SOS) indicates the bill requires reports to be subscribed and sworn to by the candidate, or the treasurer of a political committee, or in the case of the judicial candidates, by the treasurer of the candidate's campaign committee. These requirements comply

with current requirements of the New Mexico code of judicial conduct.

The SOS indicates the bill removes unconstitutional provisions from the Act and replaces them with provisions based on the limitations established by the federal courts making education, compliance, and enforcement easier for the SOS. Also, the bill simplifies contributions for all candidates and PACs to \$5 thousand which makes education, enforcement, and administration regarding contribution limits easier for the SOS. Lastly, the provisions of the bill that address independent and coordinated expenditures provide clearer guidance for the SOS regarding enforcement under the Act or case law.

## **ADMINISTRATIVE IMPLICATIONS**

The Secretary of State's Office (SOS) indicates changes to the definition of the primary and general election cycles should make understanding reporting requirements in relation to each cycle easier which may increase overall compliance with the Campaign Reporting Act (CRA).

The Attorney General's Office indicates SB96/SJCS authorizes the AG to institute civil actions for violations of the CRA, but provides no funding for additional staff.

The bill also proposes the SOS consult with the Attorney General for the promulgation of rules.

## **CONFLICT**

Senate Bill 72 and House Bill 10 propose a Public Accountability Board be established which would be charged with compliance with the Campaign Reporting Act instead of the SOS. If these bills were enacted it would create conflicting language with SB96/SJCS.

## **TECHNICAL ISSUES**

The SOS indicates the sponsor may wish to consider a modified effective date for the bill of January 1, 2018 to allow the SOS time to accomplish all the IT system requirements needed in order to accommodate the additional reporting requirements outlined in this bill, in addition to the fiscal implications outlined above. Given the state's current financial outlook, it may be necessary to phase the changes to the Campaign Finance Information System (CFIS) necessary to accommodate the requirements of SB96/SJCS.

The Senate floor amendment addressed the first issue outlined in the paragraph above and changed the effective date of the bill to January 1, 2018.

## **OTHER SUBSTANTIVE ISSUES**

The Secretary of State's Office (SOS) indicates Section 1 of the bill requires reporting of independent expenditures triggered by different times in the election cycle and by different dollar amounts. Further, these entities may or may not be registered as a political committee with the SOS. The SOS' 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, the system requires specific and static report due dates be established within it 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, to file an electronic report. The system would be required to allow for online registration for a CFIS account to accommodate this component of the bill.
  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 4 requires disclosure of the identification of any bank account to be used by the committee. The Secretary of State’s current Campaign Finance Information System (CFIS) does not have the capability to list more than one bank account per committee or provide for different reports for each account in the event of a reporting entity having multiple account listings.

Additionally, CFIS does not have the capability to track and monitor aggregate contributions from all contributors.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Attorney General’s Office indicates the current Campaign Reporting Act will continue to have unconstitutional provisions and will continue to have serious considerations 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.

RAE/jle/al/jle