

LFC Requester:	Hilla, Emily
-----------------------	---------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/23/2025 *Check all that apply:*
Bill Number: SB85 Original Correction
 Amendment Substitute

Sponsor: Peter Wirth, Heather Berghmans, Andrea Romero **Agency Name and Code** NMSTO 39400
Short Title: Campaign Finance Charges **Person Writing** Laura Montoya
Title: _____ **Phone:** 505-955-1121 **Email** Laura.montoya@sto.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1, at paragraph P, changes the definition of “expenditure.” Previously, an expenditure was defined with reference to a “political purpose.” The term “political purpose” (under both the law as is and under this bill) is separately defined with reference to “supporting or opposing” a ballot question or candidate. The bill would remove the language “political purpose” from the definition of expenditure and broaden the definition to include payments made by a campaign or political committee, by a public official or candidate in support of the official or candidate’s campaign, or “to pay for an advertisement that refers to a candidate or ballot question.” This third part represents the significant change, broadening the scope of “expenditure” from payments for advertisements made to *support or oppose* a candidate or ballot question to advertisements that merely *refer* to a candidate or ballot question. Arguably this could extend the definition of “expenditure” (and thereby trigger campaign act reporting requirements) to non-partisan voter information groups and other non-profits that simply provide information with advocacy.

Section 2 adds “electronic communications” to reporting requirements that previously covered mass telephone calls. This appears to be intended to extend disclosures to text messages.

Section 3 appears to be technical fixes to reporting of independent expenditures, including provisions to exclude from reporting money received by an organization that is unconnected to the political activities. For example, the intent of these changes seems to apply to a situation like this. Under existing law, a company or organization that exists for purposes other than political activities may have to report under the campaign reporting act when it makes independent expenditures. The clarifications in this section mean that as long as the entity kept a segregated account for the political activities, reportable contributions do not include money received in the ordinary course of business unrelated to the political activities. As another example, an individual who made independent expenditures would not have to report their personal salary and so on.

Section 4(A) makes changes to the timing of interim reports. Although the reporting dates change, there is not change to the total time (seven days) between the close of the reporting period and the report due date. Section 4(B) does tighten the time between an election and the post-election reports.

This bill also removes the exemption for inactive political committees during a non-election year.

Section 5 adds a new rule stating, “It is unlawful for any person to make an expenditure to repay a loan that is received from the candidate that includes a rate of interest.”

Section 6 requires reports to include the terms of loans from candidates to their committees and evidence of those loans.

Together, the changes in section 5 and 6 appear designed to prevent candidates from making loans to their own campaigns and then benefitting (due to interest rates) when those loans are paid off by contributions.

Section 7 extends the legislative session fundraising prohibition to candidates, not just incumbents.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

While not directly addressing the issue of interest charged on a loan to a campaign, the most recent Supreme Court case to address similar issues, *Fed. Elec. Comm'n v. Cruz*, 596 U.S. 289, held that a restriction on the use of post-election contributions to pay back candidate loans to a campaign violated the candidate's First Amendment rights.

Section 3: There are a lot of different deadlines that may become cumbersome during a campaign. January 7th is the new date to report but could cause issues of transparency or confusion because if a candidate is allowed to receive donations up until the 31st of December, many of the act blue donations will not come in until after the 7th of January to show on the report.

Section 4: The change from the "second Monday in April and October to "Tuesday after the first Monday in June and on January 7th of the following year "Tuesday after the first Monday in June and December 31 is confusing. If you receive payment on the 31st, it is not prudent to document them until you actually receive the funds and they have been posted in your bank account.

Page 15, section 2 adds in the sale of property. Why is anyone selling property for campaigns?

Page 18, section C. Also doesn't make logical sense because no one is factoring in that when you receive donations, especially from the mail or act blue prior to the December 31 deadline, you can't document what has not yet been deposited or posted but technically, you should not be in violation because the donation was sent before the deadline.

Section 7: This section makes the campaign reporting more fair because it now includes both the incumbent and candidate whereas before, the incumbent was not permitted to receive donations during January 1 to end of session and now, it requires the same rules for the candidate.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The date of January 7th is not fair to any candidate or incumbent who has to report donations that

were sent or given to them by December 31st. Act Blue donations are only sent once a month, and a campaign cannot deposit until the check is received. Once they deposit, the check has to be posted by the bank. The same situation happens if someone mails a check by December 31st.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The date of January 7th is not fair to any candidate or incumbent who has to report donations that were sent or given to them by December 31st. Act Blue donations are only sent once a month and a campaign cannot deposit until the check is received. Once they deposit, the check has to be posted by the bank. The same situation happens if someone mails a check by December 31st.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS