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FISCAL IMPACT REPORT

LAST UPDATED 2/13/25

SPONSOR Rep. Romero/Sens. Berghmans and Wirth ORIGINAL DATE 1/24/25

BILL

SHORT TITLE Campaign Finance Changes NUMBER Senate Bill 85/a

ANALYST Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	No fiscal impact	\$30.0	No fiscal impact	\$30.0	Nonrecurring	General Fund
Costs to State (NMCD)	No fiscal impact	Up to \$57.6	Up to \$86.4	Up to \$144.0	Recurring	General Fund
Cost to Counties	No fiscal impact	Up to \$19.2	Up to \$28.8	Up to \$48.0	Recurring	See Fiscal Implications
Total	No fiscal impact	Up to \$106.8	Up to \$115.2	Up to \$222	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

State Land Office (SLO)
 Secretary of State (SOS)
 State Ethics Commission (SEC)
 Office of the State Auditor (OSI)
 State Treasurer (STO)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of the Senate Floor Amendment to Senate Bill 85

The Senate Floor Amendment to Senate Bill 85 defines electronic communication as any form of communication that is broadcast, transmitted, stored or viewed using electronic media.

Synopsis of Senate Bill 85

Senate Bill 85 (SB85) amends sections of the Campaign Reporting Act [Sections 1-19-25 to 1-19-36 NMSA 1978] to expand definitions of expenditure and donations in campaigns.

Section 1 amends the definition of expenditure to specify that expenditure covers payments made by campaigns or political committees, by a public official or candidate in support of their

campaign, or to pay for an advertisement that refers to a candidate or ballot question.

Section 2 amends the statute to require campaigns and political committees to report on electronic communications in the same manner as telephone calls.

Section 3 amends state law covering independent expenditures, including requiring all persons who make independent expenditures to file a report with the Secretary of State (SOS), replaces “contribution” or variants thereof with “donation” or variants thereof, and defines donation as a payment or transfer or promise of payment or transfer to a person who makes independent expenditures, excluding ordinary business transactions, compensation or investment or sale proceeds, commercially reasonable loans, gifts, or personal loans from a family member.

Section 4 adjusts reporting deadlines for expenditures and contributions for reporting individuals and adds additional reporting requirements for certain expenditures in the days preceding an election. Additionally, Section 4 removes language exempting political committees from reporting in non-election years if they have not received any contributions or made any expenditures and allowing them to cancel registration if they have remained inactive for one year.

Sections 5 and 6 make it unlawful for a candidate or a candidate’s agent to use contributions to repay a loan received from the candidate that includes a rate of interest and requires reporting on loans that a candidate makes to their campaign committee.

Section 7 modifies the legislative prohibited period for political donations to include contributions from campaigns or political committees and adjusts the language to include special or extraordinary legislative sessions as prohibited periods.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SOS states the Campaign Reporting Act contains provisions regarding contribution limits to and from candidates and political committees. Individuals who knowingly and willfully violate the act are guilty of a misdemeanor and can be punished by a fine of up to \$1,000, imprisonment of up to one year, or both. The fiscal impact of this bill assumes the cost should any individual violating the Campaign Reporting Act to be punished to the highest degree allowable of imprisonment of up to one year.

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The New Mexico Corrections Department reports the average cost to incarcerate a single inmate in FY24 was \$57.6 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, Legislative Finance Committee staff estimate a marginal cost (the cost

per each additional inmate) of \$32.7 thousand per inmate per year across all facilities and estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB85's amendments are anticipated to increase the number of incarcerated individuals and increase the time they spend being incarcerated.

Overall, this analysis estimates Senate Bill 85 will result in additional incarceration costs of up to \$86.4 thousand per year per individual charged under the revised statute, based on the costs to incarcerate a single inmate at both NMCD and county jails. This analysis estimates the fiscal impact of the changes proposed by SB85 based on the costs of incarcerating one additional person annually.

SOS states the changes to the Campaign Reporting Act will require a \$30 thousand one-time cost to its information system to allow for appropriate disclosure of the terms of loans.

SIGNIFICANT ISSUES

SB85's changes require reporting of additional details on donors and contributions, specifically for independent expenditures, including the disclosure of contributions of \$1,000 or more. According to the Office of the State Auditor, the amendments would not place significant burdens on political campaigns and candidates for office.

The State Ethics Commission (SEC) outlines various significant issues related to SB85 (see agency analysis). Of note, the SEC points out that SB85 would require persons, including out-of-state groups, who make independent expenditures over a certain threshold to disclose the source of significant funds used to make independent expenditures, whether the donations were made or received to support or oppose a ballot question or candidate in a New Mexico election. The SEC states that "currently, the Campaign Report Act contains several significant loopholes regarding the disclosure of funding for independent expenditures" and that SB85's amendments could cure the "loopholes" currently permissible under the Act.

The State Treasurer's Office (STO) references a recent U.S. Supreme Court case that addressed similar issues as SB85. STO mentions that *Fed. Elec. Comm'n v. Cruz*, 596 U.S. 289, held a restriction on the use of post-election contributions to pay back candidate loans to a campaign violated the candidate's First Amendment rights. The New Mexico Attorney General (NMAG) references the same Supreme Court case, adding that the Court reasoned that lowering the probability that a loan would be repaid reduced the incentive to make the loan in the first place. NMAG mentions the likelihood of a legal challenge, which would be dependent on the prevalence of the practice of charging interest on candidate loans; the agency states that, if the practice is commonplace, a challenge is likely to occur.

Both the NMAG and STO mention concern for the January 7th deadline in SB85. While STO states this date change is not fair to a candidate or incumbent needing to report donations before December 31st, NMAG states that SB85 should clarify that a weekend tolls the new deadlines in the bill. STO adds that setting a reporting date of January 7th for donations received by December 31st could be burdensome and that donations may take longer to process depending on other factors, such as bank processing.

NMAG mentions the lack of definition of "electronic communications" in their analysis of the

original bill; however, the Senate Floor Amendment addresses this concern.

ADMINISTRATIVE IMPLICATIONS

The SEC has the authority to investigate and adjudicate administrative complaints alleging violations of the Campaign Reporting Act through civil action.

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