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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Feldman	<b>ORIGINAL DATE</b>	2/21/07	<b>HB</b>
		<b>LAST UPDATED</b>	3/16/07	
<b>SHORT TITLE</b>	Campaign Reporting Requirements	<b>SB</b>	800/aSF1 #1/aSF1 #2/aSF1 #3/aSF1 #4/aSF1#5 /aHVEC	
		<b>ANALYST</b>	Ortiz	

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of HVEC Amendment

House Voters and Elections Committee amendment strikes the second senate floor amendment, which makes it so that contributions to candidates for statewide and district offices and certain political committees are limited overall.

#### Synopsis of SFI#5 Amendment

Senate Floor Amendment 5 strike Senate Floor Amendment 4.

Synopsis of SFI#4 Amendment

Senate Floor Amendment 4 changes the effective date from July 1, 2007 to July 1, 3007.

Synopsis of SFI#3 Amendment

Senate Floor Amendment 3 adds that the bill relates to elections by limiting contributions to political campaigns.

Synopsis of SFI#2 Amendment

Senate Floor Amendment 2 makes it so that contributions to candidates for statewide and district offices and certain political committees are limited overall, not just to campaigns.

It also adds the following campaign contribution limitations:

1. During primary and general election periods an individual and political committee shall not contribute to another political committee if it will cause its aggregate amount of contributions to the political committee to exceed five thousand dollars.
2. During primary and general election periods, a political committee shall not accept a contribution from an individual or political committee that would cause the aggregate amount of contributions from the individual or political committee to exceed five thousand dollars.
3. Neither of the above two additions would apply to a qualified political party pursuant to the Election Code or to a national party committees registered with the federal election commission.

Synopsis of SFI#1 Amendment

Senate Floor Amendment 1 changes the effective date from July 1, 2007 to January 1, 2008.

Synopsis of Original Bill

Senate Bill 800 limits campaign contributions from persons or political committees to a campaign to \$2300 during each of the periods between the primary and general elections, and the general and primary elections. A candidate may not solicit or receive funds in excess of those amounts. The bill provides for an increase in those amounts after each general election based upon the consumer price index.

Senate Bill 800 would amend the Campaign Reporting Act (NMSA Sections 1-19-25 through 1-19-36) to impose its registration and reporting requirements on so-called third party expenditures groups defined as persons who are not affiliated with a campaign or political party, and who contribute more than \$500 in money or “things of value”, in the aggregate, in any calendar year to election campaigns or in attempts to influence the passage of constitutional amendments or other questions submitted to the voters. It would include individual persons, and organizations of two or more such persons, within the act’s definition of “political committees” and would therefore subject them to the provisions of the act. It would define expenditures from those individuals as “independent expenditures”. The bill imposes registration and reporting requirements on those persons, whether they are located in another state and are registered and file reports with the Federal Election Commission, since they make expenditures to affect

elections in New Mexico.

The bill would enact detailed reporting requirements for independent expenditures and prescribe the format and content of those reports. Reports of independent expenditures would be public records subject to inspection.

The bill also lowers the threshold for reporting, within 24 hours of receipt, contributions or pledges received after 5:00 p.m. on the Tuesday before an election for statewide elections from \$2500 to \$1000.

The bill also requires that all required reports submitted under the act be subscribed and sworn to, or electronically authenticated using an electronic signature.

The bill also requires disclosure of the employer of any person or entity making contributions of one hundred dollars (\$100) or more in the aggregate per election, on required reports.

The bill would also make it unlawful for a political committee or candidate to accept any cash contribution from a single source given in a twenty-four-hour period in excess of one hundred dollars (\$100).

The bill also confers authority on the Secretary of State to compel the production of books, records, etc. pursuant to a subpoena during her investigation into violations of the Campaign Reporting Act. It provides that failure to cooperate with an investigation is itself a violation of the act.

The bill also provides that if a reporting individual fails to file a report by the deadline imposed by the Campaign Reporting Act, the Secretary of State shall publish the individual's name on a list that includes all reporting individuals who failed to file a report by the appropriate deadline. The Secretary shall designate the individual on the list as delinquent and shall only remove the individual from the list when the individual satisfies the reporting requirements. The list shall be electronically accessible to the public via the internet pursuant to Section 1-19-32 NMSA 1978.

## **SIGNIFICANT ISSUES**

According to the Attorney General's Office the bill raises the basic issue of whether New Mexico should join the majority of other states in placing limits on campaign contributions. The bill does not impose limits on campaign expenditures. The United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976) upheld a federal law imposing campaign *contribution* limits, but ruled that portions of that law imposing campaign *expenditure* limits violated the First Amendment's protections regarding freedom of expression and association.

The AGO adds that the bill appears to require individuals, not affiliated with political action committees, political parties, or political campaigns, to register as "political committees" if they expend more than \$500 or provide things of value greater than that amount to political campaigns or in an attempt to influence voting on other questions in any calendar year. Those expenditures are deemed "independent expenditures" and individual donors would be required to report those expenditures in accordance with the act. Query: Should the bill limit the contributions to so-called independent expenditure political committees to the same extent as the

limits imposed on candidates to level the playing field?

### **FISCAL IMPLICATIONS**

Sums collected for the penalty would be deposited into the general fund.

### **ADMINISTRATIVE IMPLICATIONS**

The Secretary of State cites the need for two staff persons at the Secretary of State's office, including one investigator.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 821 is a duplicate. Relates to HB 818, 819, 821, 822, 823 and 553, and SB 400.

### **TECHNICAL ISSUES**

Notes the AGO, current law exempts out-of-state political committees from registration and disclosure requirements if they are registered with and report to the federal election commission. NMSA Section 1-19-26.1D. This bill would enact a new NMSA Section 1-19-26.1E which appears to except a political committee making independent expenditures in excess of \$500 per year (which now includes independent donors) from that exception, and therefore would subject those individuals to the registration and reporting requirements of New Mexico state law. However, the amendments require a careful reading in order to construe their provisions.

### **OTHER SUBSTANTIVE ISSUES**

According to the Attorney General's Office, the bill would impose criminal penalties for failing to "cooperate" with the Secretary of State during an investigation into violations of the Campaign Reporting Act, by making that failure in and of itself a violation of the act. (See NMSA Section 1-19-36, imposing misdemeanor criminal penalties for violations of the act.) This raises Fifth Amendment "self-incrimination" issues, as the bill appears to penalize persons who may not "cooperate" with the Secretary of State if they refuse to incriminate themselves during an investigation.

The new requirements, adds the AGO, also appear to apply to individuals located out-of-state whether they are registered with the Federal Election Commission and file reports with that Commission, because these groups are making expenditures to affect New Mexico elections. Generally, the FEC requires registration and filing with regard to Federal elections. The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued there under, supersede and preempt any provision of State law with respect to election to Federal office. Federal law supersedes state law concerning the organization and registration of political committees supporting Federal candidates; disclosure of receipts and expenditures by Federal candidates and political committees; and limitation on contributions and expenditures regarding Federal candidates and political committees. 11C.F.R.108.7. Presumably this bill will not be construed to impose its new requirements on contributions and expenditures for elections to Federal office.

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### **ALTERNATIVES**

The AGO suggests to Impose the same contribution limits that apply to candidates to the so-called third party (independent expenditure political committee that seek to affect the candidate's election. This would “level the playing field”. e.g.)

- On page 20, line 24, after “committee” insert “, political committee that makes independent expenditures”,
- On page 21, line 2 after “candidate” insert “or political committee that makes independent expenditures”.
- Repeat the same amendments to Subsection B on page 21, on lines 5 and 9 respectively.

### **POSSIBLE QUESTIONS**

1. How will this affect local governments?
2. Can the SOS handle the requirements of this bill with current resources?

EO/csd:nt