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FISCAL IMPACT REPORT

SPONSOR Martinez, K. & Sanchez, M. **ORIGINAL DATE** 03/06/09
LAST UPDATED _____ **HB** 891
SHORT TITLE Election Communication Contribution Reporting **SB** _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 99, HB 151, HB 244, HB 252, HB 253, HB 272, HB 495, HB 535, HB 550, HB 553, HB 614, HB 646, HB 686, HB 808, HB 850, HB 878, HB 883, SB 49, SB 94, SB 116, SB 128, SB 139, SB 140, SB 163, SB 247, SB 258, SB 262, SB 263, SB 269, SB 296, SB 346, SB 451, SB 521, SB 535, SB 555, SB 557 SB 606, SB 611, SB 613, SB 646, SB 652, SB 676, SB 678 & SB 693

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 Bill

House Bill 891 amends sections in the Charitable Solicitations Act, Section 57-22-1 *et seq.* NMSA 1978, setting forth reporting requirements for entities granted federal tax exempt status under Section 501(c) of the Internal Revenue Code of 1986 and engaged in electioneering communication. The new section requires that these tax-exempt organizations file a disclosure report regarding electioneering communications that occur both during the primary election and during the general election detailing:

1. all expenditures related to the electioneering communication, the purpose of the expenditure, and the recipient of the expenditure
2. each donation or allocation that exceeds \$5,000, if not previously reported
3. name and address of each donor
4. the date of the expenditure

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The bill describes in detail the deadlines for filing the activity report for electioneering communications occurring in both the primary and general elections.

The bill also requires that reports be filed electronically, allowing for entities to apply to the attorney general's office for exemption from this requirement in case of hardship. Finally, the new section requires that the attorney general ensure that these reports be public accessible and available for download, "to the greatest extent practicable".

HB 891 proposes to amend Section 57-22-3 to define the term electioneering communication, and explain the time periods corresponding to general election and primary election.

HB 891 defines electioneering communication to mean any radio, TV, cable or satellite broadcast, and any print advertisement that: refers to a clearly identified candidate for state office; is made during a primary or general election for the office sought by the candidate; and is targeted to the relevant electorate. The term does not include communications appearing in a news story, commentary or editorial distributed through print or broadcast, unless such print media or broadcasting facilities are owned or controlled by any political party, political committee or candidate.

Lastly, HB 891 proposes to amend Section 57-22-4 (A) and (B) to state that organizations exempt from the registration and reporting requirements of the Charitable Solicitations Act must still comply with the reporting requirements regarding electioneering communications set forth in the new section.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

SIGNIFICANT ISSUES

The AGO notes the State of New Mexico is on the verge of enacting the first ever limits on campaign contributions. If this bill or others like it do not pass, there is a likelihood that tax exempt organizations could become secret conduits for large campaign contributions. New Mexico has already experienced campaign "donations" being funneled through non-profit corporations.

In addition, the AGO provided the following:

This bill is specifically designed to follow the US Supreme Court's First Amendment rulings in *Regan v. Taxation with Representation*, 103 S.Ct. 1997 (1983) and *Cammarano v. United States*, 79 S.Ct. 524 (1959) in which the court held that the legislature can place conditions on tax exempt status even when it touches on First Amendment speech. It was permissible to deny 501(c)(3) status to an organization that wanted to engage in lobbying which is protected speech under the First Amendment. As the Court stated in *Regan* at pages 2000 and 2002:

Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as cash grants to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions

Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.

Therefore, by amending the Charitable Solicitations Act, there is a legal argument that this bill avoids campaign regulation of First Amendment speech. In short, this bill is narrowly tailored because it simply places on tax-exempt organizations a minimal disclosure requirement in addition to the disclosure requirements that already exist under the Act.

ADMINISTRATIVE IMPLICATIONS

The AGO shall ensure that, to the greatest extent practicable, the information required to be disclosed is publicly available through the AGO web site in a manner that is can be searched, sorted and can be downloaded.

RELATIONSHIP

SB 247, Election Agent Registration Requirements and SB 535, Election Definition of Political Committee amend the Campaign Reporting Act to regulate activity by non-profit organizations. However, the AGO notes there is a legal argument that both bills appear to run afoul of US Supreme Court authority, thereby infringing on speech protected by the first amendment.

HB 891 also relates to HB 808, Tax-Exempt Election Contributions & Reporting that also enacts and amends statutory sections in the Campaign Reporting Act, Section 1-19-25 et. seq. NMSA 1978.

HB also relates to other ethics bills as follows:

HB 99, Prohibit Former Legislators as Lobbyists

HB 151, State Ethics Commission Act

HB 244, Prohibit Contractor Contribution Solicitation

HB 252, Political Contributions to Candidates

HB 253, Quarterly Filing of Certain Campaign Reports

HB 272, Quarterly Campaign Report Filing

HB 495, Political Candidate & Committee Donations

HB 535, Lobbyist Identification Badges

HB 550, Local School Board Governmental Conduct

HB 553, Disclosure of Lobbyist Expenses

HB 614, State Ethics Commission Act

HB 646, School Board Candidate Contribution Info

HB 686, AG Prosecution of State Officer Crimes

HB 850, Governmental Conduct Act for All Employees

HB 878, State Contractor Registration & Info

HB 883, Clean Government Contracting Act
SB 49, Governmental Conduct Act For Public Officers
SB 94, Prohibit Former Legislators as Lobbyists
SB 116, Limit Contributions to Candidates & PACs
SB 128, Require Biannual Campaign Reports
SB 139, State Ethics Commission Act
SB 140, State Ethics Commission Act
SB 163, Prohibit Former Legislators as Lobbyists
SB 258, Contribution from State Contractors
SB 262, Political Contributions to Candidates
SB 263, Contractor Disclosure of Contributions
SB 269, State Bipartisan Ethics Commission Act
SB 296, State Contractor Contribution Disclosure
SB 346, Political Contributions to Candidates
SB 451, Contributions to PERA Board Candidates
SB 521, Campaign Contributions in Certain Elections
SB 555, Public Employee & Officer Conduct
SB 557, State Ethics Commissions Act
SB 606, Expand Definition of Lobbyist
SB 611, Investment Contractor Contributions
SB 613, Campaign Finance Changes
SB 646, Judicial Candidate Campaign Contributions
SB 652, Campaign Reporting Private Cause of Action
SB 676, School Board Candidate Contributions
SB 678, School Board Candidate Contributions
SB 693, Prohibit Certain Contributions to Candidates

TECHNICAL ISSUES

The AOC notes there is no definition for the phrase “targeted to the relevant electorate” in the amendment to Section 57-22-3 (E)(c).

DW/svb