

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/12
 LAST UPDATED 02/10/12 **HB** _____

SPONSOR SJC

SHORT TITLE Campaign Reporting & Definitions **SB** 11/SJCS/aHVEC

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	Unknown (See Below)		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 74, HB 113, HB 114, HB 207, HB 208, HB 310, HJR 25, SB 12, SB 103, SB 105, SB 116, SB 117, SB310 & SB 370

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Department of Finance & Administration (DFA)
 Secretary of State (SOS)

SUMMARY

Synopsis of HVEC Amendment

The House Voters and Elections Committee amendment to Senate Judiciary Committee Substitute for Senate Bill 11 inserts a new section entitled “DISCLAIMERS IN ADVERTISEMENT.—“ requiring a person who makes or plans to make an expenditure of \$2,500 or more during a calendar year for an identified candidate to ensure the advertisement(s) contain the name of the authorizing candidate or the name, address and phone number of the person who authorized it, who paid for the ad and the phone number, email or web address. A disclaimer will be put legibly on the ad. Those transmitted by audio media will have the same information clearly spoken at the end of the ad. For audio-visual media, the same information will be both spoken and written legibly at the end of the ad.

Synopsis of Substitute Bill

The Senate Judiciary Committee substitute for Senate Bill 11 relates to campaign financing. The

bill creates a reporting requirement for independent expenditures.

It requires that any person who makes an independent expenditure that is not otherwise required to be reported under the Campaign Reporting Act (Act) shall file a report of the expenditure with the SOS within three days. Such independent expenditure reports are required to identify:

- the name and address of the person who made the expenditure;
- the name and address of the person to whom the expenditure was made;
- the date, amount and purpose of the expenditure; and
- the name and address and the amount of each contribution not previously reported for, each contributor contributing \$100 or more in the aggregate during the previous year that were earmarked for an independent expenditure or made in response to a solicitation that refers to the independent expenditure.

The bill requires that when there is an independent expenditure of \$3,000 or more or a series of independent expenditures totaling \$3,000 within a year, the person who made the independent expenditure that is not otherwise required to be reported, to file a report of the expenditure with the SOS within three days.

The report shall contain the following:

If the expenditure was made from a segregated bank account that consists only of funds contributed to the account by individuals for the purpose of making independent expenditures, the name, address and amount of each contribution not previously reported for each contributor who contributed more than \$100 in the aggregate to the account during the preceding calendar year; or

If the expenditure was made from funds other than a segregated bank account, the name, address and amount of each contribution not previously reported for each contributor who contributed more than \$5,000 in the aggregate to the person who made the expenditure during the preceding calendar year.

The bill makes it unlawful for a person to willfully conduct, structure, engage in or participate in financial transactions in order to avoid the contribution limits in the Act. A person who violates the provisions of this Act is subject to civil damages of up to ten times the value of the contribution of the transaction.

The bill deletes the definition of advertising campaign in the Act, and creates a new definition of advertisement. It also creates a new definition of ballot measure and a new definition of campaign expenditure.

It expands the definition of contribution, amends the definitions of expenditure and political committee. It also creates definitions for independent expenditure, independent expenditure committee and coordinated expenditure.

In the definition of coordinated expenditure the bill requires that payment must be paid for an advertisement that: 1) expressly advocates the election or defeat of a clearly identified candidate; 2) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate; or 3) refers to a clearly identified candidate, can reasonably be expected to be seen or heard by at least five hundred persons eligible to vote for the candidate

and is published or disseminated within thirty days before the first day that voters may cast an absentee ballot in person at the county clerk's office in an election at which the candidate is on the ballot.

The bill requires an independent expenditure committee to register with the SOS within ten days of receiving or expending in excess of \$2,000 by filing a statement of organization under oath.

The bill changes current law by basing contributions limits on the calendar year.

The bill has an emergency clause.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additional fiscal impact on the judiciary would be proportional to the increased arrests due to 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. Efforts to quantify specific fiscal impact by case are underway by the AOC, but specific information is not available at this time.

This bill raises civil penalties for violating the Act from \$250 to up to \$2,000 for each violation not to exceed \$40,000.

SIGNIFICANT ISSUES

It is unclear how these amendments will affect the contribution limits currently applicable to political committees. In a recent court decision in *Republican Party v. Duran*, the court issued a preliminary injunction prohibiting enforcement of contribution limits on independent expenditures. The court in that case appears to contemplate that committees may have mixed purposes. It appears to require that committees segregate contributions for independent expenditures from contributions for candidates or for coordinated expenditures. Contributions received for independent expenditures are not subject to the contribution limits, while contributions received which will be expended for candidates or for coordinated expenditures are subject to the contribution limits.

The AGO provided the following legal issues:

A significant issue is whether the bill seeks to require disclosure of more information about so-called independent expenditure groups that seek to operate independently of candidates but nevertheless want to influence a candidate election. If that is a major purpose of the bill, it is fair to question whether the bill achieves that goal. For example, it can be argued that the bill may do little to change existing law and not require much if any additional disclosures from so-called independent expenditure groups.

For example, under current law, any committee—operated primarily for a political purpose which means influencing or attempting to influence an election—must disclose its contributions and expenditures. This bill essentially adds only one additional type of group from which disclosure is sought: a committee—whose “primary purpose” is to pay

for advertisements that mention a candidate's name shortly before an election—must also disclose its contributions and expenditures. But what about groups for which that is not their primary purpose? And what about corporations or other entities that under the U. S. Supreme Court opinion in Citizens United can now make direct expenditures to influence elections? This bill does not seem to require any disclosures from those groups.

It also appears to be that the bill does not provide for any disclosure from groups such as non-profits, e.g., charities, advocacy organizations, unions, and chambers of commerce, that would not be required to disclose their contributors or expenditures because making these sorts of political advertisements is not their primary purpose.

Therefore, it seems fair to question whether this bill will actually provide for any more public disclosure from nonprofits, corporations, the State equivalents of federal Super-PACs and other groups that make electioneering expenditures but do not have that as their primary purpose.

There is a split of authority over the constitutionality of contribution limits based on a calendar year rather than an election cycle. The Ninth Circuit struck down this identical provision as unconstitutional. The court struck down California's campaign contribution limits as unconstitutional because—like this bill—they were limited by year instead of by election cycle. The Ninth Circuit held that this discriminated against challengers because most challengers normally do not start raising money until either the year of the election, or the year before the election. Therefore, incumbents would have the advantage of raising the limit amounts every year.

An important note of caution, however, is that every ten years during an election in a redistricting year, challengers will normally be precluded from raising contributions early because they will not know the boundaries of the district they want to run in.

ADMINISTRATIVE IMPLICATIONS

The agencies affected by this bill can handle the requirements of the bill as part of on-going responsibilities

RELATIONSHIP

SB 11 relates to;

- HB 74, Conservancy District Absentee Ballots
- HB 113, Voter ID Requirements
- HB 114, No Corporation Influence on Elections
- HB 207, Voter Identification Requirements
- HB 208 – Contractor Registration and Contributions
- HB 310, Election Contributions by Contractors
- HJR 25, No Election Money from Corporations, CA
- SB 12, Campaign Public Financing Changes
- SB 103, No Legislator Lobbying for One Year
- SB 105, Public Campaign Financing
- SB 116, Use of Legislative Campaign Funds
- SB 117, Elections Commission Act
- SB 310, Campaign Contributions Based on Calendar Year
- SB 370 – Election contributions and Fundraising

OTHER SUBSTANTIVE ISSUES

The AGO also provided the following:

Section 1 imposes a three-day disclosure deadline on anyone who makes independent expenditures that are not otherwise required to be reported. The bill is complex, and it is not clear which expenditures are not otherwise required to be reported. The courts have always required that statutes be absolutely clear so that anyone exercising their First Amendment rights can immediately know what their obligations are—especially when criminal charges are possible. This Section may be deemed to fail to pass that clarity test.

DW/amm:lj:svb