

LFC Requester:

Emily Hilla

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/24/25

Check all that apply:

Bill Number: SB 85

Original Correction
Amendment Substitute

Sponsor: Sen. Peter Wirth
Sen. Heather Berghmans
Rep. Andrea Romero

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: Campaign Finance Changes

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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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This Bill proposes several amendments to the Campaign Reporting Act, NMSA 1978, §§ 1-19-25 through -37 (“CRA”). Some of these proposed changes include:

- Section 1(P), providing a more specific definition of “expenditure” under the CRA.
- Section 2, amending 1-19-26.3 to add “electronic communication” to accompany each reference to telephone calls.
- Section 3(A), amending the requirements related to independent expenditures by requiring report filing for any person who makes an independent expenditure.
- Section 3(D)(2), amending certain independent expenditure requirements by replacing the term “contribution” with the term “donation,” which is defined in Section 3(F) as noted below.
- Section 3(D)(2)(b), amends the requirements related to independent expenditures by adding a requirement for exempting donations that such funds be deposited in a segregated account not to be used for independent expenditures or coordinated expenditures.
- Section 3(F), adds the newly defined term “donation,” distinguishing it from the term contribution.
- Section 4 is amended to set certain fixed dates for filing of reports.
- Section 4(B)(5) is amended by lowering the reporting threshold associated with certain statewide offices by making it uniform with other offices.
- Section 4(C) adds a reporting requirement related to contributions received during the prohibited period.
- Section 4 shortens or otherwise modifies certain reporting deadlines, and adding a reporting requirement for unreported contributions and expenditures within seven days of a general election.
- Section 5(B) prohibits candidates from applying an interest rate to any loans made to the campaign.
- Section 6(G) adds a requirement to report the terms of any loan a candidate makes to the candidate’s campaign.
- Section 7 changes requirements related to fundraising during the prohibited period and defines terms used in the section.

FISCAL IMPLICATIONS

N/A

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

The prohibition on candidates charging interest on loans to the campaign raises the possibility of legal challenges. The Supreme Court has articulated high standards that must be met before a regulation can impede the influx of campaign funds. 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. The Court reasoned that lowering the probability that a loan would be repaid reduced the incentive to make the loan in the first place, thereby burdening core political speech by reducing the campaign's access to funds. *Id.* at 303. A similar argument could be raised that candidates are less likely to loan money to a campaign if they cannot collect interest to reflect the risk of the loan and time value of money. If a court found that this was a restriction on core political speech, it could only be justified by preventing "quid pro quo corruption." However, because this proposed change involves self-dealing, it would not likely meet this test.

Whether a legal challenge is likely may depend on the prevalence of the practice of charging interest on candidate loans. If the practice is commonplace, then a challenge is more likely. If the practice is rare, then a challenge is less likely.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

SB 85 proposes to add certain requirements to "electronic communications" that currently apply to phone calls. However, there is no definition of that term in either the Campaign Reporting Act or SB 85. Consider adding a definition that includes the forms of communications at issue.

The amended reporting deadlines starting on page 15, line 17 provide dates certain for some reports (January 7 and December 31). This section also provides that, in the event the date referenced falls on a federal holiday, the deadline will move to the next business day. This may lead to confusion as to whether the date-certain deadlines are otherwise hard and fast, even if they fall on a weekend. Consider clarifying that a weekend also tolls the deadlines.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo ante

AMENDMENTS

See “Other Substantive Issues” above.