

LFC Requester:	Charlene Cerny
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date March 4, 2015
Bill No: HB 278-305

Sponsor: HSCA Committee
Short Title: Campaign Finance Disclosure

Agency Code: Attorney General's Office
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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 Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Safety and Civil Affairs Committee Substitute to HB 278 (CS/HB 278) makes several changes, both stylistic and substantive to HB 278. It deletes “covered transfers” from Sections 1 and 3. Instead, it adds a new subsection to Section 1-19-34.3 of the Campaign Reporting Act aimed at persons or entities who seek to circumvent applicable reporting and disclosure requirements by making it unlawful to conceal the true source of contributions used for making independent expenditures. It removes the Secretary of State’s discretion to waive electronic reporting requirements for independent expenditures.

CS/HB 278 strikes new material in HB 278 that would have provided examples of coordination/coordinated expenditures. It further revises several definitions in the Campaign Reporting Act. It revises the definition of “advertisement” to add a threshold value of at least \$50 and remove the qualifier that it be seen by at least 500 persons. It removes the same qualifier from the definition of “coordinated expenditure.” It adds to the definition of “campaign committee” that a candidate may have only one such committee. It reinstates language that excludes certain administrative and solicitation expenses from the definition of “contribution.” CS/HB 278 also deletes the requirement that “top three funders” be identified in advertisements.

CS/HB 278 reinstates that subsection in Section 1-19-26.1 of the Campaign Reporting Act that excludes political committees registered with the federal election committee from certain registration and disclosure requirements. It also reinstates the phrase “for a political purpose” on Section 1-19-34.1 relating to unlawful fundraising activity during legislative sessions.

CS/HB 278 would eliminate the distinction between persons and political committees with respect to contribution limitations, in Section 1-19-34.7.

CS/HB 278 includes a temporary provision directing the Secretary of State, in consultation with the Attorney General, by December 31, 2015 to promulgate rules to implement its amendatory provisions.

Analysis of HB 278 as first introduced:

House Bill 278 amends the Campaign Reporting Act, NMSA 1978, Section 1-19-25 to -37 (1979 and as amended), by adding new sections that acknowledge and regulate the ways in which campaigns are currently financed. It (1) requires persons making an “independent expenditure” or “covered transfer” in an amount that exceeds \$1,000 to report that activity to the Secretary of State within a designated period; (2) requires persons making a campaign expenditure, coordinated expenditure or independent expenditure for advertisements in an amount that exceeds \$3,000 to make certain disclaimer statements and list the “top three funders” for the advertisement; and (3) defines independent expenditures and defines and provides examples of and coordinated expenditures.

HB 278 adds new definitions to Section 1-19-26 of the Campaign Reporting Act for “advertisement,” “ballot measure,” “campaign expenditure,” “coordinated expenditure,” “covered transfer,” “independent expenditure,” and “political party.” It also amends the current definitions of “political committee” and “political purpose.” HB 278 would require political committees to appoint and maintain a treasurer and file a statement of organization within 3 days of receiving, contributing or expending \$1,000. Political committees located in other States and registered with the Federal Election Commission would no longer be excepted from this filing requirement.

HB 278 addresses the problem of “covered transfers”, where nonprofit or other groups may seek to avoid disclosures by transferring funds for expenditures intended to affect elections from one group to another. The bill will require relevant disclosures involving such “covered transfers”.

HB 278 extends until midnight the time for filing reports of all expenditures made, contributions made or received on certain dates, including independent expenditures made after 5:00 pm on the Friday before a primary or general election, expenditures made and contributions made or received on or before the 30th day after a primary election, and expenditures made and contributions made or received on or before the 25th day after the general election and not previously reported. HB 278 would also require campaign committees and political committees, like candidates, to file reports of expenditures and contributions pursuant to the filing schedules set forth therein, regardless of whether any expenditures were made or contributions received during the reporting period. HB 278 would increase the civil penalty that may be imposed for each violation that involves unlawful solicitation or the making or acceptance of an unlawful contribution from \$250 to \$1,000 and for each violation of any provision of the Campaign Reporting Act from \$50 to \$1,000, and for a total not to exceed \$20,000 (up from \$5,000) under each provision.

FISCAL IMPLICATIONS May result in indeterminate expenditures to the AGO, as the AGO

is (1) required to work with SOS on the promulgation of implementing regulations, and (2) authorized, with or without a referral for the Secretary of State, to institute a civil action for violations or to prevent violations of the Campaign Reporting Act.

SIGNIFICANT ISSUES

1. Whether to address recent court decisions that have invalidated key parts of NM's campaign reporting laws, and to do so with disclosure requirements that appear to be in conformity with applicable and relevant court rulings in the 10th Circuit and other jurisdictions around the country. The disclosure requirements in the bill seem designed specifically to address the controversial *Citizens United* decision of the U.S. Supreme Court, which allowed corporations and other entities to make election-related expenditures but also indicated that the best available safeguard to address such expenditures was to require full disclosure of their sources of funds.
2. Whether to require third-party independent groups that make expenditures affecting election campaigns to disclose contributions and expenditure in a manner consistent with the disclosures required of candidates and political parties.

PERFORMANCE IMPLICATIONS Requires AG to work with SOS on the promulgation of implementing regulations. May result in increase to the civil caseload of the AGO if cases are referred by the Secretary of State or the AG determines that violations of the Campaign Reporting Act have occurred or may occur.

ADMINISTRATIVE IMPLICATIONS See above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP Related to SB 384.

TECHNICAL ISSUES

1. Given the amendments in Section 11 regarding civil penalties, would it not be best to combine subsections B and C since the new penalties (\$1,000 per violation to a maximum of \$20,000) will now apply to all violations of the of the Act, whereas in the current law the penalties differ for (i) unlawful solicitation and the making or acceptance of an unlawful contribution (current subsection B), and (ii) all other violations of the Act (current subsection C)?
2. The definition of "political purpose" in proposed amendment to Section 1-19-26, DEFINITIONS, uses the word "purpose in the definition itself. Query: should that be revised so that definition reads ""political purpose" means an attempt to support or oppose the nomination or election. . . ."?"

OTHER SUBSTANTIVE ISSUES None.

ALTERNATIVES None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo. Ambiguity and probable unlawful provisions in law as to various campaign reporting requirements and uncertainty and lack of coverage over what constitutes independent or

coordinated expenditures.

AMENDMENTS None.