LFC Requester:	Hilla

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

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

Date Prepared: Jan. 23, 2025 *Check all that apply:*
Bill Number: SB 85 Original X Correction __
Amendment __ Substitute __

Sponsor: Sen. Wirth, Sen. Berghmans, Sen. Romero
Short Title: Campaign Finance Changes

Agency Name and Code Number: State Ethics Commission (410)
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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

BILL SUMMARY

Synopsis: Senate Bill 85 (i) amends the Campaign Reporting Act's definition of "expenditure;" (ii) extends the disclaimer requirements for robocalls to electronic communications; (iii) amends the registration and reporting requirements related to independent expenditures; (iv) moves deadlines for required reports to the day after state holidays and makes provision for reporting of expenditures made in the week before an election; (v) repeals a provision permitting a political committee to cancel its registration; (vi) prohibits candidates from paying interest on loans made by the candidate and requires disclosure of the terms of any such loan; and (vii) amends the prohibition against solicitation of contributions in the period before and for the duration of a legislative session to prohibit the solicitation of contributions or the receipt of contributions from a lobbyist, lobbyist's employer, incumbent or candidate, campaign committee or political committee.

FISCAL IMPLICATIONS

These amendments will marginally increase the Commission's workload relating to the Campaign Reporting Act but are not anticipated to create significant fiscal implications for the Commission.

SIGNIFICANT ISSUES

I. Significant gaps in disclosure in the current Campaign Reporting Act and how SB 85 addresses those gaps

A. Furthering the disclosure of contributions used to fund independent expenditures through amendments in Section 1-19-27.3

One of SB 85's central objectives is to require more disclosure of the funding sources of independent expenditures. Currently, Section 1-19-27.3(D) requires persons who make independent expenditures to disclose information about persons who made contributions to fund those independent expenditures. The CRA defines "contribution" as payments "made or received for a political purpose" and, in turn, defines "political purpose" as supporting or opposing a ballot question or the nomination or election of a candidate in an New Mexico election. *See* § 1-19-26(G), (S). As an unintended consequence of these definitions, the CRA might not require organizations (including out-of-state organizations) that receive funds and later expend those funds on independent expenditures to disclose their donors. For example, a donor might not have donated funds for supporting a candidate in a New Mexico election and, at the time the funds were received, the group might not have received the donation to pay for independent expenditures in New Mexico. In that circumstance, the funds would not be "contributions" and, thus, not fall within Section 1-19-27.3's scope. Later, however, the organization might decide to put those donations to use to pay for independent expenditures in New Mexico elections and, arguably, need not disclose information about the donors or the amounts.

To respond to this problem, Section 3 of SB 85 amends Section 1-19-27.3 to incorporate the terms "donation," "donated," and "donor." Then, the bill adds a new subsection to Section 1-19-27.3, providing, for the purposes of Section 1-19-27.3 only, a definition of "donation" that captures funds raised out-of-state even if at the time of the transfer the money was *not* given or received for a political purpose but, later, was put to a political purpose. With these amendments, the CRA would require persons (including out-of-state groups) who make independent expenditures over a certain threshold to disclose the source of significant funds used to make independent expenditures, whether or not the donations were made or received for the purpose of supporting or opposing a ballot question or candidate in a New Mexico election.

Notably, SB85 closely mirrors Senate Bill 42 from 2023, with an exception in Section 3. Unlike its 2023 counterpart which would have required any person who makes independent expenditures to disclose certain information relate to donations, SB 85 incorporates a threshold over which a person making independent expenditures must report donations. For persons making independent expenditures totaling less than $3,000 in a nonstatewide election or less than $9,000 in a statewide election, under SB 85, the person need only report information about *contributions* of $200 in the election cycle earmarked for or made in response to a solicitation to fund expenditures. Those persons making independent expenditures totaling more than $3,000 in a nonstatewide election or more than $9,000 in a statewide election must report identified information about both contributions of $200 or more, as well as donations. The result is that SB 85 will not require individuals who do not meet the threshold to report information about donations, but it will require those who meet that threshold to report certain information about both donations and contributions.

B. Ensuring compliance with the CRA by separating non-political donations from political donations

Currently, Section 1-19-27.3 is open to abuse in another way: Organizations that accept donations for both political and non-political purposes need not disclose their donors if the donor requested in writing that their donation not be used to fund independent expenditures or make contributions to candidates. The organization may not respect the donor's wish, however, and (unwittingly or purposefully) use the donation for a political purpose; yet, so long as the organization obtained the donor's request in writing, the organization is exempt from a disclosure requirement. To avoid this issue, Section 3 of SB 85 requires that the organization deposit into a segregated bank account, which is not used to fund independent or coordinated expenditures or make contributions to candidates, those donations that a donor requested not be used for political purposes.

C. Furthering the disclosure of expenditures and related funding through other amendments across the CRA

SB 85's amendments also would provide for more disclosure related to expenditures by persons attempting to influence the outcome of New Mexico elections. These amendments are responsive, in part, to two kinds of abuses that State Ethics Commission staff have witnessed in which persons issue attack ads against candidates in New Mexico elections and, by exploiting gaps in the CRA, avoid disclosure (or *timely* disclosure important for voters) of information regarding these advertisements.

1. Closing gaps related to attack ads that do not expressly reference an election or contain an appeal to vote

The first kind of abuse arises in the circumstance where a group issues an attack ad against a candidate in the run up to an election, but does not mention or refer to the election. If an advertisement does not refer to the impending election, it arguably is not subject to disclosure requirements by the following definitional cascade: Because an ad does not reference an election, it is arguably not made for the purpose of opposing the candidate; hence, it is not made for a "political purpose" under Section 1-19-26(S); hence, it is not an "expenditure" under Section 1-19-26(M); and, hence, it is not an "independent expenditure" under 1-19-26(N); and, therefore, the advertisement does not trigger Section 1-19-27.3's disclosure requirements.

SB 85 interrupts this definitional cascade by broadening the definition of "expenditure" and correspondingly excises the definition of "political purpose" from the CRA's definition of "expenditure." Section 1 amends Section 1-19-26 NMSA 1978 to clarify "expenditure" to include transactions (1) by a campaign committee or political committee, (2) by a public official or candidate in support of that public official's or candidate's campaign in an election covered by the Campaign Reporting Act, or (3) to pay for an advertisement that refers to a candidate, or ballot question. Thus, under SB 85's definition of "expenditure," if a payment is made to pay for an advertisement that refers to a candidate or ballot question, the payment would be an "expenditure"; and if the advertisement is published or disseminated to the relevant electorate within 30 days of a primary or 60 days of a general election, then the expenditure made to pay for it would become an "independent expenditure," which would trigger Section 1-19-27.3's disclosure requirements. This change would close a gap regarding the disclosure of the sources of funds for attack ads, improving transparency regarding who donates funds to influence New Mexico's elections.

2. Closing gaps related to expenditures on the eve of an election

The second kind of abuse of the current CRA provisions arises in the circumstance in which a group issues an attack ad against a candidate on the eve of an election. Consider, for example, a group that distributes an attack ad mailer casting an incumbent in an unfavorable light. If the group who issued the advertisement qualifies as a "political committee" under the CRA, then, under Section 1-19-29(B), the group might not be required to report information relating to those advertisements until thirty days after the election. *See* § 1-19-29(B)(5)–(6). In that case, the voters are not entitled to know *before the election* significant information regarding who funded the attack ad against a candidate that is vying for their votes.

Section 3 of SB 85 attempts to close the gap by excising "not otherwise required to be reported under the Campaign Reporting Act" from Section 1-19-27.3(A). Without the "not otherwise required" language, Section 1-19-27.3 would require the group to disclose information regarding the independent expenditure—even if the group issuing the attack ad qualified as a political committee. To further close the gap, SB 85 also amends Section 1-19-29(B)(5) to include certain reporting requirements for expenditures (in addition to contributions or pledges to contribute) that are received in the days leading up to an election. SB 85 also requires a new report of all expenditures made and contributions received on or before the day of the general election and not previously reported, to be filed no later than the seventh day after a general election.

In sum, by deleting "not otherwise required to be reported under the Campaign Reporting Act" from Section 1-19-27.3(A) and adding disclosure requirements about expenditures in Section 1-19-29(B), the CRA would require groups to disclose in a timely manner information

about contributions received and expenditures made in the days before an election. Additionally, the new post-election reporting requirement in SB 85 ensures transparency by requiring disclosure of unreported expenditures and contributions made by election day, with a report due within seven days after the general election.

D. Regulation and disclosure of loans that candidates make to their own campaigns

SB 85 also requires disclosure of loans that candidates make to their campaigns. This is a significant amendment. Currently, the CRA defines a "contribution" to include a "loan" and also defines an "expenditure" to include "payment of a debt incurred in an election campaign or pre-primary convention." § 1-19-26(H), (M). As a result, candidate committees must report both (i) loans that candidates make to their campaign committees; and (ii) expenditures that their campaign committees make to the candidates to repay those debts. *See* § 1-19-31. The current practice in New Mexico is that candidate committees report the amount of the loan principal that candidates have loaned their campaigns, as well as any expenditures candidate committees make to the candidates to repay debts. These are important disclosures, but they are not specific enough to deter the threat of significant corruption that can accompany loans that candidates make to their campaign committees (and debts that campaign committees pay to candidates).

Potential problems come into focus when we consider what the CRA does not currently address in regard to loans from candidates to their own campaigns. For instance, the CRA neither prohibits candidates from charging interest on loans to their own campaigns, nor does the CRA require disclosure of the terms of the loan, including any interest. Furthermore, the CRA does not require that the campaign committee demonstrate evidence that a loan was actually made. These oversights allow for significant corruption, in two ways:

- A campaign committee that is controlled by the candidate—for example, where the treasurer is either the candidate herself or the candidate's spouse—could falsely report a loan from the candidate to the campaign committee and then, after receiving contributions, make and report expenditures to the candidate to repay the ostensible loan. If, in fact, the loan was never made, then neither the public nor the oversight agencies would know, and the candidate could effectively convert campaign contributions by lobbyists and supporters into a source of personal income.

- Again, the CRA does not regulate loans that candidates make to their campaigns, in several respects. The CRA does not prohibit a candidate from providing their campaign committee with a loan at interest. The CRA does not regulate the rates of interest at which a candidate may loan funds to their campaign committees. And the CRA does not require the disclosure of any terms of interest on a loan from a candidate to a campaign committee. As a result, a candidate could: (i) loan their campaign committee a sum at interest; (ii) allow the interest to accrue; (iii) receive contributions from lobbyists and supporters; and (iv) use those contributions to make payments on the accrued interest—again, converting contributions into a source of personal income. Where lobbyists,

> having reviewed the contribution and expenditure reports, understand that campaign committees owe a candidate debts (perhaps at interest), the lobbyist's contributions, which can be paid by the campaign committee to the candidate, might be reasonably understood as *quid pro quo* offers.

Disclosure and public view of loans from candidates to their campaigns would provide an effective deterrent to candidates using their ability to make and report loans to their campaigns as a method to convert campaign contributions into sources of personal income.

SB 85 would address these issues in two ways: First, Section 6 of SB 85 would require reporting individuals to disclose the terms of any loan the candidate makes to the candidate's campaign committee as well as evidence of any such loan. Second, Section 5 of SB 85 would amend Section 1-19-29.1 to prohibit any person from making an expenditure to repay a loan that is received from the candidate that includes a rate of interest.

E. Disclosures related to electronic communications

SB 85 section 2 amends Section 1-19-26.3 to add "electronic communications" to the existing disclosure and reporting requirements and thus, to extend the Section's current prohibitions and disclosure requirements to electronic communications. Currently, Section 1-19-26.3 regulates the issue of telephone call banks related to campaigning. Considering that campaigning has largely moved to a digital form, Section 1-19-26.3's extension to electronic communications makes sense. *See* "Why political campaigns won't stop texting you," Axios (Feb. 22, 2024) ("In 2022, Americans received 15 billion political texts, an unprecedented record, and 2024 is gearing up to be a bigger year for the messages.").

F. Disclosures related to funds received during the legislative session

Currently, Section 1-19-34.1 of the Campaign Reporting Act restricts the solicitation of contributions during legislative sessions but leaves certain areas unaddressed. SB 85 introduces several amendments to strengthen these restrictions: (i) covering a broader range of fundraising activities, (ii) adding new transparency requirements, (iii) expanding who is subject to the restrictions, and (iv) clarifying the prohibited period.

1. Prohibition on solicitation and acceptance of contributions

Currently, Section 1-19-34.1 prohibits certain incumbents and candidates for office from soliciting contributions governed by the Campaign Reporting Act. The statute, however, does not prohibit the receipt of unsolicited contributions given, for example, by lobbyists. Section 7 of SB 85 corrects this gap by expressly prohibiting both the solicitation and acceptance of contributions during legislative sessions. Additionally, Section 7 removes the word 'knowingly' from this provision, strengthening the regulation and tying it to a disclosure requirement.

2. New disclosure requirement for contributions received during prohibited period

Section 4(C) of SB 85 introduces a disclosure provision requiring that if a reporting individual subject to the legislative session fundraising prohibition of Section 1-19-34.1 receives

monetary contributions during a prohibited period, they must file a report of all contributions received but not returned during that period. This report must be submitted no later than the *seventh day after the end of the prohibited period.* These amendments to the CRA reinforce its foundational purpose to prevent quid pro quo corruption or its appearance by ensuring timely disclosure of all contributions received during restricted times.

3. Expansion of individuals and committees subject to the prohibited period

Currently, Section 1-19-34.1 prohibits incumbents and candidates from soliciting contributions governed by the Campaign Reporting Act from fundraising during the legislative session. Importantly, Section 7 of SB 85 broadens the scope of individuals and groups subject to the prohibited fundraising period. Under SB 85, the incumbent or candidate governor, lieutenant governor, campaign committees, and legislative caucus committees would also be prohibited from engaging in fundraising during the prohibited period.

4. Extension of the legislative fundraising prohibited period

Section 7 of SB 85 also extends and clarifies the "prohibited period" in Section 1-19-34.1 to ensure a clear buffer around legislative activities, thereby reducing potential conflicts of interest. Specifically, the amendment provides that for incumbents, candidates, campaign committees, and legislative caucus committees, the prohibited period now ends one calendar day after adjournment. This ensures a clear boundary before fundraising can resume.

For an incumbent or candidate for governor and lieutenant governor, Section 7 tailors the prohibited period to end on the earlier of either the 21st day after the session's adjournment or the day after all legislative bills are either signed or vetoed and filed with the Secretary of State.

Section 7 also addresses special and extraordinary legislative sessions, providing that the prohibited period will begin either upon the proclamation of the session or 72 hours before the session's start, whichever is earlier.

II. Procedural Updates: Reporting Deadlines and Threshold Adjustments

SB 85 amends Section 1-19-29 NMSA 1978 to revise reporting deadlines and establish consistent thresholds for expenditures and contributions, ensuring these filings are more administratively feasible and providing greater clarity to those required to file.

Section 4 of SB 85 adjusts the filing deadlines for semiannual reports. Reporting individuals must now submit reports by the *second Tuesday after the first Monday in June* and by *January 7.* These reports should cover all expenditures and contributions received up to the *first Tuesday after the first Monday in June* and *December 31,* respectively. If a filing date falls on a state holiday, the report is due the next business day.

Section 4 of SB 85 also standardizes the reporting threshold by setting it at $1,000 for both statewide and nonstatewide elections. Previously, the threshold was higher for statewide elections. This change simplifies the reporting process by creating a single threshold for all election types.

Section 4 further amends the reporting requirements following a primary election. Reporting individuals, except those who become candidates after the primary election, must now file a report within *7 days* after the primary, rather than the previous 30-day deadline. This report must cover all expenditures and contributions made up to the *day of the primary election,* instead of the 25th day after. This again provides timely disclosure for voters.

Previously, political committees in non-election years were permitted to skip reporting if they had not received contributions or made expenditures since their last report. SB 85 excises this exemption and repeals a provision allowing a political committee to cancel its registration after a year of inactivity.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The State Ethics Commission has jurisdiction to investigate and adjudicate administrative complaints alleging violations of the Campaign Reporting Act, to enforce the Campaign Reporting Act through civil actions, and to issue advisory opinions regarding the Campaign Reporting Act. These amendments will marginally increase the Commission's workload relating to the Campaign Reporting Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently, the Campaign Reporting Act contains several, significant loopholes regarding the disclosure of the funding for independent expenditures, in particular funding for independent expenditures that are raised out of state, and loans a candidate makes to the candidate's campaign committee. Absent Senate Bill 85's proposed amendments, sophisticated independent expenditure groups will be able to evade the Campaign Reporting Act's disclosure requirements, important disclosures concerning candidate's making loans to the candidate's campaign committees will not be included, reporting will not be required for electronic communications, and needed amendments to clarify language on reporting deadlines and the prohibited period will not be made.

AMENDMENTS