

2014, SENATE BILL 18, SPONSORED BY SENATOR PETER WIRTH
SUMMARY AND EXPLANATION

I. Purposes; SB 18 has two principal purposes:

1. To restore the enforceability of the Campaign Reporting Act (CRA). Since the CRA was enacted, the courts have developed an extensive body of restrictions on the authority of governments to regulate campaign speech. Under these rules, several key provisions of the CRA have recently been invalidated by the courts, including most of the Act's reporting requirement for PAC's and other independent groups. SB 18 would rewrite the CRA to conform to current constitutional rules.

2. To adapt the CRA to modern methods of campaigning. When the CRA was enacted, candidates and political parties were virtually the only campaign participants. There are now numerous national and local independent groups participating in state elections in a variety of ways, ranging from campaign ads coordinated with candidates to an occasional ad mentioning a public official who is running for reelection. The bill would expand the CRA to cover all these kinds of campaign activities in a constitutionally permissible way.

II. Definitions; SB 18 defines or redefines several key terms which are essential to understanding the bill's substantive provisions:

1. Advertisement: any communication referring to a candidate or ballot measure that is disseminated to more than 500 people except: (1) legitimate news stories or editorials; (2) internal communications sent only to the members or shareholders of a group or corporation; and (3) voter guides published by 501(c)(3) groups and similar kinds of neutral voter information.

2. Coordinated expenditure: an expenditure made by a non-candidate in cooperation or consultation with a candidate or political committee for an advertisement which either (1) expressly advocates election or defeat of a candidate, or (2) refers to a candidate and is disseminated to the electorate within 30 days before a primary or 60 days before a general election at which the candidate is on the ballot.

3. Independent expenditure: an expenditure, other than a coordinated expenditure, made by a non-candidate to pay for an advertisement which either (1) expressly advocates election or defeat of a candidate or passage or defeat of a ballot measure, or (2) refers to a candidate or ballot measure and is disseminated to the electorate within 30 days before a primary or 60 days before a general election at which the candidate or ballot measure is on the ballot.

4. Independent expenditure committee: a group that has the primary purpose of making independent expenditures¹ and has expended at least \$3,000 for that purpose.

¹ Since an "independent expenditure" must by definition be made to support, oppose or refer to a "candidate" or "ballot measure," and since these terms are in turn defined to mean a candidate or measure on the ballot in a New Mexico state or county election, a group does not fall within the definition of "independent expenditure committee" unless its primary purpose is to make independent expenditures for or against New Mexico candidates or ballot measures. National organizations which make such expenditures in many states, therefore, would not typically be classified as "independent expenditure committees." Any independent expenditure they may make in New Mexico would instead be reported under Section 1 of the bill (see para. III.3. below), which requires certain disclosures from any person making an independent expenditure that is not otherwise reportable.

5. Political committee: a qualified political party or a group that has the primary purpose of contributing to candidates or making coordinated expenditures.² This represents a considerable narrowing of the definition of “political committee” in the current law, which purports to cover any person who spends over \$500 for “influencing ... an election.” This overbroad definition was the main feature of the law that motivated the courts to invalidate the CRA’s registration and reporting requirements for non-candidate groups.

III. Substantive Provisions

1. Coordinated expenditures as contributions. The bill treats coordinated expenditures as contributions to the candidate with whom they are coordinated. This means that the expenditure would have to be reported by the candidate as a contribution, and the amount of the expenditure could not exceed the candidate’s contribution limit.

2. Reporting by candidates and political committees. Except for the obligation to report coordinated expenditures, the bill leaves substantially unchanged the CRA’s current requirements for reporting and disclosure by candidates and political committees (although, as noted, the definition of “political committee” would be considerably narrowed by the bill).

3. Independent expenditure reporting. Under Section 1 of the bill, any person who makes an independent expenditure of \$800 or more which is not otherwise required to be reported must report to the Secretary of State (1) the name of the sponsor and the amount and purpose of the expenditure; and (2) the names of the donors of all contributions over \$200 to the sponsoring organization that were solicited or earmarked to make independent expenditures. In addition, for independent expenditures of over \$3,000, the sponsoring organization must either (1) report the names of all contributors of over \$5,000 to the organization; or (2) finance the expenditure from a segregated bank account that contains only individual donations earmarked for independent expenditures, and report the names of all contributors of over \$200 to the account. Reports would have to be filed within three days of making an expenditure of less than \$5,000 and within 24 hours of making an expenditure of \$5,000 or more.

4. Disclaimers. Section 2 of the bill requires every person who makes a campaign expenditure, a coordinated expenditure or an independent expenditure of over \$3,000 for an advertisement to include in the ad a statement of the sponsors’ names and contact information. This provision would replace the unconstitutionally overbroad disclaimer requirements of the current law, which would be repealed by the bill.

5. Registration and reporting by independent expenditure committees. The bill requires all independent expenditure committees to register with the Secretary of State and render reports, on the same dates as the reports by candidates and political committees, of all their contributions and all their independent expenditures. Certain other obligations of candidates and political committees, however, would not be imposed on independent expenditure committees. These include the requirements that the committee maintain a single bank account, and that it dissolve itself and close its account as a condition to being relieved of the duty to file periodic reports after terminating its political activities. Independent expenditure committees

² As in the parallel case of independent expenditure committees, national organizations other than political parties would not typically be classified as “political committees” under the bill, because the contributions or coordinated expenditures they make for New Mexico candidates would usually represent only a small portion of their total contributions and expenditures. Although they would therefore not be required to register and report as political committees, their contributions in New Mexico and their expenditures coordinated with New Mexico candidates would still have to be reported by the candidates themselves.

would be allowed to use any account to finance their activities as long as it was identified in their reports; and they could withdraw their registration and cease reporting when they had made no contributions or expenditures for a full year.

6. Contributions to independent expenditure committees. The bill would not impose on contributions to independent expenditure committees the limits that are imposed on contributions to political committees by the current law. Many recent court decisions, including a decision of the U.S. district court in New Mexico invalidating part of the CRA, have held that contributions to such independent groups cannot constitutionally be limited, and the bill would bring the CRA into compliance with these rulings. The bill would, however, maintain the current limits on contributions to “political committees,” having first redefined that term to exclude committees that are truly independent of candidates and parties.

7. Restrictions on certain activities by independent expenditure committees. In order to avoid blurring the line between political committees and independent expenditure committees or opening the way for political committees to evade the contribution limits to which they are still subject, the bill would prohibit independent expenditure committees from engaging in certain activities characteristic of political committees, including coordinated expenditures and contributions to candidates or political committees.

8. Changes in contribution limits. The current law imposes limits on the contributions that may be received from any one contributor during a primary election or general election for the office being sought. SB 18 would apply these limits to every primary or general election instead of merely the elections in which the candidate is running. The effect of this change would be to apply the same total contribution limits over a four-year cycle to candidates for four-year offices as are currently applied to candidates for two-year offices.

9. Increased civil penalties. The bill would increase, to \$1,000 per violation and \$20,000 total, the civil fines that may be imposed for violations of the CRA. The criminal penalties authorized by current law would remain unchanged.