

HB 392-FN – AS INTRODUCED

2013 SESSION

13-0242
03/04

HOUSE BILL **392-FN**

AN ACT relative to political contributions and expenditures and relative to reporting by political committees.

SPONSORS: Rep. Perry, Straf 3; Rep. Berch, Ches 1; Rep. Weed, Ches 16; Rep. Phillips, Ches 5; Rep. Kidder, Merr 5; Rep. Hoelzel, Rock 3; Rep. M. Mann, Rock 32; Rep. Levesque, Hills 26; Rep. Butler, Carr 7; Sen. Fuller Clark, Dist 21; Sen. Pierce, Dist 5

COMMITTEE: Election Law

ANALYSIS

This bill:

I. Modifies the definition of “political committee.”

II. Requires reporting by political committees of electioneering communication expenditures, as defined in the bill.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to political contributions and expenditures and relative to reporting by political committees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Definitions; Political Committee. RSA 664:2, III is repealed and reenacted to read as follows:

2 III. “Political committee” means any organization:

3 (a) That has as its major purpose to promote the success or defeat of a candidate or
4 candidates or measure or measures and whose combined receipts and expenditures total \$2,500 or
5 more in a calendar year for that purpose; or

6 (b) That makes combined independent expenditures, as defined in paragraph XI, and
7 electioneering communication expenditures, as defined in paragraph XVIII, that total \$5,000 or more
8 in a calendar year.

9 As used in this paragraph, “organization” includes, but is not limited to, a for-profit or nonprofit
10 corporation; limited liability company; association, whether incorporated or unincorporated,
11 for-profit or nonprofit; committee formed by a candidate, exploratory campaign, or political party;
12 natural person or natural persons; department; team; corporation; cooperative; partnership;
13 proprietorship; real estate trust; any entity expressly made exempt from income taxation under the
14 United States Internal Revenue Code; or any other entity with which it is possible to conduct
15 business.

16 2 Definitions; Expenditure. Amend RSA 664:2, IX to read as follows:

17 IX. “Expenditure” shall mean the disbursement of money or thing of value or the making of
18 a legally binding commitment to make such a disbursement in the future [~~for the purpose of~~
19 ~~influencing the nomination for election or election of any candidate~~]. It does not include the
20 candidate’s filing fee or his *or her* expenses for personal travel and subsistence.

21 3 Definitions; Independent Expenditures. Amend RSA 664:2, XI to read as follows:

22 XI. “Independent expenditures” means expenditures by a person, political committee, or
23 other entity *or organization, as defined in paragraph III*, expressly advocating the election or
24 defeat of a clearly identified candidate *or candidates or the success or defeat of a measure or*
25 *measures* which are made without cooperation or consultation with any candidate, or any
26 authorized committee or agent of such candidate, and which are not made in concert with, or at the
27 request or suggestion of, any candidate, or any authorized committee or agent of such candidate. As
28 used in this paragraph, “clearly identified” means that the name of the candidate involved appears; a
29 photograph or drawing of the candidate appears; or the identity of the candidate is apparent by
30 unambiguous reference.

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1 4 New Paragraph; Definitions; Electioneering Communication Expenditures. Amend RSA 664:2
2 by inserting after paragraph XVII the following new paragraph:

3 XVIII. “Electioneering communication expenditures” means expenditures on any
4 communication that fulfills each of the following conditions:

5 (a) The communication refers to a clearly identified candidate for state office or refers to
6 a measure without expressly advocating the success or defeat of such candidate or measure;

7 (b) The communication is publicly broadcasted or distributed during the period from 90
8 days prior to a primary election through the date of the general election for which office the
9 candidate is seeking or during the 120 days prior to the date on which the measure is being voted;
10 and

11 (c) The communication is targeted to the relevant electorate.

12 5 Registration of Political Committees. Amend RSA 664:3, I to read as follows:

13 I. Any political committee, except the political committee of a political party, shall register
14 with the secretary of state as provided in this section. The ~~[committee shall register with]~~
15 **committee’s registration shall be received by** the secretary of state not later than ~~[24] 48~~ hours
16 after ~~[receiving any contribution in excess of \$500 or before making any expenditure in excess of~~
17 ~~\$500, but in no event later than 14 days after the formation of the committee]~~ **satisfying the**
18 **definition of a political committee under RSA 664:2, III. The registration shall be**
19 **accompanied by an itemized statement of the receipts and expenditures that caused the**
20 **definition of a political committee to be met. Such itemization shall be made pursuant to**
21 **the manner set forth in RSA 664:6.** The registration shall **also** be accompanied by a fee of \$50,
22 which shall be deposited by the secretary of state into the general fund; provided, however, that the
23 political committee of a candidate which registers under this section shall not be required to pay the
24 \$50 fee. Each political committee shall designate a treasurer or agent who is a citizen of this state
25 and who is authorized to receive all process and other legal documents on behalf of the political
26 committee, and through whom may be obtained access to all books and records of the political
27 committee. The political committee shall file with the secretary of state a statement of the purpose
28 of the committee and shall indicate whether the committee will be making independent expenditures
29 ~~[in support of or in opposition to any candidate including]~~ **or electioneering communication**
30 **expenditures. The registration shall also include** a statement of the name, address, occupation,
31 and principal place of business of its chairperson and treasurer or agent, and the names and
32 addresses of other officers. The committee shall file an amendment to its registration within 14 days
33 of any change in the officers or purpose of the committee.

34 ***I-a. For purposes of this section only, any corporation that has tax exempt status by***
35 ***virtue of being organized under section 501(c)(4), 501(c)(5), or 501(c)(6) of the United States***
36 ***Internal Revenue Code is encouraged to, but shall not be required to, disclose receipts on***
37 ***its filings with the secretary of state.***

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1 6 New Paragraph; Limitations on Political Expenditures. Amend RSA 664:5-a by inserting after
2 paragraph III the following new paragraph:

3 IV. This section shall not be construed to limit the amount of contributions that may be
4 made to political committees that solely make independent expenditures and do not make
5 contributions to candidates, campaigns, political parties, or political committees of either candidates
6 or political parties.

7 7 Reporting by Political Committee. Amend RSA 664:6, I to read as follows:

8 I. Any political committee, ***except, for the purposes of this paragraph only, the***
9 ***political committee of a political party or the political committee of a candidate,*** whose
10 receipts or expenditures [~~in support of a candidate, measure, or political party~~] exceed \$500 [~~except,~~
11 ~~for the purposes of this paragraph only, the political committee of a political party or the political~~
12 ~~committee of a candidate,~~] shall file with the secretary of state an itemized statement, signed by its
13 chairman and treasurer showing each of its receipts exceeding \$25 with the full name and home post
14 office address of the contributor in alphabetical order and the amount of the contribution, the date it
15 was received, and the aggregate total for each election for each contributor of over \$100. The
16 statement shall be filed not later than the Wednesday 12 weeks immediately preceding a primary
17 election, before 5 o'clock in the afternoon, and shall cover the period from the day of the committee
18 registration up to and including the Monday before the statement is due. All receipts of \$25 or under
19 shall appear on the statements as unitemized receipts. Any listing which exceeds an individual's
20 aggregate total of \$100 for each election shall be accompanied by the contributor's occupation
21 including official job title, the name of the contributor's employer, and the city or town of the
22 contributor's principal place of business, if any. The statement shall also show each committee
23 expenditure with the full name and city or town of persons, corporations, committees, or to
24 whomever paid or to be paid, the date paid, and the election for which the expenditure was made,
25 with the specific nature and amount of each expenditure since the date of the registration.

26 ***I-a. For purposes of this section only, any corporation that has tax exempt status by***
27 ***virtue of being organized under section 501(c)(4), 501(c)(5), or 501(c)(6) of the United States***
28 ***Internal Revenue Code is encouraged to, but shall not be required to, disclose receipts on***
29 ***its filings with the secretary of state.***

30 8 Reporting by Political Committee. Amend RSA 664:6, II-a to read as follows:

31 II-a. A political committee shall file a statement in the same form as in paragraph I with the
32 secretary of state not later than the Wednesday immediately preceding a primary and a general
33 election, before 5 o'clock in the afternoon. The statement shall summarize the statements under
34 paragraphs I and II if such statements are filed and itemize all receipts and expenditures since the
35 cutoff of the statement under paragraph II up until the Monday preceding the filing of the statement
36 under this paragraph. In addition to the reporting requirements contained in this section, the
37 secretary of state shall be notified by the fiscal agent within [~~24~~] **48** hours of any contribution

1 exceeding \$500 which is received after the statement under this paragraph is filed and prior to the
2 day of election.

3 9 Reporting by Political Committee. Amend RSA 664:6, IV-a to read as follows:

4 IV-a. Any political committee whose independent expenditures **and electioneering**
5 **communications**, in aggregate, exceed \$500 shall file an itemized statement with the secretary of
6 state **which shall be received by the secretary of state** not later than [24] 48 hours after such
7 expenditures are made, and thereafter each time a further \$500 is expended. Such itemized
8 statements shall cover the period during which independent expenditures **and electioneering**
9 **communication expenditures** totaling \$500 were made. Each statement shall include a
10 certification by the political committee that the independent expenditure **or electioneering**
11 **communication** meets the definition in RSA 664:2, XI **or RSA 664:2, XVIII**. Each statement shall
12 contain the date of each independent expenditure **or electioneering communication**
13 **expenditure**; the name and address of the person to whom the expenditure was made; the name of
14 the candidate on whose behalf or against whom each **independent** expenditure was made **or the**
15 **name of the candidate who was referenced in each electioneering communication**
16 **expenditure**; the amount of each expenditure; the purpose of each expenditure, and the aggregate
17 amount of all previous independent expenditures **and electioneering communication**
18 **expenditures**. If the independent expenditure is made in support of or [~~to oppose~~] **in opposition to**
19 **more than one candidate or if the electioneering communication expenditure depicts or**
20 **mentions more than one candidate**, the statement made under this paragraph shall allocate the
21 way in which the expenditure was made among the candidates on a reasonable basis. For the
22 purposes of this paragraph, “reasonable basis” means a statement which reflects the benefit or the
23 burden reasonably expected to be derived or suffered by each candidate. The filing requirements of
24 this paragraph shall be in addition to all other filing requirements under this section, and shall not
25 be limited to the filing periods during which expenditures must otherwise be reported.

26 10 New Paragraph; Penalties. Amend RSA 664:21 by inserting after paragraph VI the following
27 new paragraph:

28 VII.(a) A political committee other than a political committee of a candidate that fails to
29 register in accordance with RSA 664:3 shall be subject to a fine up to 25 percent of the total amount
30 of independent expenditures and electioneering communication expenditures made during the period
31 from the date the political committee was required to register to the date the political committee
32 registered.

33 (b) A political committee that fails to report independent expenditures or electioneering
34 communication expenditures in accordance with RSA 664:6, IV-a shall be subject to a fine equal to
35 25 percent of the total amount of independent expenditures not reported or reported late.

36 11 Effective Date. This act shall take effect upon its passage.

HB 392-FN - FISCAL NOTE

AN ACT relative to political contributions and expenditures and relative to reporting by political committees.

FISCAL IMPACT:

The Department of Justice, Judicial Council, Judicial Branch, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2013 and each year thereafter. The Department of State states this bill may increase state general fund revenue by an indeterminable amount in FY 2013 and each year thereafter. There will be no fiscal impact on county and local revenues, or local expenditures.

METHODOLOGY:

This bill modifies the definition of a “political committee” and requires political committees register with and report electioneering communication expenditures to the Department of State. The bill makes violations of these provisions a misdemeanor and creates new penalties. These penalties are: (1) a fine of up to 25 percent of the total amount of independent expenditures and electioneering communication expenditures made during the period from the date the political committee was required to register to the date the political committee actually registered; and (2) a fine equal to 25 percent of the total amount of expenditures not reported or reported late. The Department of State states that, other than serving as a repository for reports mandated by the bill, the Department does not appear to gain any additional responsibility as a result of the bill, and so the bill will have no fiscal impact on Department expenditures. The Department states this bill will increase state general fund revenue by an indeterminable amount in FY 2013 and each year thereafter.

The Department of Justice states it expects to be responsible for enforcing the bill’s provisions, but is unable to estimate the number of investigations and prosecutions that would be generated by the bill. As such, the Department states the bill’s impact on expenditures is indeterminable.

The Judicial Council states the bill could result in a slight increase in indigent defense expenditures, to the extent that class A misdemeanor penalties are sought for violations of the bill and to the extent that those charged are eligible for appointed counsel. If anyone charged

with an offense is eligible for appointed counsel, the state would be subject to expenditures of \$275 for each case handled by a public defender or contract attorney, and \$60 per hour up to a cap of \$1,400 for each case handled by assigned counsel. Additional expenses would be incurred if an appeal is filed.

The Judicial Branch states it has no information on which to estimate how many fines or criminal charges will result from the bill. The Branch notes that in the past decade, there have only been two prosecutions at any level for violations of existing laws governing political expenditures, a situation the Branch assumes will remain relatively unchanged by this bill.

The New Hampshire Association of Counties states it cannot predict or determine the number of political committees the bill may impact or the number of violations that may occur. The Association states to the extent more individuals are charged as a result of the bill, the counties may have increased expenditures.