F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 01/30/13

SPONSOR Morales   **LAST UPDATED**   **HB**

SHORT TITLE Filing Fee in Lieu of Nominating Petitions   **SB** 218

ANALYST Cerny

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**		
Minimal	Minimal	Minimal		Voting System Revolving Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
State Treasurer's Office (STO)
State Land Office (SLO)
Secretary of State (SOS)
Attorney General (AGO)
Administrative Office of the Courts (AOC)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 218 proposes amending the primary election law to allow candidates for certain offices to pay a filing fee in lieu of submitting nominating petitions. It thus eliminates the gathering of a requisite number of signatures necessary for declaration of candidacy.

The filing fees would be $500 for offices of state senator and state representative. The filing fees would be one percent of the salary for the following offices: United States senator, United State representative, governor, lieutenant governor, state auditor, state treasurer, attorney general, commission of public lands, secretary of state, public regulation commissioner, district attorney and elective judicial offices in the judicial department. Fees collected will be deposited in the voting system revolving fund.

The bill also addresses Section 1-8-42 NMSA 1978 (being Laws 1973, Chapter 228, Section 12,

titled "Primary Election Law—Pauper's Statement in Lieu of Filing Fee." It amends that section of the statute that enables a candidate who is without financial means to pay such filing fee by a sworn oath on a form provided by the Secretary of State, furnished to each county clerk and attached by the proper filing officer to the declaration of candidacy.

FISCAL IMPLICATIONS

The State would receive an unknown but probably insignificant amount each year from filing fees in lieu of nominating petitions.

SOS states**: "**If the transition from nominating petitions to filing fees causes an increase in the number of candidates, it may increase the ballot length.   If the ballot were to increase to two pages, it would cause a significant increase in the costs of primary elections."

AOC suggests a candidate's petition signatures can be challenged in court under current law. Though such challenges are rare, and the bill would not eliminate them, they would likely become even more infrequent if a candidate could qualify for the ballot with simply a filing fee, thus reducing costs precipitated by challenges.

SIGNIFICANT ISSUES

AGO states that nominating petitions have recently been at issue in New Mexico courts.

- Most notably, the United States Court of Appeals for the 10th Circuit recently opined that the Election Code's Article 8 provisions regarding the address requirement for candidate nominating petitions are in conflict. *Compare* NMSA 1978, § 1-8-31(B) (requiring petition signer to provide his address of residence or, lacking that, a mailing address) *with* NMSA 1978, § 1-8-30(C) (setting forth mandatory petition form requiring petition signer to provide his address as registered). The court concluded that if a petition signer's registered and residence addresses differed, the conflicting provisions would leave the signer to guess which address is actually required, and the Code's provisions are therefore unconstitutionally vague.
- *Woodruff v. Herrera*, 623 F.3d 1103, 1108 (10th Cir. 2010). The Supreme Court has said that it is "committed to examine most carefully, and rather unsympathetically any challenge to a voter's right to participate in an election, and will not deny that right absent bad faith, fraud or reasonable opportunity for fraud." *Ruiz v. Vigil-Giron*, 2008 NMSC 63, 145 N.M. 280, 196 P.3d 1286, 1288 (N.M. 2008) (internal quotation marks omitted).

AGO further states: "Thus, in light of the unconstitutional vagueness of the statutes that require such, it may be prudent to provide an alternative to nominating petitions."

PRC points to the proposed cost of filing fees in some races, stating: "The 'pauper's statement provided for in lieu of the filing fee seems a misnomer in that, with respect to the higher-paid offices (for which the fee would be one percent of the annual salary), the fee would be on the order of $17,400 – an amount likely to be outside the financial reach, not only of "paupers," but also of many other potential prospective candidates. From 2009 through 2012, the compensation for most United States Representatives and Senators was $174,000." (Reference "Congressional Salaries and Allowances," Ida A. Brudnick, Specialist on the Congress, Congressional Research

Service, RL30064, January 4, 2012. http://library.clerk.house.gov/reference-files/112_20120104_Salary.pdf")

LFC staff recalculated the amount in the PRC analysis to be $1,740.

The requirement to sign a "pauper's statement," or the cost of the filing fee itself, could discourage some candidates from running for office if they lacked the time, ability or inclination to collect signatures for nominating petitions.

SOS states: "Currently, major party county candidates pay a $50.00 filing (independent county candidates are required to submit nominating petitions). The Campaign Finance Information System shows that most county candidates report the filing fee as a campaign expense. It is not clear from the statute, however, whether the filing fee should be paid from campaign funds."

CAC/bm