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

SPONSOR SJC **ORIGINAL DATE** 02/23/15 **LAST UPDATED** 02/27/15 **HB**

SHORT TITLE Campaign Public Financing Changes **SB** 58/SJCS/aSFl#1

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate	Indeterminate		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 289 and HB 205, Public Financing of Legislative Races

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the Attorney General (AGO)
Administrative Office of the Courts (AOC)
Secretary of State (SOS)

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Floor amendment number 1 adds the words “children or stepchildren” after the word “spouse” on page 7, line 21.

This extends the prohibition that money received from the Public Election Fund may not be used for the candidate’s personal living expenses, or compensation to the candidate or the candidate’s spouse, to now also include the candidate’s children or stepchildren.

Synopsis of SJC Substitute

Senate Bill 58 as substituted by the Senate Judiciary Committee amends the Voter Action Act, Sections 1-19A-1 to 17 NMSA 1978 in several ways to provide clarity about who is eligible to receive campaign public financing, the process for receiving matching funds, how matching funds are computed, and how such funds may be used.

It deletes the definitions for “seed money” and “noncertified candidate” and adds definitions for

"contributions" and "coordinated expenditure."

CS/58 also changes the definition of "qualifying period" for independent and minority party candidates, with the period beginning on January 1st as opposed to February 1st, thus extending it by one month.

CS/58 also now requires a person seeking public campaign financing to list not only qualifying contributions (the $5 contributions) but any other contributions as well, on the declaration of intent that is filed with the Secretary of State. The bill reduces the amount of accepted contributions from $500 to $100, excluding qualifying contributions, that an applicant candidate may receive from any one contributor during the election cycle in which the person is running for office. The bill provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period.

Contributions used to calculate the amount of public financing an applicant candidate may receive now includes money or other things of value, including the value of in-kind contributions that are made or received for the purpose of supporting or opposing the nomination or election of a candidate for public office. However, they do not include the value of services provided without compensation or unreimbursed travel or personal expenses of individuals who volunteer their time on behalf of a candidate.

CA/58 proposes to amend Section 1-19A-7 of the Voter Action Act that restricts the use of public campaign funds by adding language that money received from the public election fund may not be used for "the candidate's personal living expenses or compensation to the candidate or the candidate's spouse," as well as for certain other matters, including contributions to another campaign of the candidate, to the campaign of another candidate or to a political party or committee or to a campaign supporting or opposing a ballot proposition, for payment of legal expenses or fines levied by a court or the Secretary of State, or for any gift or transfer for which compensating value is not received.

Under the bill, a certified candidate's total campaign expenditures includes not only money received from the public election fund, but also money received from a political party and other contributions collected pursuant to the Act.

CA/58 also requires certified candidates who do not remain candidates in a general election or withdraw their candidacies, as well as certified candidates in the general election, to transfer to the Secretary of State for deposit to the public election fund any amount received from the fund and any amount received from a political party or from private contributors that remain unexpended or unencumbered by a date certain.

CA/58 also provides that any certified candidate in uncontested elections shall receive only 10% of the distribution, calculated per Section 9, subsection D, from the public election fund.

In addition to publishing guidelines outlining permissible campaign-related expenditures, SB 58 also requires the Secretary of State to publish penalties for violations of the Voter Action Act by January 1, 2016.

SB 58 provides that persons found to be in violation of the Voter Action Act shall be subject not only to civil penalties but to criminal prosecution by the Attorney General.

FISCAL IMPLICATIONS

In 2014, seven candidates were certified to receive public financing. According to agency analysis from the SOS. In 2014, total distributions to certified candidates were $674.9 thousand.

According to agency analysis from the SOS on CS/58, total distributions in those same races would amount to $537.3 thousand, resulting in a savings of $137.6 thousand, since candidates in uncontested races would receive just 10% of the calculated distribution. However, future savings are indeterminate since it is not possible to predict how many races will be uncontested in future elections affected by this bill.
Enactment of SB 58 may result in indeterminate expenditures to the AGO, as the Secretary of State is required to refer violations of the Voter Action Act to the Attorney General for criminal prosecution.

SIGNIFICANT ISSUES

CS/SB58 eliminates language in the Voter Action Act in Section 1-19A-14, with reference to matching funds, which would likely be ruled unconstitutional if challenged in New Mexico courts because the United States Supreme Court in 2011 struck down a similar statute in the Arizona Citizen's Clean Elections Act.

AGO analysis on the original bill states that the bill "addresses Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806 (2011), which held that public campaign financing statutes, such as New Mexico's, are unconstitutional if they increase a candidate's public financing amount to help match what other speakers (i.e., other candidates, independent committees) spend when they engage in political speech. It appears to be modeled on the Fair Elections Now Act, a federal bill that was developed in anticipation of Bennett."

PERFORMANCE IMPLICATIONS

Enactment of CS/58 may result in increase to the caseload of the AGO, as the Secretary of State is required to refer violations of the Voter Action Act to the Attorney General for criminal prosecution.

OTHER SUBSTANTIVE ISSUES

CS/58 is unclear with regard to whether and when a person can begin collecting contributions that are not qualifying contributions. The proposed amendments in Section 3 of the bill to 1-19A-3 Section A provide that a person shall submit a declaration of intent prior to accepting any contributions in order to become an applicant candidate. Section B provides that a person shall not be eligible to become an applicant candidate if the person has accepted contributions totaling more than one hundred dollars ($100), excluding any qualifying contributions, from any one contributor during the election cycle. Section 8 of the bill provides that an applicant candidate may accept the $100 contributions 60 days prior to the beginning of qualifying period from registered voters in the district.

CS/58 in Section 2 amends the definition of "qualifying contribution" to allow for any voter eligible to vote (as opposed to any *registered* voter, that word deleted) as eligible to make such a contribution. However, in Section 8, paragraphs A and B require that contributions must be from qualified electors registered to vote in the candidate's district. It would be clearer if the same

terminology were used in these three sections, since they have the same meaning.

TECHNICAL ISSUES

The definition for "coordinated expenditure" in CS/58 is different than the definition for "coordinated expenditure" set forth in SB384 and HB278. These definitions need to match in order to avoid future conflict in compiling the law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Unconstitutional provisions regarding matching funds will remain in the Voter Action Act.

CAC/je/bb/aml/je