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FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 2/13/17
 LAST UPDATED 3/14/17 HB _____

SHORT TITLE Public Financing of Campaign Fixes SB 97/SJCS/aHJC/aHF1#1

ANALYST Esquibel/Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	Significant	Significant	Recurring	Public Election Fund

(Parenthesis () Indicate Revenue Decreases)

SJC substitute for Senate Bill 97 conflicts with SB 72, Public Accountability Act, and HB10, Public Accountability Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

Secretary of State’s Office (SOS)

SUMMARY

Synopsis of HF1#1 Amendments

House Floor Amendments #1 provide a new exemption to the definition of “contribution” for incidental use of a candidate’s personal property, home or business office for campaign purposes subject to a fair market cap of \$50 for each occurrence. They also make stylistic and grammatical changes to the other provisions of that definition that do not change their substance.

Synopsis of HJC Amendments

The House Judiciary Committee amendments for the Senate Judiciary Committee substitute for Senate Bill 97 (SB97/SJCS/aHJC) provide that money from the public election fund received by a candidate is not restricted from being used for financing campaign-related expenses incurred by a business owned by the candidate or a business owned by the candidate’s spouse, children or stepchildren. The HJC amendments also provide that money from the public election fund received by a candidate may be used for legal expenses.

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 97 (SB97/SJCS) proposes to amend sections of the Voter Action Act (VAA), which provide for public financing for certain candidates. The bill creates a definition of a “contribution,” “expenditure,” and “coordinated expenditure,” and removes the definitions of “noncertified candidate” and “seed money.” All language regarding matching funds and seed money is deleted. SB97/SJCS also deletes the definition of election cycle.

The Secretary of State’s Office (SOS) writes SB97/SJCS further amends Section 1-19A-3 and adds subsection D, allowing four exceptions to qualifying as an applicant candidate if a person has accepted more than \$100 from any one contributor as follows: 1) if contributions were raised for an office other than a covered office and no money was raised or expended on any campaign activity for a covered office, 2) the person does not solicit contributions for another office after declaring for a covered office or becoming an applicant candidate, 3) the person must place all other money collected before becoming an applicant candidate in a separate account and not use money in that account for the duration of the person’s campaign for the covered office, and 4) requires if the person is elected to the covered office, the person must transfer all money in the separate account to the public election fund.

Section 1-19A-10 is amended to comply with the above provisions allowing for money “as otherwise provided by law” to be deposited into the public election fund.

Section 1-19A-13 is amended such that those candidates participating in an uncontested primary but have another candidate file for candidacy in another party’s primary for the same office will be provided a 20% disbursement. It further proposes that no disbursement will be provided for an uncontested general unless they later become contested due to the filing of an independent or minor party candidate in which the candidate would be entitled to the full amount. This section is further amended such that the public election fund amount shall increase in accordance with the consumer price index published by the US Department of Labor.

The Secretary of State (SOS) writes the bill extends the qualifying period for independent and minor party candidates by one month, beginning January 1 instead of February 1. Section 1-19A-3 is amended such that a person cannot accept either qualifying contributions or other contributions prior to filing a declaration of intent. It also limits the amount a candidate may accept to be eligible to become an applicant candidate to no more than \$100 from any one contributor during the election cycle for which they are running for office.

The bill amends Section 1-19A-6 by adding language that requires the Secretary of State (SOS) to certify candidates based on the applicant candidate’s statement of compliance with requirements of the VAA. This amendment indicates that the SOS will certify applicant candidates based on their signed statements.

The bill adds restrictions on the use of public campaign funds. It provides that public funds may not be used for candidates’ personal living expenses, or for compensation to a candidate, or candidate’s spouse, children, stepchildren or a business owned by the candidate or the candidate’s spouse, children or stepchildren. [The House Judiciary Committee amendments reversed this prohibition on the use of public election funds along with allowing these funds to be used for legal expenses.] Funds cannot be paid to another campaign of the candidate or to

retire previous campaign debt. Funds cannot be used for campaign contributions to another candidate, political party, political committee or campaign supporting or to oppose a ballot proposition. The funds cannot be used to support any other candidates or oppose any candidate other than the certified candidate's opponent. Public funds cannot be used to pay legal expenses or any fine levied by the SOS. Public funds also could not be used for gifts or a transfer for which compensating value is not received.

The bill limits the participating candidate's total campaign expenditures to the amount of money distributed from the fund, contributions received from a political party collected pursuant to Section 1-19A-8, and contributions collected pursuant to Section 8 of SB97/SJCS.

The VAA is further amended to require the participating candidate to provide to the SOS any unspent funds collected pursuant to the VAA for deposit into the public election fund including any money collected from private contributors or political parties.

The bill requires the SOS to issue guidelines outlining permissible campaign-related expenditures and penalties for violations of the VAA by September 1, 2017.

Certified candidates are required to report all contributions and expenditures according to the campaign reporting schedule specified in the Campaign Reporting Act. All other reporting requirements are deleted because they pertained to matching funds.

Section 8 proposes new language allowing an applicant candidate to collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period from registered voters throughout the state. A certified candidate may collect contributions from qualified electors in the state. Total contributions may not exceed \$100 per contributor during the election cycle. Certified candidates may not accept contributions from any other source, except as allowed pursuant to Section 1-19A-8.

Section 1-19A-13 is amended to change the date on which the SOS shall determine the amount of the distributions for the upcoming election year from August 1 to September 1 of each odd numbered year. This section reduces the fund distribution for uncontested candidates to 20% of the contested election formula. This section also removes the requirement to increase the distribution by 20% in the SOS' estimate when preparing it according to this section.

Section 10 of the bill amends Section 1-19A-17 requiring the SOS to not only impose a fine for a violation, but also transmit the finding to the AGO for criminal prosecution.

Sections 1-19A-5 and 1-19A-14 related to seed money and matching funds are repealed.

The AGO provides the following section-by-section synopsis:

Section 1-19A-2: Adds definitions of "contributions", "coordinated expenditure", "expenditure" and removes the definitions of "seed money" and "noncertified candidate." The definition of "qualifying period" for independent and minority party candidates is changed from February 1st to January 1st, creating a one month extension.

Section 1-19A-3: A person must file a declaration of intent with the Secretary of State prior to collecting any contributions, as opposed to just qualifying contributions. The amount of

contributions a person may collect while remaining an eligible applicant candidate is changed from \$500 total to \$100 from any one contributor. The bill adds subsection D, allowing four exceptions to qualifying as an applicant candidate if a person has accepted more than \$100 from any one contributor as follows: 1) if contributions were raised for an office other than a covered office and no money was raised or expended on any campaign activity for a covered office, 2) the person does not solicit contributions for another office after declaring for a covered office or becoming an applicant candidate, 3) the person must place all other money collected before becoming an applicant candidate in a separate account and not use money in that account for the duration of the person's campaign for the covered office, and 4) requires if the person is elected to the covered office, the person must transfer all money in the separate account to the public election fund.

Section 1-19A-6: Removes reference to “seed money” and clarifies certification requirements.

Section 1-19A-7: Prescribes certain uses of funds distributed to a certified candidate including prohibiting use for personal living expenses, payment to retire campaign debt, contributions to another campaign, compensation to the candidate or the candidate's spouse, children or stepchildren, or a business owned by the candidate or the candidate's spouse, children or stepchildren. Subsection D appears to limit contributions from political parties to in-kind contributions. All funds not used during a campaign, including the amount received from a political party or private party, must be transferred to the Secretary of State for deposit in the public election fund.

Section 1-19A-9: Language is removed requiring noncertified candidates who have as an opponent a certified candidate to report their campaign expenditures to the Secretary of State ten days before the election. Language requiring similar reporting by people and political committees is also removed. Certified candidates shall report all contributions and expenditures.

Section 1-19A-10: “Seed money” is removed from the list of money required to be deposited into the public election fund. Instead, unspent “contributions to a candidate” shall be deposited into the public election fund.

Section 8 is a new section under the VAA which proposes that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period from voters throughout the state. A certified candidate may collect contributions throughout the qualifying period from any voter in the state. Total contributions from a voter shall not exceed \$100 per election cycle. Qualified electors throughout the state may contribute and such contributions are limited to \$100 per election cycle.

Section 1-19A-13: The amount to be distributed to candidates during uncontested elections is lowered from 50% to 20% of the amount available during contested elections. Language is removed requiring the Secretary of State to increase the total amount to be distributed by 20% for matching purposes.

Section 1-19A-17: Language is added requiring the Secretary of State to impose both a fine and transmit the finding to the Attorney General, instead of one or the other.

Sections 1-19A-5 (seed money) and 1-19A-14 (matching funds) are repealed.

The effective date of the bill is July 1, 2017.

FISCAL IMPLICATIONS

The Secretary of State’s Office (SOS) reports SB97/SJCS would reduce the public election fund distribution to certified candidates running in an uncontested election. The Voter Action Act (VAA) currently provides certified candidates running in an uncontested election with 50% of the funds distributed to a certified candidate in a contested election. The bill proposes to reduce the fund allocation from 50% to 20% for an uncontested primary that looks to be contested in the general election. Further, if a general election is uncontested the candidate will not receive any disbursement.

The SOS reports the public election fund is currently at risk of not containing adequate funds for disbursement to candidates who fall under the current auspices of the VAA in 2018 and beyond. By reducing the disbursement for uncontested candidates to 20%, the savings realized will help ensure adequate funding is available for publicly financed candidates moving forward.

The SOS notes it is impossible to predict the elements of the fund disbursement formula including the number of candidates that will apply to be certified under the VAA, the races that will be contested, and how many voters will be registered. However, below is a table illustrating a sample disbursement based upon the publicly financed candidates in 2016 and the adjusted disbursement under the provisions of SB97/SJCS for uncontested candidates. In the sample scenario below, the public election fund would realize a cost savings of \$82,692.

Covered Office	Party	Existing Primary Disbursement	Primary Election Disbursement per SB97/SJCS (20% for uncontested primary but contested general election)	Existing General Disbursement	General Election Disbursement per SB97/SJCS
Justice of the Supreme Court	Dem	\$41,276 (uncontested)	\$16,510 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
	Rep	\$27,634 (uncontested)	\$11,054 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
Judge of the Court of Appeals	Dem	\$41,276 (uncontested)	\$16,510 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.

	Rep	\$27,634 (uncontested)	\$11,054 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
PRC Commissioner, District 1	Dem	\$31,544 (contested)	\$31,544 No change as race is contested.	Defeated in primary	No funds were disbursed in 2016 general election.
Total		\$169,364	\$86,672	\$710,184	\$710,184

SIGNIFICANT ISSUES

The SOS and the AGO indicate the bill eliminates language in the VAA, Section 1-19A-14, with reference to matching funds, which would likely be ruled unconstitutional if challenged in New Mexico courts because the U.S Supreme Court in 2011 struck down a similar statute in Arizona. Since they increase the amount of public funds made available to a publicly financed candidate if an opponent of that candidate receives or expends a greater amount than the amount of public funds originally provided to the publicly financed candidate. [See Arizona Free Enter. Club’s Freedom PAC v. Bennett, 131 S. Ct. 2806 (2011)].

ADMINISTRATIVE IMPLICATIONS

The SOS reports the bill would reduce the requirements that must be verified directly by the SOS, therefore, reducing the labor and staff hours required to complete the candidate certification process.

CONFLICT

Senate Bill 72 and House Bill 10 would enact the Public Accountability Act which proposes to remove the enforcement provision of the Voter Action Act as proposed by SB97/SJCS and place that duty with the Public Accountability Board.

OTHER SUBSTANTIVE ISSUES

The Attorney General’s Office notes with the removal of the “seed money” statute, Section 1-19A-5 [NMSA 1978], an applicant candidate’s personal expenditures on a campaign are considered to be "contributions" under the Voter Action Act, subject to the \$5 thousand limit, regardless of how the candidate may characterize those funds or their intended use. See *Montoya v. Herrera*. 2012-NMSC-011, 276 P.3d 952

The statute does not define independent expenditure. PACs do not have restrictions on the types of expenditures that can be made, except for the limitations on contributions to candidates and campaign committees, and for coordinated expenditures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

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

RAE/jle