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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/08

SPONSOR Campos, J LAST UPDATED _____ HB 203

SHORT TITLE Primary Ballot Access for Certain Candidates SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB1
Relates to HB190

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General's Office (AGO)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 203 provides for a statutory alternative to placing a candidate's name on the primary election ballot if a candidate does not receive the "preprimary convention designation."

The Attorney General's Office explains that currently a candidate will appear on the primary election ballot only if he receives a preprimary convention designation (receives 20% support of the elected delegates). A candidate who fails to receive the preprimary designation may collect additional signatures. The additional signatures must be from each county. They shall total at least 2 percent of the total vote received in the county.

For those candidates, who have districts that contain counties that are partially contained within the district, the additional signatures for those counties shall total 2 percent of the total vote received in those precincts within that portion of the county. A candidate has twenty days to collect these signatures (from the close of the preprimary convention).

SIGNIFICANT ISSUES

According to the Secretary of State, there is a pending lawsuit Don Wiviott v. State of New Mexico and Mary Herrera, Secretary of State, D-0101-CV-2008-00022 (1st Judicial District) that alleges that the Legislature's 2007 decision to delete Section 1-8-33(D) unconstitutionally abridges a candidate's access to a primary election ballot. If the Legislature adopts Senate Bill 1, then the lawsuit may be moot.

The Federal Court for the District of Connecticut has ruled that a similar statute that required a candidate to receive a preprimary convention designation (15%) was a "severe burden" on ballot access and turned away viable candidates. See Campbell v. Bysiewicz I, 213 F.Supp.2d 152 (D. Conn. 2002)/ Campbell v. Bysiewicz II, 242 F. Supp. 2d 164 (D. Conn. 2003). The Court struck down the law and the Connecticut Legislature amended the law to allow a candidate, who did not receive the 15% designation, to file petitions signatures (equal to 2 percent of the total state-wide party registration) to be placed on the ballot. See C.G.S.A. § 9-400 (amended through 2007). In contrast, the Massachusetts State Supreme Court upheld a two-part system where a candidate had to: (a) first obtain a certain number of signatures (from registered voters from any party) and (b) receive 15% of the state convention delegate vote. See Langone v. Secretary of the Commonwealth, 446 N.E. 2d. 43 (Mass. 1983). The Court found that the law was not a "severe burden" on ballot access because it allowed a political party to re-gain some control over whom it was nominating as its candidate (i.e. since any registered voter could sign the petitions—conceivably Democrats could sign petitions for a candidate who was trying to run as a Republican). (Note, New Mexico requires a person signing a candidate petition to be of the same political party as the candidate. See NMSA 1978, Section 1-8-31).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 1 will allow a candidate to collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office expresses concern that there may be an argument that this solution constitutes an additional "severe" burden on ballot access. For example, is it realistic to expect a statewide candidate (i.e. governor or commissioner for public lands) in a state that has the 5th largest land mass in the country to be able to collect signatures from 33 counties each totaling at least 2 percent of the total vote received in those counties in just twenty days? Is a Democratic Party candidate going to be able to reach that total in Catron County? Is a Republican Party candidate going to be able to reach that total in Rio Arriba County? Is it realistic to expect a congressional candidate to be able to collect signatures from multiple counties each totaling at least 2 percent of the total vote received in the county, as well as at least 2 percent of the total vote received in areas that are partially contained within the district, in just twenty days?

The Secretary of State notes that House Bill 203 addresses the concerns raised regarding ballot access after a pre-primary convention. This bill requires all candidates for statewide and federal office to participate in the pre-primary convention and only permits circumventing the decision of the convention when the candidate is able to demonstrate organization and support in each county to be represented. This bill balances competing state and party interests in ballot access and in appropriate restrictions in such access.

POSSIBLE QUESTIONS

Senate Bill 1 provides for 4 percent of the total vote of the candidate's party in the state or congressional district. Is this actually a higher or lower total when compared to 2 percent of the total vote within each county?

EO/bb