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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/13
 SPONSOR Wirth LAST UPDATED 02/13/13 HB _____
 SHORT TITLE Public Campaign Financing Changes SB 16/aSRC
 ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown (See Narrative)				Recurring	Public Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 15 and may conflict with HB 68

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

Administrative Office of the Courts (AOC)

Department of Finance and Administration (DFA)

Secretary of State (SOS)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment clarifies, with regard to certification of candidates for public financing, that the Secretary of State must determine from the applicant candidate’s statements in their final submittal of qualifying contributions whether they have met the requirements of the Voter Action Act. Further, with regard to allowable contributions, that the total contributions per election cycle to a candidate may not exceed one hundred dollars per qualified elector.

Synopsis of Original Bill

Senate Bill 16 amends, repeals, and enacts sections of the Voter Action Act (“VAA”), Chapter 1, Article 19A NMSA 1978 that specifically apply to the public financing of campaign expenses

and debts for “covered offices,” defined as any office of the judicial department that is subject to statewide elections and to the office of the Public Regulation Commission.

SB amends the VAA by allowing candidates to collect \$100 contributions which the State will match with a disbursement of four times the amount collected—not to exceed three times the initial disbursement to the candidate in total. Current law disqualifies any applicant from receiving public financing if that candidate receives more than \$500 from any single contributor; this bill reduces the amount to \$100.

SB 16 also, in section 9 changes the distribution formula for certified candidates so that it is no longer based on the spending of a non-qualified opponent but instead is based on the amount of contributions collected by a qualified candidate.

Following an initial distribution based on numbers of voters, the matching fund formula will be set at 4 times the amount of contributions collected, but not to exceed 3 times the initial disbursement of the candidate.

The bill clarifies that violation of the VAA includes reporting violations under the Campaign Reporting Act.

Specifically, SB 16:

Section 1: Changes statutory reference for Voter Action Act from Section 1-19A Subsections 1-17 NMSA 1978 to Chapter 1, Article 19A NMSA 1978

Section 2: Amends Section 1-19A-2 NMSA 1978 by eliminating definitions for “non-certified candidate” and “seed money.” It also changes the definition of qualifying period for independent or minor party candidates by moving the beginning date from February 1 to January 1.

Section 3: Amends Chapter 1, Article 19A-3 NMSA 1978 by changing references to “candidate” to “person” since it speaks to a person who is applying to *become* an applicant candidate. It also changes the eligibility requirements for becoming an applicant candidate by reducing the maximum amount of contributions a person may have received when they are running for office from \$500 to \$100. If a person has received more than \$100 of contributions they shall be ineligible to become an applicant candidate.

Section 4: Amends Chapter 1, Article 19A-6 NMSA 1978 with minor changes in clarifying language.

Section 5: Amends Chapter 1, Article 19A-7 NMSA 1978 clarifying guidelines and restrictions for contributions and expenditures as follows:

- Subsection C – expenditures and debts cannot exceed the money received from the fund or from a political party pursuant to the Voter Action Act;
- Subsection D – funds from any source that remain unspent or unencumbered by the date of the primary election must be transferred to the secretary for deposit in the fund within 30 days after a primary election ;
- Subsection E -- funds from any source that remain unspent or unencumbered by the date of a general election must be transferred to the secretary for deposit in the fund within 30

days after a general election.

It also adds a new Subsection F specifying that should a certified candidate withdraw or otherwise is no longer a certified candidate, the individual must transfer all funds that remain unspent or unencumbered to the secretary within 30 days of the time they withdrew or ceased to be a certified candidate.

Section 6: Amends Chapter 1, Article 19A-9 NMSA 1978 to include not only the publishing of permissible campaign related expenditures, but also penalties for violations of the Voter Action Act by January 1, 2014 and adds that certified candidates must report all contributions and expenditures consistent with the Campaign Reporting Act. Removes Subsections E and F in their entirety.

Section 7: Amends Chapter 1, Article 19A-10 NMSA 1978 by removing reference to seed money.

Section 8: Adds a new section to the Voter Action Act: Allowable Contributions, specifying these as follows:

- An applicant candidate may collect contributions from qualified electors in the candidate's district during the 60 days preceding the qualifying period and throughout the qualifying period;
- A certified candidate may collect contributions from qualified electors in their district and must not accept contributions from any other source unless allowed by Section 1-19A-8 NMSA 1978;
- Contributions to a candidate may not exceed \$100 per donor per election cycle.

Section 9: Amends Chapter 1, Article 19A-14 NMSA 1978 regarding Matching Funds by eliminating current language and adding the following:

- After the initial distribution of funds (per formula in Section 1-19A-13m NMSA 1978) the secretary will distribute matching funds, within three days of filing of campaign report, at four times the amount of contributions collected by the candidate as an applicant and as a certified candidate;
- The total amount of public money distributed to a certified candidate must not exceed three times the amount of the initial distribution;
- No matching funds will be distributed to a candidate in an uncontested election.

Section 10: Amends Chapter 1, Article 19A-17 NMSA 1978 clarifying that violations to provisions of the Voter Action Act may result in a fine or *criminal* prosecution and adds the submission of false statements in reports required by the Campaign Reporting Act to the violations categorized as a fourth degree felonies. Violators are subject to a civil penalty of up to \$10,000 per violation and all money distributed to that candidate shall be returned to the fund.

FISCAL IMPLICATIONS

Because the number of candidates in any race may vary, and how much each candidate may raise that will be matched is unknown, it is not possible to estimate the cost of operating impact.

SOS states: “It is unknown how much the matching fund distributions would be under this formula.”

AOC states: “There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additional fiscal impact on the judiciary would be proportional to the increased arrests cases filed due to enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Efforts to quantify specific fiscal impact by case are underway, but specific information is not available at this time.”

The AGO notes that while the bill addresses legal issues, whether there will be sufficient public funds available to provide for meaningful public financing for Public Regulation Commission and appellate judge races is open to question.

SIGNIFICANT ISSUES

SB 16 also removes the sections of the Act that increased a candidate’s public financing amount when other candidates or independent committees spent more than a certain amount opposing the candidate. AGO states that the matching provision was held to be unconstitutional in a recent US Supreme Court, and last year during the PRC election, New Mexico’s Act was challenged as being unconstitutional.

SOS states: “The matching funds provision of the existing statute was ruled unconstitutional earlier this year in Dolan v. Duran because it was based on the amount spent by a certified candidate’s non-certified opponent. This bill appears to resolve the unconstitutional provision. It also resolves an ambiguity in the statute regarding an applicant candidate.”

AGO states: “This 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. This bill is modeled on the Fair Elections Now Act, a federal bill that was developed in anticipation of Bennett.”

PERFORMANCE IMPLICATIONS

AOC notes that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type.

OTHER SUBSTANTIVE ISSUES

Since campaign contribution will be returned to the SOS if unspent, AGO raises the question, “Can contributions, which constitute protected First Amendment speech, be seized by the State?”

RELATIONSHIP

Relates to HB 68, SB 15

CC/svb:blm