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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/13
 SPONSOR Padilla LAST UPDATED 03/15/13 HB 90/aSRC/aSJC/aSFI#1
 SHORT TITLE Local Government Campaign Reporting Act SB /aSFI#2/aHVEC
 ANALYST Cerny/Chabot

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
Minimal	Minimal	Minimal	Recurring	General Fund to benefit School Fund

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$150.0	\$0.0	\$150.0	Nonrecurring	Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 15, SB 16, SB 88, SB 336, HB 68, HB 93

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Attorney General's Office (AGO)

New Mexico Municipal League (NMML)

Secretary of State (SOS)

SUMMARY

Synopsis of HVEC Amendment

House Voters & Elections Committee Amendment amends language in SB 90 as follows:

1. Strikes Senate Rules Committee Amendments 1, 2 and 4.

2. Strikes Senate Judiciary Committee Amendment 1.
3. On page 3, line 5, strikes the comma and inserts in lieu thereof "or".
4. On page 3, line 7, strikes "or a municipality", strikes lines 8 and 9 in their entirety and strikes line 10 up to the semicolon

The HVEC amendment redefines “local government” for the purposes of the bill to include only a “school board or a special district with a population of more than five thousand according to the most recent decennial census.” Thus enactment of SB 90 will no longer require campaign reporting from candidates for municipal elections.

Synopsis of SFI Amendment #2

Senate Floor Amendment #2 strikes Senate Floor Amendment #1, thus reinstating the language of SRC amendment #3 and therefore requiring reporting under the Act, with regard to school elections, only to districts with twelve thousand students or more.

Synopsis of SFI Amendment #1

Senate Floor Amendment #1 strikes Senate Rules Committee amendment #3 which redefined “local government” to include school districts of enrollments with twelve thousand students or more, thus narrowing the Local Government Campaign Reporting Act and not requiring reports from districts with fewer than twelve thousand students.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 90 as amended by the Senate Rules Committee adds language referring to governance in special districts and municipalities with populations of more than 5,000 to reflect that the campaign reporting requirements will be required of all such entities, even those that do not have such reporting requirements in their “charter” or “code of ordinances.”

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 90 raises the reporting requirement to \$1,000 from \$200 and changes the definition of “local government” to a school district of 12,000 students or more.

Synopsis of Original Bill

Senate Bill 90 (SB 90) enacts a new section of the Election Code that would enact a comprehensive system of reporting obligations for local government candidates seeking public office. It includes both reporting obligations and penalties for failing to meet those obligations. Finally, it includes some limitations on the use to which candidates may put the contributions. Currently there is a process in place only for those running in statewide elections to report to the Secretary of State (SOS).

SB 90 would apply to those who seek or consider an office in a local government election covered by the proposed Local Government Campaign Reporting Act. These are: an individual who either has filed a declaration of candidacy; has received contributions or made expenditures of two hundred dollars or more; or authorized another person or campaign committee to receive contributions or make expenditures of two hundred dollars or more for the purpose of seeking the candidate's election to a local government office.

SB 90 requires timely reporting of campaign contributions and expenditures to the SOS of two hundred dollars or more in the following cases: elections for a school board, a two-year public post-secondary educational institution, a special district with a population of more than five thousand according to the most recent federal decennial census or a municipality with a population of more than five thousand according to the most recent federal decennial census that does not have campaign reporting requirements in its charter.

The reports are to be electronically filed with the SOS. Statements of no activity are also required if not contributions or expenditures were made during the reporting period, in lieu of a full report.

SB 90 also provides for penalties for non-compliance.

In detail, SB 90 would stipulate:

- Candidates or campaign committees that have received contributions or made expenditures of more than two hundred dollars shall file with the SOS a report of all contributions received and expenditures made on a prescribed form, and the report shall be filed in the same or similar electronic system as that used for the Campaign Reporting Act.
- Four different reports would be required under this act. These filings would be due on the sixtieth day before the election; on the thirtieth day before the election; five days before the election; and thirty days after the election. If a candidate or campaign committee has not received any contributions and has not made any expenditures since the last report filed with the SOS, the candidate or campaign committee shall only be required to file a statement of no activity.
- Reports will be required until the candidate or campaign committee delivers a report to the SOS stating that there are no outstanding campaign debts; all money has been expended in accordance with the provisions of Section 6 of the Local Government Campaign Reporting Act; and the bank account for campaign funds maintained by the candidate or campaign committee has been closed.
- The report must contain the name and address of the person to whom an expenditure was made or from whom a contribution was received; the occupation and type and name of business, if any, of any person making contributions of two hundred fifty dollars or more in the aggregate per election; the amount of the expenditure or contribution or value thereof; the purpose of the expenditure; and the date that the expenditure was made or the contribution was received.
- Late or false or incomplete reports subject the candidate to a fine of \$50 per day for each regular working day after the time required by the Local Government Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions. A maximum of \$5,000 may be assessed under this bill.

- If a candidate fails to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the SOS, the candidate's name can be stricken from the ballot if the violation occurs prior to the date of withdrawal of candidacy or shall not be issued a certificate of election if the violation occurred after the date set for withdrawal of candidacy. A losing candidate shall not be permitted to file a declaration of candidacy in future elections until the candidate has complied with all requirements of the act.
- SB 90 also imposes limitations on the use of campaign funds. See p 9 lines 1-18.

FISCAL IMPLICATIONS

The SOS state that the bill creates reporting for new categories of candidates, and does not provide for the same type of report currently used by statewide candidates. Notably, the reports required by this bill do not account for anonymous contributions or special events. As a result, the same reporting module cannot be used by the SOS.

Further, the current program is not built to accommodate the multiple election cycles which would be involved in the program created by this bill. The current SOS reporting software is programmed to accommodate all candidates filing on the same filing dates. Under this bill, different candidates would fall under different election cycles. Significant modifications to the software program would be required to accommodate multiple election cycles.

Therefore, the SOS anticipates a nonrecurring appropriation of \$150 thousand to modify the current reporting program to accommodate the requirements of this bill.

Minimal revenues from penalties anticipated.

SIGNIFICANT ISSUES

The bill contains a provision on page 9 stating "No contributions solicited for or received in a federal election campaign may be used in a local government election campaign." The SOS questions whether that provision is enforceable.

The bill provides for a penalty for late filing of reports. Unlike the Campaign Reporting Act, it does not allow the SOS to waive the penalties for good cause shown. The SOS states: "Issues with web browsers and internet connections have caused statewide campaign filers to file late reports, through no fault of the filer."

The New Mexico Municipal League (NMML) states: This bill would impose significant reporting requirements on large numbers of candidates for local government offices. The population threshold of five thousand includes most of the incorporated municipalities in New Mexico. The NMML also points out that the SOS will be charged with processing hundreds of additional campaign reports and with monitoring and potentially addressing many more candidates who fail to comply with the act.

The Attorney General's Office (AGO) states: "One of the penalties enacted by this bill, in subsection C of Section 5, would bar from the ballot any candidate who either fails to file a campaign contribution report or to pay a fine to the SOS for failing to file such a report if the violation occurs before or on the last date for the withdrawal of candidates. The same subsection

would bar issuance of a certificate of election to such a candidate if the violation occurs after the last date for the withdrawal of candidates. These provisions could be subject to legal challenge on the basis that they unconstitutionally burden a candidate's First Amendment rights. The resolution of such a claim would depend on a balancing of the burden the provisions place on a candidate's constitutional rights against the interest the State has in placing that burden. Here, the burden is relatively minimal – a candidate must merely submit a report or pay a fine for failing to do so. Comparatively, the State has a powerful interest in the transparency of elections.”

ADMINISTRATIVE IMPLICATIONS

If enacted, a process would need to be developed to ensure the SOS receives all declarations of candidacy filed with the local municipal clerks. The SOS needs this information to ensure all candidates running for office are in compliance with the reporting requirements mandated by this legislation.

For statewide campaign reporting, the SOS obtains the information for each candidate who files with the SOS or a county clerk and sets up a user name and password for each. For local governments, it is anticipated the SOS would need to create a web portal for local clerks to enter the information. It is unlikely existing SOS staff would be able to create the usernames and passwords in a timely manner for all candidates who would come under this bill.

The SOS states: “It is unlikely the program would be ready for implementation by July 1, 2013.”

Additional the SOS staff time to monitor compliance and assist with reporting by local government candidates also would be required.

TECHNICAL ISSUES

The SOS points out that SB 90 creates a Local Government Campaign Reporting Act, separate from the statewide Campaign Reporting Act; it includes some of the same definitions, but not all.

Notably, the Local Government Act under this bill does not include definitions of "bank account", "person", or "reporting individual". The bill defines "candidate" and "political purpose" but the definitions do not match those found in the Campaign Reporting Act.

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