FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR SRC   **LAST UPDATED** 02/27/13   **HB**

SHORT TITLE Change Nominating Petition Forms   **SB** 222/SRCS

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 218

SOURCES OF INFORMATION
LFC Files

SUMMARY

    Synopsis of Bill

Senate Rules Committee Substitute for Senate Bill 222 changes the format of the nominating petition forms filed by candidates who wish to run for elected office in primary elections and changes requirements for invalidating petitions.

With regard to the inclusion of the candidate's district or division, the bill states that the petition must include "the district or division of the office sought, if the office sought is a judicial division office elected at large within a judicial district."

SB 222 allows signatures to be counted for those who were not a registered member of the candidate's political party ten days prior to the filing of the nominating petition.

It invalidates any nominating petition if the information required of the individual gathering signatures is not listed on the petition prior to signing by the voter or if any of the required information was altered. It also adds language providing that a nominating petition shall be invalid if the information required at the top is not included, and provides that no showing of bad faith, fraud or reasonable opportunity for fraud is required.

The bill makes the same changes to nominating petitions for independent candidates.

The Substitute bill differs from the original bill in that is deletes as a required piece of information the date of birth on all petition forms.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

SOS in previous analysis states: "This bill addresses an issue that arose during the primary election cycle in which it was determined that a person circulating a nominating petition had forged certain signatures.

However, there are significant legal issues with the bill as drafted.

SOS points out that the bill as amended (p. 5 lines 14-16) appears to require only judicial candidates to include on the nominating petition the district or division of the office sought. The previous language, which applied to all primary candidates, caused a number of legal challenges in the 2012 primary election owing to the confusion around requirements for judicial candidates versus those for other offices. The SOS does not feel that the proposed language change will rectify the problem for non-judicial candidates "and should be clarified, whether as a result of this bill or another bill."

SOS states: "In the 2012 primary election, that language was interpreted to mean that candidates for legislature should include the district number, while candidates for judicial office should include both the judicial district and the division number of the seat held.

AGO states nominating petitions have recently been at issue in New Mexico courts.

- Most notably, the United States Court of Appeals for the 10th Circuit recently opined that the Election Code's Article 8 provisions regarding the address requirement for candidate nominating petitions are in conflict. *Compare* NMSA 1978, § 1-8-31(B) (requiring petition signer to provide his address of residence or, lacking that, a mailing address) *with* NMSA 1978, § 1-8-30(C) (setting forth mandatory petition form requiring petition signer to provide his address as registered). The court concluded that if a petition signer's registered and residence addresses differed, the conflicting provisions would leave the signer to guess which address is actually required, and the Code's provisions are therefore unconstitutionally vague.
- *Woodruff v. Herrera*, 623 F.3d 1103, 1108 (10th Cir. 2010). The Supreme Court has said that it is "committed to examine most carefully, and rather unsympathetically any challenge to a voter's right to participate in an election, and will not deny that right absent bad faith, fraud or reasonable opportunity for fraud." *Ruiz v. Vigil-Giron*, 2008 NMSC 63, 145 N.M. 280, 196 P.3d 1286, 1288 (N.M. 2008) (internal quotation marks omitted).

AGO notes that p. 4 lines 3-7 indicate that "a person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.

Therefore, AGO states that "It has been judicially determined that conflicting provisions, which would leave the signer to guess which address is actually required, are unconstitutionally vague. Thus, in order to pass Constitutional scrutiny, Senate Bill 222 must clearly dictate what shall occur if a signer's registered and residence addresses differ."

AMENDMENTS

Title of the bill (p. 1, line 13) states "Providing Penalties." As no penalties are provided for, this should be deleted.

Per the recommendations of the AGO and SOS, consider amending SB222 to

- provide clarity relative to the required information with regard to "the district or division of the office sought" on petition forms used by judicial and legislative candidates;

- resolve the conflicting provisions with regard to address by amending the address provision in the statutes at issue (p. 4 lines 3-7) and in the proposed nominating petition forms included within the bill;

- delete the new language suggested for Section 2 E, on p. 5 lines 17-18 as AGO states a "This language is unclear and superfluous."

CAC/blm