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FISCAL IMPACT REPORT

ORIGINAL DATE 02/14/14

SPONSOR HVEC LAST UPDATED _____ HB 328/HVECS

SHORT TITLE Minor Party Election Nominating Petitions SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Total	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Near Duplicate of SB 125/SRCS

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Voters & Elections Committee Substitute for House Bill 328 enacts new sections of the Election Code, Chapter 1, NMSA 1978, and amend others, to provide for procedures and filing requirements for the nomination of candidates by minor political parties in general elections and standardizes filing dates for candidates in general elections.

Section 1 amends section 1-7-4 of the Election Code such that each political party shall file its rules and regulations “along with petitions containing the required number of signatures, if the signature provision is applicable to the party” within thirty days after its organization and no later than “twenty-three days after the primary election” before any “general” election in which it is authorized to participate. The bill adds a new paragraph B to this section that requires the SOS to notify the political party whether the rules and qualifying petitions are in order and that the party has therefore qualified to be on the ballot, with seven days of the filing. The SOS must also notify the state’s county clerks and post on its website this party qualification information.

Section 2 of the bill contains clean up language to correct a reference to a statute that was recompiled.

Section 3 in paragraphs A through C amends language in section 1-8-2. It provides that minor party candidate nominating petitions will be filed with the SOS on the 23rd after the primary election, rather than the 21st. This section now requires that the number of petitions signatures required for qualification is determined to be 1% of the total number of votes cast in gubernatorial elections, rather than either a gubernatorial election or presidential election.

Section 3 in paragraph D amends the language to exempt parties certified in the year of the election from the rule that candidates must have been member of that party on the day the governor issues the primary election proclamation.

Section 3 adds a new paragraph E that provides that when a party is certified in the year of the election and after the date of the governor's proclamation, the party's candidates must be a member of that party no later than the date the party filed its rules and regulations. It also provides that minor party candidates must be a resident in the district of the office sought on the date of the governor's proclamation. In the case of a candidate running for US senator or representative, the residency requirement pertains to residency within the state. This section also states that no one who is a candidate for a party in the primary election may be certified as a candidate for a different party in the general election within the same election cycle.

Section 3 in paragraph F deleted "minor party" from the paragraph so that now voters of any party will not be able to sign a nominating petition for more persons than the number of candidates necessary to fill the office at the next general election.

Section 4 in paragraph A amends language pertaining to the certification of nominees from minor political parties. It deletes language requiring the SOS to determine the signatures and addresses of voters are "valid" and provides for the SOS to simply count facially valid signatures. The SOS must mail notice to the certifying party and candidate by 5:00 pm on the Tuesday following the filing date stating whether the candidate has qualified to be on the ballot.

Section 4 in paragraph B creates provision for minor party candidates to challenge a notice of disqualification by filing a petition in district court within 10 days, requiring that the district court render a decision with 10 days; then allowing for that decision to be appealed to the supreme court within five days of the decision, stating that the supreme court's decision would be rendered not later than fifty-six days before the general election. In paragraph C, new language clarifies that any voter may file a court action challenging a minor party candidate's nominating petitions as provided in Section 1-8-35 of the Election Code.

Section 5 amends current language with respect to declarations of candidacy for retention for judicial offices, changing the filing dates from the twenty-first day after the primary election to the second Tuesday in March of each even-numbered year.

Section 6 enacts a new section of the Election Code. It allows the declaration of candidacy and petition signatures submitted by candidates for nomination as minor party candidates will be counted toward requirements for qualification as an independent candidate for the same office in the election, where the candidate's party did not obtain status. To so qualify a candidate would have to follow the requirements of Section 1-8-45 and 1-8-51. Further, this section prohibits any candidate for circulating petitions for more than one political party in an election cycle.

Section 7 enacts a new section of the Election Code creating a nominating petition form in statute for minor party candidates. It requires that, in the March of even-numbered years, the SOS will post a sample of a nominating petition form and provide a copy to each county clerk, available upon request by any candidate.

Section 8 is amends Section 1-8-51 such that independent candidates shall file declarations of candidacy and nominating petitions by the 23rd after the primary election. Section 9 similarly amends the Election Code so that write-in candidates file on the 23rd day after the primary as well.

Section 9 similarly amends language in the Election Code so that write-in candidates must also file on the twenty-third day after the primary election their intent to be a write-in candidate.

The bill carries an emergency clause so that it will take effect immediately.

FISCAL IMPLICATIONS

HB 328 carries no appropriation. No fiscal impact in anticipated.

SIGNIFICANT ISSUES

One of the purposes of this bill is to reconcile sections of the current election code to comply with a federal court ruling that found the April petition deadline for newly-qualifying parties to be unconstitutional.

AGO analysis on a related bill states that “an amendment of the filing deadline for submission of petitions is appropriate and in accordance” with the holding below:

In The Constitution Party of New Mexico v. Duran, the United States District Court for the district of New Mexico held that NMSA 1978, Sections 1-7-2(A) and 1-7-4(A) (1969) violate the First and Fourteenth Amendments of the United States Constitution to the extent that those Sections require minor political parties to file qualifying petitions “no later than the first Tuesday in April before any election in which [a minor party] is authorized to participate.” The Court will also enter a permanent injunction enjoining Defendant, New Mexico Secretary of State from enforcing Sections 1-7-2(A) and 1-7-4(A) to the extent that those Sections require minor political parties to file qualifying petitions “no later than the first Tuesday in April before any election in which [a minor party] is authorized to participate.”

This committee substitute resolves a number of issues raised by the SOS with regard to the original version of the bill. The current committee substitute mirrors the committee substitute for SB 125, which is being carried at the agency's request.

The effect of the bill is as follows:

As noted above, Section 1-7-4 was found to be unconstitutional by a federal district court. Section 1 of the bill addresses that court ruling. The SOS requested the twenty-third day after the primary so that minor party filings can be handled after the completion of the statewide canvass, which occurs on the 21st day after the primary.

Section 2 cleans up language to correct a reference to a statute that was recompiled.

Section 3 of the bill moves the filing date for minor party candidates so that they do not file declarations of candidacy before the deadline for the minor party itself to qualify. The reduction in the number of signatures needed by a minor party candidate is now consistent with the requirements for major party and independent candidates.

Section 3 also resolves an issue raised by the state supreme court by addressing the situation where a candidate cannot be a member of a minor party on the date of the governor's proclamation, if the party has not yet qualified. Section 3 also adds a residency provision that did not previously exist for minor party candidates, and matches the requirement for major party and independent candidates. It provides that candidates may not run unsuccessfully in the primary and then change parties and run in the general election.

Section 4 establishes the same procedure and timelines for accepting and qualifying minor party candidate nominating petitions as exists for major party and independent candidates. By eliminating the thirty-five and forty-two day deadlines in 1-8-4, the SOS can procedurally accommodate the later filing date for minor party candidates.

Section 5 addresses a conflict between the state constitution and 1-8-26, by putting the statute in conformance with the constitution.

Section 6 allows a minor party candidate to become an independent candidate if his party seeks but does not obtain qualification. It should be noted, however, that independent candidates are required to obtain 3 times as many signatures.

Section 7 creates the minor party nominating petition form, consistent with the major party and independent forms set forth in statute.

Sections 8 and 9 ensure that all general election candidates (who did not run in the primary) file for office on the same day.

OTHER SUBSTANTIVE ISSUES

The National Conference of State Legislatures lists as an election resource Ballot Access News. It states that “*Ballot Access News* is edited and published by Richard Winger, the nation's leading expert on ballot access legal issues. *Ballot Access News* is a non-partisan newsletter reporting on efforts to include independent candidates and minor parties on ballots in the U.S.”

On February 4, 2014, Ballot Access News published the following report regarding ballot access issues here and in other states that are relevant to HB 328.

The Green Party and the Constitution Party are waiting for the 4th circuit to issue an opinion in *Pisano v Strach*, which was argued in October 2013. On February 4, the two parties informed the court of two favorable ballot access decisions that have been released in other states, since the oral argument. These other decisions are not controlling but they can be influential. One of them was from December 2013, when the New Mexico April petition deadline for newly-qualifying parties was struck down. The other was from January 2014, when the Eleventh Circuit reinstated the Georgia ballot access appeal and said that presidential ballot access is entitled to extra protection (by coincidence, the Georgia case was also filed by the Green and Constitution Parties, and also concerns presidential access).

The North Carolina case concerns whether the May petition deadline for newly-qualifying parties is too early. It also concerns a procedural issue: whether the U.S. District Court should have permitted discovery to reveal evidence that North Carolina doesn't need a May deadline. *For example, in 1988, the North Carolina State Board of Elections voluntarily set that deadline aside and permitted the New Alliance Party to submit its signatures in July, because the Board felt if it didn't, the New Alliance Party would sue and would probably win a case against the May deadline.* (<http://www.ballot-access.org/>) (Italics added for emphasis.)

DUPLICATION

HVEC Committee Substitute for HB 328 is nearly identical to SB125/CRS. The only difference is that on page 11, line 10, the House bill contains the words “New Mexico” following the words “in the county of _____,” in the section that provides for the form of the nominating petition.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A federal district court will set the filing date, likely for the 2nd Tuesday in July, for minor party qualifying petitions. However, SOS analysis states that “such a ruling is not likely to address inconsistencies that will be corrected in this bill.

CAC/jl