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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/10/15  
**SPONSOR** Wirth **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Public Financing of Legislative Races **SB** 289

**ANALYST** Cerny

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
Public funds for judicial and PRC candidates		\$ 1,200.0	0	\$ 1,200.0	Recurring	Public Election Fund
Initial distributions for legislative candidates		\$ 3,000.5	0	\$ 3,000.5	Recurring	Public Election Fund
Matching funds for legislative candidates		Indeterminate, likely significant	0	Indeterminate, likely significant	Recurring	Public Election Fund
Temporary Staff		\$ 14.0	0	\$ 14.0	Recurring	General
Software Development		\$ 30.0	0	\$ 30.0	Nonrecurring	General
<b>Total</b>		Indeterminate, but significant	0	Indeterminate, but significant	Both	Both

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 205. Conflicts with SB 58.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

Public Regulation Commission (PRC)

## SUMMARY

### Synopsis of Bill

Senate Bill 289 amends the Voter Action Act, Sections 1-19A-1 to 17 NMSA 1978 in several ways to provide clarity about who is eligible to receive campaign public financing, the process for receiving matching funds, how matching funds are computed, and how such funds may be used.

SB 289 would enable state legislators in contested primary and general elections, if certified, to receive an amount equivalent to \$1.00 per registered voter of the candidate's party in their district for each election plus matching funds equal to four times the amount of contributions collected. The current statute pertains only to elections of PRC commissioners and judicial elections for justice of the Supreme Court and judges in the Court of Appeals.

It deletes the definitions for "seed money" and "noncertified candidate" and adds definitions for "contributions" and "coordinated expenditure."

SB 289 also changes the definition of "qualifying period" for independent and minority party candidates, with the period beginning on January 1<sup>st</sup> as opposed to February 1<sup>st</sup>, thus extending it by one month.

SB 289 also now requires a person seeking public campaign financing to list not only qualifying contributions (the \$5 contributions) but any other contributions as well, on the declaration of intent that is filed with the Secretary of State. A person may not become an applicant candidate if they have received more than \$100 in accepted contributions, excluding any qualifying contributions.

Contributions used to calculate the amount of public financing an applicant candidate may receive now includes money or other things of value, including the value of in-kind contributions that are made or received for the purpose of supporting or opposing the nomination or election of a candidate for public office. However, they do not include the value of services provided without compensation or unreimbursed travel or personal expenses of individuals who volunteer their time on behalf of a candidate. SB 289 reduces the amount of accepted contributions from \$500 to \$100, excluding qualifying contributions that an applicant candidate may receive from any one contributor during the election cycle in which the person is running for office.

SB 289 amends Section 1-19A-7 of the Voter Action Act that restricts the use of public campaign funds by adding language that money received from the public election fund may not be used for "the candidate's personal living expenses or compensation to the candidate or the candidate's family," as well as for certain other matters, including contributions to another campaign of the candidate, to the campaign of another candidate or to a political party or committee or to a campaign supporting or opposing a ballot proposition, for payment of legal expenses or fines levied by a court or the Secretary of State.

The bill provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period. The applicant may also collect private contributions not exceeding \$100 per contributor during the election cycle.

For matching funds, the candidate may receive additional funds equal to four times the amount of the maximum \$100 private contributions (not including qualifying contributions which are earmarked for the Public Election Fund). SB 289 creates a new kind of report – a Matching Funds Contribution Report, in addition to the other reports required by the Campaign Reporting Act. The candidate would file matching funds reports on the first Monday in February, April, May, July, September and October, and the 3<sup>rd</sup> Monday of May and October in election years. The maximum amount of matching funds would be limited to three times the original distribution. The SOS would be required to distribute matching funds within three days of the filing of the matching funds report.

Under SB 289, a certified candidate's total campaign expenditures includes not only money received from the public election fund, but also money received from a political party and other contributions collected pursuant to the Act.

As stated above, matching fund distributions distributed by the SOS to certified candidate may be in an amount equal to four times the amount of contributions collected by the candidate as an applicant candidate and certified candidate--as long as the total amount of public money distributed does not exceed three times the amount of the initial distribution made by the SOS per Section 9. It also requires the SOS to recalculate and reduce matching contributions if insufficient funds exist in the Public Election Fund.

SB 289 also requires certified candidates who do not remain candidates in a general election or withdraw their candidacies, as well as certified candidates in the general election, to transfer to the Secretary of State for deposit to the public election fund any amount received from the fund and any amount received from a political party or from private contributors that remain unexpended or unencumbered by a date certain.

SB 289 also provides that no money from the public election fund shall be distributed to any certified candidate in uncontested elections.

In addition to publishing guidelines outlining permissible campaign-related expenditures, SB 289 also requires the Secretary of State to publish penalties for violations of the Voter Action Act by January 1, 2016.

SB 289 provides that persons found to be in violation of the Voter Action Act shall be subject not only to civil penalties but to criminal prosecution by the Attorney General.

## **FISCAL IMPLICATIONS**

In 2014, seven candidates (for judicial and PRC commissioner races) were certified to receive public financing. According to agency analysis from the SOS:

In 2014, total distributions to certified candidates were \$674,983. Under this bill, those same candidates would be eligible to receive \$1,899,519, an increase of \$1,224,536 using the candidates who participated in the 2014 primary and general election cycles. Without additional appropriations, these amounts would exceed the funds currently being distributed into the public election fund. Additionally, funds in the public election fund which are over and above the public campaign financing distributions are currently used to pay the expenses of the primary and general elections.

The SOS's projected additional operating expense of \$1.2 million was computed by taking the total allocated to certified candidates, subtracting the campaign matching funds provided to the one uncontested candidate, and multiplying it by three—the maximum distribution allow per candidate.

The SOS reiterates the same concerns that were addressed in the analyses for SB 58 with regard to those provisions of the bill that match SB 289. With regard to the addition of legislative candidates, there is a significant increase in the potential fund distribution. The formulas for PRC and judicial candidates remains the same, (PRC = \$0.25 per registered voter, Judicial = \$0.15 per registered voter) however, legislative candidates will receive an amount calculated \$1.00 for each registered voter in their district (by party for primary).

SB 289 would also provide public funding for contested state legislative elections. The exact costs of these distributions are difficult to determine because they are dependent on how many elections are contested in future elections.

For primary elections, \$1 per registered voter would be paid to each of the two candidates in their district by party. Using figures provided by the SOS for the 2014 primary elections, with 986,766 registered voters, and 26 percent of the seventy races contested, these distributions would have amounted to \$ 513, 118 for the 2014 primary election.

For generation elections, the distribution would be \$1 per registered voter based on all registered voters in the state to both candidates in contested races. Using figures provided by the SOS for 2014 general election, with 1,274,377 registered voters: in the 70 House races, of which 51 percent of races were contested, the distribution would amount to \$ 1,299,864. In the 42 Senate races, of which 50 percent were contested, the distribution would amount to \$1,192,511.

Thus estimated total cost for the 2016 elections, both primary and general, to legislative races only, would amount to a total of \$3,005,493 in distributions. Since there are currently 1,291,364 registered voters, an increase of 1.3 percent over 2014, the distributions may be even slightly higher than this estimate.

This estimate for legislative races does not include the matching funds that would be allocated in contested races, at a figure of \$1 for every \$3 raised, up to a limit of three times the initial distribution. We have no estimates on the total amount raised by legislative candidates in the last primary and general elections, therefore this amount is indeterminate but likely significant.

The SOS staff is required to validate candidates who apply for public campaign financing. With legislative seats added to this process, assuming that 50 percent of races are opposed, this would mean that there could be conceivably 122 additional candidates to validate, requiring the SOS to hire ten temporary employees during the period of the validation process, at an estimated cost of \$14.0 thousand.

The legislatively appropriated funding to pay for the cost of elections would need to be replaced by an additional appropriation to the Public Election Fund or to the SOS to make up for the shortfall if such funding it used for increased matching.

This table indicates spending, from 2012 to 2015, for elections and candidates (where applicable) from the Public Election Fund (in thousands):

	Elections	Candidates
2012	\$ 1,052.4	\$ 809.9
2013	\$ 1,696.0	\$ 0
2014	\$ 1,200.8	\$ 675.0
2015*	\$ 1,629.9	\$ 0

\*Spending for FY2015 is as of January, 2015, midway through the fiscal year.

### **SIGNIFICANT ISSUES**

SB 289 eliminates language in the Voter Action Act in Section 1-19A-14 which would likely be ruled unconstitutional if challenged in New Mexico courts because the United States Supreme Court in 2011 struck down a similar statute in the Arizona Citizen’s Clean Elections Act.

Prior AGO analysis states that SB 289 “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. It appears to be modeled on the Fair Elections Now Act, a federal bill that was developed in anticipation of Bennett.”

SB 289 provides that certified candidates will file as many as eight potential Matching Funds Reports and that the matching funds will be distributed within three days of filing by the SOS. The bill also provides that those contributions listed on the Matching Funds Report must come from registered voters in the candidate’s district. SOS analysis asks whether it would be required to validate that the contributors are registered voters in the district prior to issuing matching funds, whether any non-qualifying contributions are to be excluded, and if so, what matching criteria is to be used. If a candidate collects non-qualifying contributions, is the candidate disqualified from public financing or matching funds?

SOS analysis does not support SB 289’s increase in initial distributions and matching fund allocations to candidates, and states the following regarding the Public Election Fund:

It is the position of the SOS that those funds are more appropriately used to fund voting equipment and ballot expenses in the statewide elections, rather than used to fund campaigns of certain PRC and judicial candidates.

### **PERFORMANCE IMPLICATIONS**

SOS analysis maintains that “if a candidate collects many small contributions from many contributors, it would most likely be impossible for the SOS office to validate the Matching Funds Reports for all candidates within three days.”

Enactment of SB 289 may result in increase to the caseload of the AGO, as the Secretary of State is required to refer violations of the Voter Action Act to the Attorney General for criminal prosecution.

## **CONFLICT, DUPLICATION**

SB 289 duplicates HB 205. It also conflicts with SB 58 in that SB 58 covers only judicial and PRC candidates with regard to matching funds.

## **OTHER SUBSTANTIVE ISSUES**

SB 289 is unclear with regard to whether and when a person can begin collecting contributions that are not qualifying contributions. The proposed amendments in Section 3 of the bill to 1-19A-3 Section A provide that a person shall submit a declaration of intent prior to accepting any contributions in order to become an applicant candidate. Section B provides that a person shall not be eligible to become an applicant candidate if the person has accepted contributions totaling more than one hundred dollars (\$100), excluding any qualifying contributions, from any one contributor during the election cycle. Section 8 of the bill provides that an applicant candidate may accept the \$100 contributions 60 days prior to the beginning of qualifying period from registered voters in the district.

SB 289 in Section 2 amends the definition of “qualifying contribution” to allow for any voter eligible to vote (as opposed to any *registered* voter, that word deleted) as eligible to make such a contribution. However, in Section 8, paragraphs A and B require that contributions must be from qualified electors registered to vote in the candidate’s district. It would be clearer if the same terminology were used in these three sections, since they have the same meaning. “Registered voter” is the term perhaps most understandable to a lay person.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Unconstitutional provisions regarding matching funds will remain in the Voter Action Act.

CAC/bb