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FISCAL IMPACT REPORT

SPONSOR Ruiloba/McQueen **ORIGINAL DATE** 2/21/17
LAST UPDATED _____ **HB** 399

SHORT TITLE Campaign Public Financing Changes **SB** _____

ANALYST Esquibel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	Significant	Significant	Recurring	Public Election Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant	Significant	Significant	Recurring	Public Election Fund

(Parenthesis () Indicate Expenditure Decreases)

HB399 conflicts with SB97/SJCS, Public Financing of Campaign Fixes; SB72 and HB10, Public Accountability Act; SB96, Campaign Finance Fixes.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Secretary of State's Office (SOS)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 399 (HB399) would amend sections of the Voter Action Act (VAA), which provides for public financing for certain candidates. The definition of covered office is amended to include the Office of Secretary of State (SOS) to be eligible for public financing in addition to the currently covered offices of public regulation commissioner and statewide judicial offices.

The bill creates a definition of a “contribution”, “expenditure” and a “coordinated expenditure,” and removes the definitions of “noncertified candidate” and “seed money.” And deletes all remaining language regarding matching funds and seed money.

The bill would extend the qualifying period for independent and minor party candidates by one month – beginning January 1 instead of February 1. Section 1-19A-3 is amended such that a person cannot accept either qualifying contributions or other contributions prior to filing a declaration of intent. It also limits the amount a candidate may accept to be eligible to become an applicant candidate to no more than \$100 from any one contributor during the election cycle for which they are running for office. Applicant candidates for SOS are required to obtain the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state.

The bill would amend Section 1-19A-6 adding language requiring the SOS to certify candidates based on the applicant candidate’s statement they have complied with requirements of the Voter Action Act (VAA). This amendment indicates the SOS will certify applicant candidates based on their signed statement.

The bill adds restrictions on the use of public campaign funds. It provides that public funds may not be used for candidate’s personal living expenses, or for compensation to a candidate, candidate’s spouse, or children. Funds cannot be paid to another campaign of the candidate or to retire previous campaign debt. Funds cannot be used for campaign contributions to another candidate, political party, political committee or campaign supporting or opposing a ballot proposition. The funds cannot be used to support any other candidates or oppose any candidate other than the certified candidate’s opponent. Public funds cannot be used to pay legal expenses or any fine levied by the SOS. Public funds could also not be used for gifts or a transfer for which compensating value is not received.

The bill removes the current allowance in law for a political party to donate monetary contributions to a participating candidate’s and limits them to in kind contributions only.

The Voter Action Act would be further amended to require the participating candidate to provide any unspent funds collected pursuant to the VAA to the SOS for deposit into the public election fund including any money collected from private contributors.

The bill requires the SOS to issue guidelines outlining permissible campaign-related expenditures and penalties for violations of the VAA by September 1, 2017.

Certified candidates are required to report all contributions and expenditures according to the campaign reporting schedule specified in the Campaign Reporting Act. All other reporting requirements are deleted because they pertained to matching funds.

The bill proposes new language that would allow an applicant candidate to collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period from registered voters in the candidate’s district. A certified candidate may collect contributions from any voter in the state. Total contributions may not exceed \$100 per contributor during the primary election cycle and \$100 in the general election cycle. Certified candidates may not accept contributions from any other source, except as allowed pursuant to Section 1-19A-8. Contributions may not be collected in the primary cycle for the general cycle

or vice versa. Additionally, contributions collected in a particular cycle may only be used in that cycle.

Section 1-19A-13 would amend the date in which the SOS shall determine the amount of the distributions for the upcoming election year from August 1 to September 1 of each odd numbered year. This section reduces the fund distribution for uncontested candidates from 50% to 10% of the contested election formula. This section also removes the requirement to increase the distribution by 20% in their estimate when preparing it according to this section.

Section 10 of the bill would amend Section 1-19A-17 requiring the SOS to not only impose a fine for a violation, but also transmit the finding to the Attorney General for criminal prosecution.

Sections 1-19A-5 and 1-19A-14 are repealed as they pertain to seed money and matching funds.

The effective date of HB399 is July 1, 2017.

FISCAL IMPLICATIONS

The Secretary of State's Office (SOS) notes the bill increases the distributions from the public election fund by adding the SOS as another statewide office eligible to apply for public financing.

However, the bill also reduces the fund distribution to certified candidates that will run in an uncontested election. The VAA currently provides certified candidates running in an uncontested election with 50% of the funds distributed to a certified candidate in a contested election; however, the bill proposes to reduce the fund allocation from 50% to 10%.

The SOS notes it is impossible to predict the elements of the fund disbursement formula including the number of candidates that will apply to be certified under the VAA, the races that will be contested, and how many voters will be registered. However, below is a table illustrating a sample disbursement based upon the publicly financed candidates in 2016 and the adjusted disbursement under the provisions of HB399 for uncontested candidates. Additionally, the table below illustrates the cost if the candidates who ran in 2016 for Secretary of State were to have collected public financing as allowed for under the proposed legislation. The additional requirement on the fund in this illustration, by adding the additional statewide office of the SOS, would be \$258,618. [$\$169,364 + \$710,184 = \$879,548$ (existing statute) $\$72,890 + \$1,065,276 = \$1,138,166$ (HB399); difference = \$258,618].

Covered Office	Party	Existing Primary Disbursement	Primary Disbursement per HB399 (10% for uncontested)	Existing General Disbursement	General Disbursement per HB399 (10% for uncontested)
Justice of the Supreme Court	Dem	\$41,276 (uncontested)	\$8,255 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
	Rep	\$27,634 (uncontested)	\$5,527 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
Judge of the Court of Appeals	Dem	\$41,276 (uncontested)	\$8,255 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
	Rep	\$27,634 (uncontested)	\$5,527 (uncontested)	\$177,546 (contested)	\$177,546 No change as race was contested.
PRC Commissioner, District 1	Dem	\$31,544 (contested)	\$31,544 No change as race is contested.	Defeated in primary	No funds were disbursed in 2016 general election.
Secretary of State	Dem	Not currently allowed	\$8,255 (uncontested)	Not currently allowed	\$177,546 No change as race was contested.
	Rep		\$5,527 (uncontested)		\$177,546 No change as race was contested.
Total		\$169,364	\$72,890	\$710,184	\$1,065,276

The public election fund is currently at risk of not containing adequate funds for disbursement to candidates who fall under the current auspices of the Voter Action Act in 2018 and beyond. By reducing the disbursement for uncontested candidates to 10%, the savings realized will help offset the increase in the fund disbursement by adding the SOS as a covered office. However, as illustrated above, under the provisions of the bill the fund will experience further strain by adding the new covered office, SOS.

SIGNIFICANT ISSUES

The Secretary of State’s Office (SOS) indicates Subsection D of Section 10 in the bill prohibiting certified candidates from using funds collected in the primary election cycle from using those funds in the general election cycle may be unnecessarily restrictive. The sponsor may want to consider revising this section such that collected funds can be used at any time during election cycles.

The Attorney General’s Office (AGO) notes the bill removes VAA provisions that are likely at odds with the U.S. Supreme Court’s 2011 ruling in Arizona Free Enter. Club’s Freedom PAC v. Bennett, 131 S. Ct. 2806. Under Bennett, the Court found unconstitutional Arizona’s public financing scheme whereby the amounts allocated to participating candidates would be increased

in the event a non-participating opponent exceeded the funds allocated to the participating candidate.

The AGO notes proposed Section 10(A) only allows applicant candidates to accept contributions from voters within the candidate's district in the 60 days immediately preceding the qualifying period and throughout the qualifying period. This denial may be viewed as an abridgement of the freedom of political expression and political association of the voters from outside the candidate's district who will nevertheless be affected by the candidate's votes once elected to office. The U.S. Supreme Court has held that the government may not restrict the number of causes or candidates a donor may support. See McCutcheon v. Fed. Election Comm'n, 134 S. Ct. 1434, 1438 (2014). However, because the restriction only applies during the pre-certification period, the provision may withstand judicial scrutiny.

The proposed change in 1-9A-17 requiring that the Secretary of State impose a fine *and* transmit the finding to the AG addresses an issue that was examined by the Court of Appeals in State v. Block, 2011-NMCA-101, ¶ 19, 150 N.M. 598. In Block, the Court determined that the use of the disjunctive “or” in the existing version of 1-9A-17 did not preclude the AG from initiating a prosecution in addition to any fine levied by the Secretary of State, regardless of whether a referral occurred. By replacing “or” with “and” the Legislature clarifies that it did not intend to limit the AG's exercise of his plenary authority under NMSA 1978, Section 8-5-2, in keeping with the conclusions of the Block court.

PERFORMANCE IMPLICATIONS

The SOS writes the bill eliminates language in the Voter Action Act in Section 1-19A-14, with reference to matching funds, as the current language 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 Arizona.

ADMINISTRATIVE IMPLICATIONS

The SOS notes the bill reduces the requirements that must be verified directly by the SOS, therefore, reducing the labor and staff hours required to complete the candidate certification process.

CONFLICT

The Administrative Office of the Courts (AOC) notes HB399 differs from the Senate Judiciary Committee Substitute for SB97, Public Financing of Campaign Fixes, in the following ways:

- Section 2(F): adds the SOS to the definition of “covered office”.
- Section 4: amends Section 1-19A-4 NMSA 1978 to provide that applicant candidates for SOS are required to obtain the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the state.
- Section 6(B)(5): amends Section 1-19A-7 NMSA 1978 to prohibit money being used from the Public Election Fund for the payment of legal expenses relating to violations of the VAA or the Campaign Reporting Act (CRA).
- Section 6(D): includes the value of in-kind contributions within the limitations of total campaign expenditures.

- Section 6(E), (F) and (G): removes “political party” as an entity from which funds received.
- Section 7: amends Section 1-19A-8 NMSA 1978 to permit certified candidates to accept limited in-kind contributions only from a political party.
- Section 10: substitutes “voters” for “qualified electors.”
- Section 10(C): limits contributions to \$100 per voter in a primary election cycles and \$100 in a general election cycle and prohibits a candidate from accepting contributions allocated to the general election cycle during the primary election cycle, or vice versa.
- Section 10(D): prohibits contribution receives during the primary election cycle to be used for general election expenses, or vice versa.
- Section 11(B)(2) and (D)(2): amends Section 1-19A-13 NMSA 1978 to specify distributions for certified candidates for SOS.

Senate Bill 72 and House Bill 10 would enact the Public Accountability Act which proposes to remove the enforcement provision of the Voter Action Act as proposed by HB399 and place that duty with the Public Accountability Board.

OTHER SUBSTANTIVE ISSUES

The AOC indicates the bill would require the SOS to publish penalties for violations of the Voter Action Act by September 1, 2017. Section 1-19A-17 NMSA 1978 provides for both civil penalties and a fourth degree felony criminal penalty for a person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the secretary or knowingly makes a false statement in a report required by the VAA.

The Attorney General’s Office (AGO) indicates HB399 apparently seeks to achieve two broad purposes: (1) to extend the opportunity for public financing to the office of Secretary of State; and (2) to correct the current law’s matching funds provisions that the U.S. Supreme Court has ruled are unconstitutional. The following is a synopsis of relevant amended sections:

1-19A-3: A person must file a declaration of intent with the secretary of state prior to collecting any contributions, as opposed to just qualifying contributions. The amount of contributions a person may collect while remaining an eligible applicant candidate is changed from \$500 total to \$100 from any one contributor, excluding qualifying contributions. Further, language restricting expenditures to \$500 in order to remain eligible to become an applicant candidate are stricken by this bill. These changes would seemingly allow unlimited expenditures and small contributions.

1-19A-9: Language is removed requiring noncertified candidates who have as an opponent a certified candidate to report their campaign expenditures to the Secretary of State ten days before the election. Language requiring similar reporting by people and political committees is also removed.

1-19A-10: “Seed money” is removed from the list of money required to be deposited into the fund. Instead, unspent “contributions to a candidate” shall be deposited into the fund.

Section 10: This new section provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period from voters in the candidate’s district. A certified candidate may collect contributions throughout the qualifying period from

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any voter in the state. Total contributions from a voter shall not exceed \$100 per during the election cycle. Only qualified electors registered in a candidate's district may contribute and such contributions are limited to \$100 per election cycle, excluding contributions made during the qualifying period.

1-19A-17: Language is added requiring the Secretary of State to impose both a fine and transmit the finding to the Attorney General, instead of one or the other.

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