F I S C A L I M P A C T R E P O R T

SPONSOR Candelaria **ORIGINAL DATE** 2/2/17 **LAST UPDATED** 2/3/17 **HB**

SHORT TITLE Disclosure of Presidential Candidate Taxes **SB** 118/aSRC

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (NMAG)
Secretary of State's Office (SOS)

SUMMARY

Synopsis of SRC Amendments

The Senate Rules Committee (SRC) amendments to Senate Bill 118 change the date from 56 days to 70 days prior to the general election as when all candidates for President and Vice President of the United States are required to file with the New Mexico Secretary of State (SOS).

The SRC amendments also clarify if a candidate for President or Vice President fails to file with the SOS, the candidate's "presidential ticket," as opposed to just the candidate as originally drafted, shall not be printed on the general election ballot.

Synopsis of Original Bill

Senate Bill 118 (SB118) would require all candidates for President and Vice President of the United States to file with the New Mexico Secretary of State (SOS) at least 56 days prior to the general election, a copy of their federal income taxes for the five most recent taxable years for which a return was filed with the Internal Revenue Service, and to provide written consent to the SOS for public disclosure of said tax returns. Additionally, the tax returns provided by the candidates to the SOS shall be publicly available on the SOS' government website with certain information redacted. If a candidate fails to comply with the requirements, their name shall not be printed on the general election ballot.

FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Secretary of State indicates it expects no fiscal impact related to this legislation.

RELATIONSHIP

The Attorney General's Office (NMAG) reports there is a similar bill being proposed at the federal level and there are a number of other states who are proposing similar legislation including New York's Tax Returns Uniformly Made Public Act (TRUMP Act).

TECHNICAL ISSUES

The Secretary of State's Office (SOS) notes in a general election, the Presidential and Vice Presidential candidates run as a pair. Therefore, the sponsor may consider requiring both the President and Vice President candidates to comply with the requirements in the bill in order for both their names to appear on the ballot, and perhaps clarify if one candidate complies and the other does not, neither candidate will appear on the ballot.

Currently, the President and Vice President do not file a declaration of candidacy or any other candidacy paperwork with the SOS and the office may not have contact information to communicate to these candidates the requirements proposed within the bill. The SOS has experienced difficulties in the past when attempting to contact presidential candidates to inform them of withdrawal requirements and deadlines.

The Attorney General's Office (NMAG) notes the bill states that social security numbers, employer identification numbers, and home addresses shall be redacted from the income tax returns prior to them being made publicly available. There may be other identifying information that should also be redacted such as phone numbers, partner numbers, and identifying numbers.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office (NMAG) notes there could be a preemption issue given the "Eligibility Clause" in the U.S. Constitution (Art. II, Sec. I, Clause V), existing federal law requiring various financial disclosures by candidates (Federal Election Campaign Act of 1971, 52 U.S.C. 30104), and, if enacted, the currently proposed federal legislation addressing this same issue.

There are U.S. Supreme Court decisions that could provide general support to those arguing that the proposed bill is unconstitutional. *See e.g. Anderson v. Celebrezze*, 103 S.Ct. 1564 (1983); *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842. Although the election laws in the aforementioned cases can certainly be distinguished from SB118, the Supreme Court may be leery of allowing states to impose impediments to ballot access on Presidential candidates that are decided by the nation rather than just the regulating state. "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all the voters in the Nation. Thus, in a Presidential election a State's enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders.

Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will largely be determined by voters beyond the State's boundaries." *Anderson*, 103 S.Ct. at 1573. Ruling such legislation is constitutional could lead to a patchwork of ballot access across the country, with each state enacting laws containing various regulations on Presidential candidates' access to ballots. The Supreme Court has stated that its primary concern is not the interest of the candidate but rather the interests of the voters who chose to associate together to express their support for a candidate and the views he espouses.

In contrast, it would seem likely that SB118 would be upheld given the general sentiment in *Bush v. Gore*, 121 S.Ct. 525 (2000) that state's should be given latitude in their election laws, along with the following language found in *Anderson.* Each provision of a state's election code, "whether it governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends. Nevertheless, *the state's important regulatory interests are generally sufficient to justify reasonably, nondiscriminatory restrictions*. Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any litmus-paper tests that will separate valid from invalid restrictions.

RAE/al/jle