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FISCAL IMPACT REPORT

SPONSOR Wirth **ORIGINAL DATE** 1/25/19
LAST UPDATED 3/11/19 **HB** _____

SHORT TITLE Campaign Public Financing Changes **SB** 4/aSJC/aHJC

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		Recurring	Public Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 407, HB 428, HB 462, SB 3, SB 99

Conflicts with SB 99, HB 428, HB 462

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Office of the Secretary of State (SOS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 4 amends Section 1-19A-13 of the Voter Action Act to:

- clarify the specified distribution from the public election fund for an uncontested primary election applies if another candidate is running in another party's primary for the same office and that candidate's primary is contested; and
- provide that for an uncontested primary in which another candidate is running in another party's primary for the same office, but no primary for the office is contested, the amount distributed is equal to the average of the amount each candidate would receive for a contested primary election.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 4:

- removes the \$50 cap on the value of the incidental use of a candidate’s personal property, home or business office for campaign purposes that is excluded from the definition of “contribution;”
- adds electronic payments to the acceptable forms of payment for qualifying contributions to the public election fund;
- changes the prohibited uses of money specified in Section 5 of SB 4 to allow a certified candidate to use public election fund money for joint advertisements or services with other certified candidates;
- amends Section 1-19A-13 of the VAA to provide for a distribution to a certified candidate when an initially uncontested general election race becomes contested because of the qualification of a candidate for that race; and
- amends Section 1-19A-17 so that a person who willfully or knowingly violates the rules of the secretary of state is no longer subject to criminal penalties.

Synopsis of Original Bill

Senate Bill 4 amends the Voter Action Act (“VAA”), which provides for public financing for candidates seeking a statewide judicial office or public regulation commissioner.

The bill adds definitions for the terms “contribution,” “expenditure,” and “coordinated expenditure,” and removes the definitions of “noncertified candidate” and “seed money.” The definition of “qualifying period” is amended to clarify that candidates are eligible to apply for public financing if they are seeking a covered office for a primary election, a general election, or both. The qualifying period for general election candidates is extended by one month – beginning January 1 instead of February 1.

SB 4 amends Section 1-19A-3 of the VAA, which describes the conditions for obtaining public financing, to provide that a person is not eligible to become an applicant candidate for a covered office if the person accepts contributions totaling more than \$100 from any one contributor during the election cycle in which the person is running for office. A person who accepts more than \$100 in contributions from any one contributor may still be eligible to become an applicant if the person meets the criteria specified in the bill.

The bill amends the process for certifying candidates in Section 1-19A-6 by requiring the SOS to determine whether an applicant candidate has met the requirements for certification from the applicant candidate’s signed statement.

SB 4 adds a new section to the VAA that describes allowable contributions. Under the new provision, an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period from registered voters in the state. An applicant candidate is prohibited from accepting contributions from any other source. A certified candidate may collect contributions registered voters, and may not accept contributions from any other source, except as allowed pursuant to Section 1-19A-8.

The bill adds restrictions on the use of campaign funds and restricts total campaign expenditures to the amount received from political parties under Section 1-19A-8 and allowable contributions, in addition to money distributed from the public election fund. Candidates must return any unspent amounts to the public election fund, including money collected from private contributors or political parties.

SB 4 amends Section 1-19A-13, which addresses distributions from the public election fund, to reduce the fund distribution for uncontested candidates in a primary election to twenty percent of the contested primary election formula, and to remove any funding for an uncontested general election.

The bill requires SOS to issue guidelines outlining permissible campaign-related expenditures and penalties for violations of the VAA by September 1, 2019.

SB 4 repeals provisions of the VAA that pertain to seed money and matching funds.

SB 4 has an effective date of July 1, 2019.

FISCAL IMPLICATIONS

SOS notes that SB 4 reduces the public election fund distribution to certified candidates who run in an uncontested primary election. The VAA currently provides certified candidates running in an uncontested primary election with an amount equal to fifty percent of the amount distributed to a certified candidate in a contested primary election. The bill reduces the fund allocation to twenty percent, and limits eligibility for the fund allocation to uncontested primary elections where another candidate is running for the same office in another party's primary. SB 4 provides that no money shall be distributed to a candidate in an uncontested election, except as the bill otherwise provides.

SOS states that the public election fund is currently at risk of not containing adequate funds for disbursement in 2020, and beyond, to candidates covered by the existing provisions of the VAA. SB 4's provisions reducing the disbursement for uncontested candidates would realize savings that would help the public election fund maintain a higher balance.

SOS notes that it is impossible to predict the elements of the fund disbursement formula, including the number of candidates that will apply and be certified under the VAA, the races that will be contested, and how many voters will be registered.

SIGNIFICANT ISSUES

NMAG points out that SB 4 eliminates provisions of the VAA relating to matching funds that are likely unconstitutional under the U.S. Supreme Court's opinion in *Arizona Free Enter. Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011). That opinion found unconstitutional Arizona's public financing scheme under which amounts allocated to participating candidates would be increased in the event a non-participating opponent exceeded the funds allocated to the participating candidate.

ADMINISTRATIVE IMPLICATIONS

SOS states that SB 4, if enacted, would assist SOS in consistent administration and enforcement of the VAA. Additionally, SOS states that candidate certification under SB 4 would be based solely on an applicant candidate's statement that he or she has complied with the VAA's requirements, which would reduce the requirements the SOS must now verify directly and reduce the labor and staff hours required to complete the candidate certification process.

SOS points out that the bill directs SOS to issue guidelines outlining permissible campaign-related expenditures and penalties for violations of the VAA by September 1, 2019.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

SB 3 Campaign Finance Reporting
SB 99 Appointment of PRC Members
HB 407 Election Laws 50-Year Tune-Up
HB 428 Sec. of State Candidates in Voter Action Act
HB 462 Sec. of State & A.G. in Voter Action Act

Conflicts with:

SB 99, which also amends Section 1-19A-10 NMSA 1978.
HB 428, which also amends Section 1-19A-1 NMSA 1978.
HB 428 and HB 462, which also amend Sections 1-19A-2 & 1-19A-13 NMSA 1978.

BG/gb/sb/al