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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/21
 SPONSOR Duhigg/Wirth LAST UPDATED 03/10/21 HB _____
 SHORT TITLE Judicial Candidates In Voter Action Act SB 160/aSRC
 ANALYST Nichols/Gaussoin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	\$200.0	\$200.0	Recurring	General Fund
	(\$200.0)	(\$200.0)	Recurring	PRC Subaccount of Public Election Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
District Court Judge Candidates		Up to \$950.0 (see Fiscal Impact)		Up to \$950.0 (see Fiscal Impact)	Recurring (in even FY)	Public Election Fund
PRC Candidates		(\$200.0)		(\$200.0)	Recurring (in even FY)	Public Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 298

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

State Ethics Commission

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 160 changes the number of “qualifying contributions” a district judge candidate must receive before qualifying for public financing. For the statewide offices already covered by the Voter Action Act, candidates qualify for public campaign financing by receiving contributions of exactly \$5 from a number of voters equal to one-tenth percent of the number of voters in the state. As originally written, district judge candidates would have needed a number of qualifying contributions equal to one-tenth percent of the number of voters in their judicial districts. The amendment changes that to a set number depending on the size of the district: 400 contributions in a judicial district with 400 thousand or more voters, 300 in a district with 200 thousand to 399 thousand voters, 200 in a district with 100 thousand to 199 thousand voters, and 100 in a district with fewer than 100 thousand voters.

The committee also struck the word “registered” before “voter” in instances throughout the bill. Voter appearing alone is defined as a registered voter in Section 1-1-5 NMSA 1978 and is the controlling definition for the section of law addressed in SB160. The amendment also cleans up language in the title.

Synopsis of Original Bill

Senate Bill 160 amends the Voter Action Act (VAA), under which certain candidates can apply for public campaign funds, to remove the office of public regulation commissioner from the act and add the office of district judge. For contested primary elections and for contested general elections, a district judge could receive between 15 cents and 55 cents per voter, depending on the size of the district.

The bill also amends the Voter Action Act to remove a subaccount within the fund that is used for carrying out the provisions of the act related to the Public Regulation Commission (PRC) elections, as well as an annual \$200 thousand deposit into the fund currently used for PRC elections.

In addition, the bill makes several technical changes. It modifies language referencing a threshold for qualifying contributions from “one-tenth of one percent” to “one-tenth percent,” and changes a reference to candidates from “that person” to “those persons.”

FISCAL IMPLICATIONS

SB160 does not contain an appropriation. The bill would remove a subaccount within the public election fund, along with a \$200 thousand appropriation to the fund from inspection and supervision fees collected from utilities pursuant to Section 62-8-8 NMSA 1978 and utility and carrier inspection fees collected pursuant to Section 63-7-20 NMSA 1978, but also eliminates moot PRC candidacies. While disbursements to PRC candidates have varied in the five election cycles, the average total disbursement was \$203 thousand, resulting in a net neutral impact on the public election fund. Absent the appropriation to the public election fund, SB160 would result in a positive effect on the general fund, the repository of fees.

However, 94 district judge candidates would become eligible for the funds, which could have a significant impact on public election fund disbursements. SOS notes that judicial contests appear on the primary and general election ballots when a vacancy occurs in an office. A district judge is required to run in a partisan office for initial election and then runs for retention, which is exempt from the VAA, until the judge vacates the office. There is no term limit or expiration for judicial offices. Due to this fact, the number of judicial offices appearing on a ballot can vary widely.

SOS estimates the likely cost of disbursements to district judge candidates based on the average number of candidates in the past three election cycles, which is 18 general election candidates, 15 democratic primary candidates, and five republican primary candidates. Based on the average number of candidates and the proposed disbursement rates, which differ by district, SOS estimates a cost of \$300 thousand for primary elections and \$650 thousand for general elections. The estimate assumes a full disbursement, which may or may not be the case, depending on whether the candidates are contested or uncontested in their races.

However, the VAA provides that if there is not a sufficient amount of funding in the public election fund for the full allocations for the primary and general election, SOS will allocate the available money between the primary and general elections in a prorated amount. If there is insufficient money for all candidates, SOS will reduce amounts allocated to candidates by the same percentage as the total reduction in funding.

SB160 does not make a provision for the anticipated increase in public election fund disbursements as a result of including district judge candidates, so full funding for district judge candidates would likely not be available without additional appropriations to the fund. Adding additional eligible candidates without increasing the amount in the fund could result in reductions in available funding for all candidates.

SIGNIFICANT ISSUES

The bill does not include any source of funding for public election disbursements to district court judges. Under SB160, 94 district judges would be eligible for public election funds.

The Administrative Office of the Courts notes candidates for judicial office are often in the difficult situation of raising money from individuals and corporations while working to avoid conflict of interest claims and complying with judicial ethics. Making district judges eligible for public funding could help to mitigate concerns about conflict of interest.

PRC members will now be appointed by the governor, rather than elected, so no longer need to be covered by the VAA. Currently, the law covers statewide judicial positions (Supreme Court justices and Court of Appeals judges) and PRC commissioners.

Under the VAA, public election funding is disbursed to candidates based on a statutory formula that takes into account the number of voters in a district and whether the candidate is running in a contested election. Funds can be used for both the primary and general elections, and unused funds must be returned.

In 2020, the Secretary of State distributed nearly \$2.4 million in public election funds to 11 candidates for public office under the provisions of the VAA. In the 2020 election cycle, 16

candidates declared an intent to seek public financing, and 11 candidates – nine statewide judicial candidates and two Public Regulation Commission (PRC) candidates – ultimately brought in the required levels of contributions to receive public funds. For the 2020 elections cycle, SOS distributed \$564.4 thousand for the primary election and \$1.8 million for the general election. Candidates returned a total of \$8,011 in unspent funds.

In 2019, the Legislature made several changes to the VAA, including streamlining the certification process, changing the formula for disbursements to unopposed candidates, repealing language requiring matching funds, and providing provisions for acceptable use of the public funds.

RELATIONSHIP

SB160 relates to SB298, which would amend the Voter Action Act to include candidates for state senator and state representative to those eligible to apply for public campaign funds and creates distinctions in the law for major and minor party candidates, among other changes.

AN/HG/sb/al/rl