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FISCAL IMPACT REPORT

ORIGINAL DATE 3/20/07
LAST UPDATED 3/30/07 **HB** 6/aHAFc/aSfI#1

SPONSOR Lujan, B.

SHORT TITLE Public Financing of Statewide Campaigns **SB** _____

ANALYST Wilson/Aubel/Fernandez

REVENUE

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	-9,900	-9,900	Recurring	General Fund (Unclaimed Property Fund)
	9,900	9,900	-Recurring	Other State Funds (Public Election Fund)
	-1,200	-1,200	Recurring	General Fund (Unclaimed Property Fund)
	1,200	1,200	Recurring	Other State Funds (Public Election Fund)

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From*

Administrative Office of the Courts (AOC)
 Department of Finance & Administration (DFA)
 Office of the Attorney General (OAG)
 Public Defender Department (PDD)
 Secretary of State (SOS)

* Responses were submitted during the 2007 Regular Session for SB 799, an identical Campaign Reform Bill.

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor amendment strikes the effective date of the provisions of the act which would have been July 1, 2007 and inserts a new section with a contingent effective date.

The provisions of the act shall become effective upon certification by the Secretary of State that the constitution has been amended no later than December 31, 2008 to abolish nonpartisan retention elections for justices of the Supreme Court and judges of the Court of Appeals and to require those justices and judges to be elected to their positions in partisan elections.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendments remove all references to elected state offices other than the judicial department subject to statewide elections and office of the PRC. Qualifying contributions and the amount to be distributed to a qualified candidate remain as defined for these positions:

Candidates receive funding based on a formula drawn from the number of registered voters in the state and number registered for each party. For the primary, candidates receive funding based on the number of persons registered for that party. For the general election the formula is based on all registered voters. For both elections, the amount is listed below.

Supreme Court	\$0.15
Court of Appeals	\$0.15

For PRC elections, the amount is based on the number of voters in the district and amended by party affiliation for a primary election:

Public Regulatory Commission	\$0.25
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The HAFC amendment changes the fiscal impact significantly. In the original bill, the funds generated from unclaimed property to the General Fund would have been fully diverted to the Public Election Fund in the estimated revenue amount of \$9.9 million. The amendment now specifies that \$100 thousand per month will be transferred to the Public Election Fund for an annual total of \$1.2 million. This money does not revert at the end of the fiscal year. The sub-account established for PRC elections remains as specified in the original bill.

The Unclaimed Property Fund does not receive money equally throughout the year; therefore, the required \$120 thousand monthly distribution to the Public Election Fund will most likely be problematic.

In order to address the potential problem raised by the monthly distribution, other options include defining the transfer as an annual distribution or one based on a percentage of available funds up to a specified amount.

Synopsis of Original Bill

House Bill 6 amends the Voter Action Act Section 1-19A-2 NMSA 1978 and expands public funding of elections to statewide offices of the executive and judicial branches. Currently, this funding is limited Public Regulatory Commission (PRC) elections. Funding will be available based on a formula for contested primaries and contested general elections. In judicial races the funding will only be available for contested elections to the court of appeals and the supreme court. As such, judicial retention elections are not eligible for this fund.

To become eligible for state funding a candidate must have enough qualifying contributions. For the governor and lieutenant governor this will be 0.02% of the number of voters in the state or about 1,100 contributions. For all other races, it is 0.01% of the number of voters in the state or about 550 contributions. For the PRC it is 0.01% of the voters in that PRC district. No contribution can exceed \$100.00.

Candidates receive funding based on a formula drawn from the number of registered voters in the state and number registered for each party. For the primary candidates receive funding based on the number of persons registered for that party. For the general election the formula is based on all registered voters. For both elections, the amount is listed below.

Governor	\$1.50
Lt. Governor	\$0.25
Comm. of Public Lands	\$0.75
Secretary of State	\$0.15
State Auditor	\$0.15
Supreme Court	\$0.15
Court of Appeals	\$0.15
PRC	\$0.25

The formula for PRC candidates is based on the number of voters in the district for which the candidate is running, further qualified by party affiliation for the primary election.

Once a candidate becomes certified and accepts the state funding, the candidate cannot accept any contributions or loans from another source except the candidate's political party. After both the primary and general election, the candidate must return all unused funds to the Secretary of State within 30 days.

FISCAL IMPLICATIONS

HB 6 changes the distribution of money received under the Uniform Unclaimed Property Act from the General Fund to the Public Election Fund.

TRD notes that State Unclaimed Property collections have been unstable in the past but recently have experienced an upward trend, with about \$11.6 million in FY06 and \$12.5 million projected for FY07. Because of the volatility of the fund, the 2006 consensus estimate for the fund is \$10 million for FY08 going forward, which is the revenue estimate utilized.

The TRD fund administrator will retain at least \$100.0 thousand in the Unclaimed Property Fund to pay unclaimed property claims allowed, which is reflected in the revenue fiscal chart.

The bill also creates a sub-account in the Public Election Fund to segregate the \$300 thousand currently deposited in the Public Election Fund to be used solely for the PRC elections.

SIGNIFICANT ISSUES

DFA is skeptical that the State's residents will be well served by diverting existing General Fund revenues to the public financing of campaigns.

In judicial races the funding will only be available for contested primaries and general elections to the court of appeals and the Supreme Court. No district, metropolitan, or magistrate elections will qualify. Judicial retention elections are also excluded from this funding.

The Code of Judicial Conduct 21-700A(3)(d) does not allow a judge to “solicit funds for a political organization or candidate.” A committee that is separate from the candidate, but acting on behalf of the candidate, does the fundraising. For example, in a recent contested statewide judicial race, one candidate does not know how many campaign contributors there were because of these limitations.

Recent data estimate there are about 550,000 registered voters in New Mexico. Based on the formula in the bill, a candidate in a contested general judicial race will receive about \$82.5 thousand. Recently, the campaign committee for a candidate in a contested statewide judicial race raised \$300 thousand. It is uncertain if this funding formula in this bill will provide sufficient funding for a judicial candidate to run a viable campaign. According to AOC, about three or four covered judgeships are up for election annually.

The bill changes the PRC public support funding formula, which was based on an average of campaign expenditures for the preceding four elections, to the specified formula above. Based on the estimate of 550,000 registered voters statewide and assuming equal distribution across the 5 PRC districts, a “ball-park” estimate for a PRC candidate would equal \$27.5 thousand.

Additional estimates per candidate in general elections for the relevant elected positions are as follows:

Governor	\$825,000
Lt. Governor	\$137,000
Comm. of Public Lands	\$412,500
Secretary of State	\$82,500
State Auditor	\$82,500

The AOC notes that there is significant concern in judicial campaigns because of the influence of outside organizations that take an active role in a campaign. If spending by the other candidates and independent organizations exceed the amount a participating candidate was eligible to receive, this law allows additional “matching” state funds be distributed to the candidate by the excess amount up to the original amount received. Thus the final contribution could be doubled.

The OAG notes that currently the Voter Action Act provides public funding to the election campaigns of candidates for the office of Public Regulation Commissioner who agree to accept limited campaign contributions from individuals and political action committees. The Act is New Mexico’s experiment with “clean elections”, where PRC candidates hoping to receive public financing must collect a certain number of small “qualifying contributions” (\$5) from registered voters. In return, they are paid a flat sum by the government to run their campaign, and agree not to raise money from private sources. Proponents believe that the “clean election” system will minimize perceived “undue influence” of wealthy contributors over political candidates. Participant candidates forego traditional special interest donations and agree to accept public funding.

This bill would expand coverage of that act to include election campaigns for candidates for any statewide executive department or judicial department office. Those offices could include

Governor, Lieutenant Governor, Attorney General, Treasurer, Auditor, Supreme Court Justice etc. Candidate participation is voluntary. The United States Supreme Court in Buckley v. Valeo upheld a federal law imposing campaign contribution limits, but ruled that portions of that law imposing campaign expenditure limits violated the First Amendment's protections regarding freedom of expression and association.

The bill would prescribe the total amount of \$5.00 contributions the candidates for various offices may accept from individual donors (qualifying contributions which are deposited into the public election fund) based upon percentages of voters within the state. The bill would also prescribe the amounts each candidate would be entitled to receive from the fund, based upon the office sought.

ADMINISTRATIVE IMPLICATIONS

It is not known what the administrative implications are for the SOS as a result of the provisions of this bill.

POSSIBLE QUESTIONS

The AOC asks if an outside organization comes into a race very late, will additional state funding be available in time for another candidate?

What if a candidate withdraws? Will his replacement receive the money he is entitled to under this act?

DW/MA/CF/mt:csd