

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 01/30/12  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Campaign Public Financing Changes SB 12

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$25.0 - \$250.0			Recurring	Public Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 74, HB 113, HB 114, HB 207, SB 11, SB 103, SB 105, SB 116 & SB 117

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Finance & Administration (DFA)

Department of Information Technology (DoIT)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 12 amends provisions of the Voter Action Act (Act). It deletes the definition of a noncertified candidate. It changes the qualifying period for minor party and independent candidates to extend it for one extra month beginning January 1 of an election year rather than February 1. It deletes the definition of seed money.

It clarifies the language in 1-19A-7 to include money received from a political party and qualifying contributions under the new Section 7 in the bill.

It deletes the requirement for noncertified candidates with a certified opponent, or political committees or persons making expenditures to support a noncertified candidate, to file additional reports under the Campaign Reporting Act.

It adds a new section to the Act to define allowable contributions and sets a limit of \$100 per donor per election cycle.

The bill deletes the existing provision for matching funds based on expenditures by opposing candidates. It adds a new matching funds provision which provides that the candidate shall receive four times the amount of contributions the candidate has collected during the time he or she was an applicant candidate or a certified candidate, up to a limit of three times the amount of the initial distribution.

The bill provides civil and criminal penalties under 1-19A-17.

### FISCAL IMPLICATIONS

DFA notes that the fiscal impact to the Public Election Fund could be substantial.

The SOS states that the fiscal implications of the change to the matching funds provision is unknown. More distributions may be required since it would be based on contributions collected by certified candidates rather than on money spent by an opponent or in support of an opponent.

The AGO notes that while the bill addresses legal issues, it may still be problematic whether there will be sufficient public funds available to provide for meaningful public financing for Public Regulation Commission and appellate judge races.

The purpose of the Public Election Fund is to finance the election campaigns of certified candidates for covered offices and pay administrative and enforcement costs of the Voter Action Act. For FY12, the General Appropriation Act (GAA) offset the General Fund appropriation to the agency by redirecting \$1 million other revenue from the Public Election Fund to the Elections Program at the SOS to cover 2012 election-related expenses. Any new negative impact on the Public Election Fund may require more General Fund appropriations to the SOS office for future election-related expenses.

Pursuant to 1-19A-13(D), the amount of money to be distributed to a certified candidate for a contested general election in 2012:

- 1) Office of PRC Commissions, twenty-five cents (\$0.25) for each voter in the district of the office for which the candidate is running; and
- 2) Office of Justice of the Supreme Court and the Judge of the Court of Appeals, fifteen cents (\$0.15) for each voter in the state.

Contested General Election Distribution		
Office	Voters	Fund
PRC District #1	266,287	\$66,572
PRC District #3	283,364	\$70,841
Judicial Office	1,166,262	\$174,939

The SOS will disburse \$455,000 from the Public Election Fund for campaigns in 2012. The balance in the fund is projected to be \$2,100,000 at FY12 year-end. Revenues are projected to be \$1,500,000 for FY13.

The amount in the table above is an estimate that is dependent upon the number of certified candidates that seek public funding.

## **SIGNIFICANT ISSUES**

The SOS notes that changes to the matching funds provision appears to be intended to bring the Act into compliance with case law in which similar matching funds provisions in other jurisdictions have been determined to be unconstitutional.

The changes to Section 1-19A-17 bring criminal penalties into line with a ruling of the New Mexico courts.

AGO provided the following:

The bill also removes the sections of the Act that increased a candidate's public financing amount when other candidates or independent committees spent more than a certain amount opposing the candidate. That matching provision was held to be unconstitutional in a US Supreme Court decision last year.

The bill clarifies that violation of the Act includes reporting violations under the Campaign Reporting Act.

This bill addresses case which held that public campaign financing statutes, such as New Mexico's, are unconstitutional if they increase a candidate's public financing amount to help match what other speakers spend when they engage in political speech.

This bill is modeled on the Fair Elections Now Act a federal bill that was developed in anticipation of 2011 case law.

## **ADMINISTRATIVE IMPLICATIONS**

The SOS further notes that the elimination of the seed money provisions and changes to the definitions may simplify the oversight and administration of the Act within the SOS's office.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 12 relates to:

- HB 74, Conservancy District Absentee Ballots
- HB 113, Voter ID Requirements
- HB 114, No Corporation Influence on Elections
- HB 207, Voter Identification Requirements
- SB 11, Campaign Reporting & Definitions
- SB 103, No Legislator Lobbying for One Year
- SB 105, Public Campaign Financing
- SB 116, Use of Legislative Campaign Funds
- SB 117, Elections Commission Act

## **ALTERNATIVES**

The SOS suggests adding an emergency clause to this bill in order to avoid law suits at an earlier date.

**SUGGESTED AMENDMENTS**

As noted above, appropriations from the Public Election Fund have been made to the SOS Election Program's operating budget. This has been accomplished by including language in the GAA enabling the agency to expend some of the Public Election Funds in the Elections Program. The legislature might consider amending the use of the Public Election Fund to permanently allow it to be used for this purpose.

DW/svb