

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 12, 2015
Bill No: Senate Bill 58-305

Sponsor: Senator Peter Wirth
Short Title: Campaign Public Financing Changes

Agency Code: Attorney General's Office
Person Writing: Sally Malavé
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Senate Bill 58 amends the Voter Action Act, NMSA 1978, Sections 1-19A-1 to -17 (2003 and as amended through 2014) in several ways to provide clarity for who is eligible to receive campaign public financing and how such funds may be used. It deletes the definitions for “seed money” and “noncertified candidate” and adds definitions for “contributions” and “coordinated expenditures.” In addition to publishing guidelines outlining permissible campaign-related expenditures, Senate Bill 58 also requires the Secretary of State to publish penalties for violations of the Voter Action Act by January 1, 2016. Contributions used to calculate the amount of public financing an applicant candidate may receive now includes money or other things of value, including the value of in-kind contributions that are made or received for the purpose of supporting or opposing the nomination or election of a candidate for public office, but do not include the value of services provided without compensation or unreimbursed travel or personal expenses of individuals who volunteer their time on behalf of a candidate. Senate Bill 58 reduces the amount of accepted contributions from \$500 to \$100, excluding qualifying contributions, that an applicant candidate may receive from any one contributor during the election cycle in which the person is running for office.

Apparently in response to reports that former PRC Commissioner Ben Hall paid himself and his fiancée for working on his re-election campaign, Senate Bill 58 proposes to amend Section 1-19A-7 of the Voter Action Act that restricts the use of public campaign funds by adding language that money received from the public election fund may not be used for “the candidate’s personal living expenses or compensation to the candidate or the candidate’s family,” as well as for certain other matters, including contributions to another campaign of the candidate, to the campaign of another candidate or to a political party or committee or to a campaign supporting or opposing a ballot proposition, for payment of legal expenses or fines levied by a court or the Secretary of State. Under Senate Bill 58, a certified candidate’s total campaign expenditures includes not only money received from the public election fund, but also money received from a political party and contributions collected pursuant to the Act.

Senate Bill 58 also requires certified candidates who do not remain candidates in a general election or withdraw their candidacies, as well as certified candidates in the general election, to transfer to the Secretary of State for deposit to the public election fund any amount received from the fund and any amount received from a political party or from private

contributors that remain unexpended or unencumbered by a date certain. 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. Senate Bill 58 now provides a new formula for the distribution of matching funds and limits the amount of all public money distributed to a certified candidate to three times the amount of the initial distribution allowed for the candidate. It also provides that no money from the public election fund shall be distributed to any certified candidate in uncontested elections.

Senate Bill 58 provides that persons found to be in violation of the Voter Action Act shall be subject not only to civil penalties but criminal prosecution by the Attorney General.

FISCAL IMPLICATIONS May result in indeterminate expenditures to the AGO, as the Secretary of State is required to refer violations of the Voter Action Act to the Attorney General for criminal prosecution.

SIGNIFICANT ISSUES

Senate Bill 58 addresses Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806 (2011), 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 (i.e., other candidates, independent committees) spend when they engage in political speech. It appears to be modeled on the Fair Elections Now Act, a federal bill that was developed in anticipation of Bennett.

PERFORMANCE IMPLICATIONS May result in increase to the caseload of the AGO, as the Secretary of State is required to refer violations of the Voter Action Act to the Attorney General for criminal prosecution.

ADMINISTRATIVE IMPLICATIONS See above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None at this time.

TECHNICAL ISSUES There are no technical issues or drafting errors.

OTHER SUBSTANTIVE ISSUES There are no other substantive issues.

ALTERNATIVES There are no recommended alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo. If challenged, federal or state courts may strike down the current matching funds provision of the New Mexico's Voter Action Act as unconstitutional.

AMENDMENTS There are no recommended amendments.