LFC Requester:	Charlene Cerny

AGENCY BILL ANALYSIS
2015 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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** X

Date February 24, 2015
Bill No: SB 58s-305

Sponsor: Senator Peter Wirth
Short Title: Campaign Public Financing Changes (Current Substitute)

Agency Code: Attorney General's Office
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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: N/A
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

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: The current substitute for 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 address the distribution and use of public campaign funds. Section 1 deletes the definitions for "seed money" and "noncertified candidate" and adds definitions for "contributions" and "coordinated expenditures." The definition of "contribution" 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; however, "contribution" does 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.

Section 3 reduces the amount of acceptable contributions that an applicant candidate may receive from $500 to $100 (excluding qualifying contributions) from any one contributor during the election cycle in which the person is running for office.

The substitute to SB 58 proposes to amend Section 1-19A-7 of the Act, which currently restricts the use of public campaign funds, to add language stating that money received from the public election fund shall not be used for the following purposes: (1)"the candidate's personal living expenses or compensation to the candidate or the candidate's spouse;" (2) contributions to another campaign of the candidate, to the campaign of another candidate or to a political party or committee; (3) to a campaign supporting or opposing a ballot proposition; (4) for payment of legal expenses or fines levied by a court or the Secretary of State; (5) or for any gift or transfer for which compensation is not received.

Under Section 5 of the substitute bill, certified candidates who do not remain candidates in a general election or who withdraw their candidacy, must transfer any unexpended or unencumbered amounts received from political parties or from private contributors, to the Secretary of State for deposit to the public election fund within thirty days. Similarly, a certified candidate will be required to transfer to the Secretary of State any unspent or unencumbered funds for deposit in the public election fund within thirty days of the general election.

Under Section 6, the Secretary of State must publish penalties for violations of the Voter

Action Act by January 1, 2016. The amended language also requires that certified candidates report all contributions and expenditures according to the campaign reporting schedule outlined in the Campaign Reporting Act.

Section 8 of SB 58 also proposes to add a new section to the Voter Action Act to address allowable contributions. According to the proposal, an "applicant candidate" may collect contributions during the sixty days immediately preceding the qualified period, and throughout the qualifying period, only from qualified electors registered to vote in the candidate's district. A "certified candidate" may only collect contributions from qualified electors registered to vote in the candidate's district but shall not accept contributions from any other source. The total amount of contributions from a qualified elector to a candidate may not exceed one hundred dollars per election cycle, excluding the qualifying contribution.

Under Section 9 of SB 58, the Secretary of State must determine the amount of money to be distributed to each certified candidate for the election cycle ending with the next general election, by September 1 of each odd-numbered year. This section also reduces the amount of money that the Secretary of State can distributed in uncontested primary and general elections.

Under Section 10 of SB 58, persons found to be in violation of the Voter Action Act shall be subject, not only to civil penalties, but also criminal prosecution by the Attorney General.

Finally, Section 11 proposes to repeal Section 1-19C-5 of the Voter Action Act pertaining to seed money, as well as Section 1-19C-14 pertaining to matching funds.

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. By deleting Section 10 from the original SB 58, the substitute leaves intact NMSA 1978, § 1-19A-14, which may be subject to challenge after Ariz. Free Enter. Club's Freedom Club PAC v. Bennett.

By limiting Public Regulation Commission candidates to accept contributions only from voters in their district, Section 8 of SB 58 and its substitute may be viewed as denying voters outside the candidate's district the right under the First Amendment to help elect a candidate whose official actions can directly affect them, as PRC commissioners vote on issues with statewide import and effect.

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

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
N/A

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES
N/A

ALTERNATIVES
N/A

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 pursuant to the U.S. Supreme Court's decision in Bennett.

AMENDMENTS
N/A