

LFC Requester:

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AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

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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

Date January 24, 2016

Bill No: HB 208

Sponsor: Miguel P. Garcia  
Short Public Financing of Legislative  
Title: Races

Agency Code: 305  
Person Writing Caroline Manierre  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB 80

SB 12

SB 124

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

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.

**Synopsis:**

House Bill 208 amends the Voter Action Act. The bill adds definitions of “contribution” and “coordinated expenditure” to the Act and adds the office of state legislator to those covered by the Act.

House Bill 208 reduces the amount of contributions that an applicant candidate may receive from any one contributor during the election cycle from \$500 to \$100, excluding qualifying contributions.

House Bill 208 amends Section 1-19A-7 to provide that money from the public election fund may not be used for certain expenses, including personal living expenses, compensation to the candidate or the candidate’s family, contributions to another campaign and contributions to pay off legal expenses or fines levied by a court or the secretary of state. All funds not used by certified candidates during a campaign, including amounts received from the public election fund, a political party or private contributors, must be transferred to the secretary of state for deposit in the fund. A certified candidate who withdraws or ceases being a certified candidate must return unspent amounts to the public election fund.

House Bill 208 adds a new section to the Voter Action Act, which provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period. A certified candidate may collect contributions only from qualified electors registered to vote in the candidate’s district. Total contributions from a qualified elector to a candidate may not exceed \$100 per election cycle, not including the amount of any qualifying contribution.

The bill adds language regarding the amount of money to be distributed to certified candidates for the office of state legislator, and changes the amount of money to be distributed to a certified candidate in an uncontested primary from fifty to ten percent of the amount available for candidates in contested elections.

The bill amends the penalties provision of the Act to require the secretary of state, upon making a

determination that a violation of the act has occurred, to impose a fine and transmit the finding to the attorney general for criminal prosecution. Currently, the Act gives the secretary of state the option of imposing a fine or transmitting the finding of a violation to the attorney general.

Section 12 of the bill repeals NMSA 1978, Sections 1-19A-5 (“Seed Money”) and 1-19A-14 (Matching Funds) and related provisions in the Act.

**FISCAL IMPLICATIONS:** The requirement that upon finding a determination the secretary of state shall impose a fine *and* transmit the finding to the OAG means the Bill could result in indeterminate expenditures to the OAG.

### **SIGNIFICANT ISSUES**

House Bill 208 would prohibit a certified candidate from accepting contributions from sources other than qualified electors registered to vote in the candidate’s district, except from political parties as allowed under Section 1-19A-8 of the Act, and from accepting total contributions from a qualified elector in excess of one hundred dollars. There may be a constitutional issue with regard to limiting contributors to those within the candidate’s district and to a cap of one hundred dollars. This denial may be viewed as an abridgement of the freedom of political expression and political association of the voters from outside the candidate’s district who will nevertheless be affected by the candidate’s votes once elected to office. The United States Supreme Court has held that the government may not restrict the number of causes or candidates a donor may support. *See McCutcheon v. Fed. Election Comm’n*, 134 S. Ct. 1434 (2014). It is possible that in light of this, a court might determine that the issue is not narrowly tailored enough to serve a compelling state interest in preventing corruption or the appearance of corruption in elections.

House Bill 208 repeals the Act’s provisions for seed money and matching funds. This removes the potential for challenges such as those made against similar matching provisions found unconstitutional by the U.S. Supreme Court in *Arizona Free Enter. Club’s Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011).

**PERFORMANCE IMPLICATIONS:** This bill could result in the increase in caseload of the OAG, due to the required referral of the bill to the OAG for prosecution.

**ADMINISTRATIVE IMPLICATIONS:** Should the bill result in increased referrals to the OAG, it might require additional staff time and resources for the OAG.

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

- House Bill 208 is nearly a duplicate of Senate Bill 12, however there are several additional changes that House Bill 208 incorporates that are not in Senate Bill 12, to include references to candidates for the office of state legislator.
- House Bill 80 and Senate Bill 124 do not necessarily conflict with House Bill 135, but would amend the language in the Voter Action Act to change from “secretary of state” to “state ethics commission.”

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:** Status quo

**AMENDMENTS**