

# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Bill No. 2018-\_\_

### Public Campaign Finance Changes

---

**SPONSOR(S):** Councilors Romero-Wirth, Ives and Villarreal

**SUMMARY:** The proposed ordinance amends Section 9-3 of the Public Campaign Finance Code to include a definition for qualified small contribution, establishes a new section regarding a qualified small contribution, establishes a new section mandating matching payments by the city, establishes a new section regarding reporting of qualified small contributions and matching payments, and changes all uses of "municipal clerk" to "city clerk".

**PREPARED BY:** Jesse Guillen, Legislative Liaison

**FISCAL IMPACT:** TBD

**DATE:** July 6, 2018

**ATTACHMENTS:** Bill  
ECRB Executive Summary  
Fiscal Impact Report

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

[illegible]

3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

[illegible]

7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

20  
21  
22  
23  
24  
25

21  
22  
23  
24  
25

23  
24  
25

24

25

25

1 association or credit union doing business in this state under which a campaign account or  
2 accounts are maintained.

3 B. *Campaign materials* means any published communication, electronic or otherwise,  
4 disseminated to more than one hundred (100) persons that either supports the election or defeat of  
5 any identifiable candidate or candidates or supports the approval or defeat of a ballot proposal,  
6 other than communications to, or editorials, reports, or commentary by news media.

7 C. *Candidate* means any individual who seeks election to a Santa Fe municipal office.  
8 An individual shall be a candidate when they:

- 9 (1) Announce publicly;  
10 (2) File for office;  
11 (3) When contributions are accepted or expenditures made; or when  
12 (4) Any activity is held to promote an election campaign of an individual if  
13 that activity is endorsed or supported by that person or if the benefits of such activity are  
14 later accepted by such person.

15 D. *Contested race* means a race in which there are at least two (2) candidates for the  
16 office sought.

17 E. *Contribution* means a loan, loan guarantee, gift, advance, pledge, contract,  
18 agreement or promise of money or anything of value or other obligation, whether or not these  
19 items are legally enforceable, made directly or indirectly, to a candidate or political committee, or  
20 to a person obligated to file a report under subsection 9-2.6 SFCC 1987, for the purpose of  
21 supporting the election or defeat of any identifiable candidate or the approval or defeat of a ballot  
22 proposition.

23 (1) The term "contribution" includes:

- 24 (a) The transfer of funds or anything of value between political  
25 committees;

1 (b) The transfer of anything of value for less than full consideration;

2 (c) Interest, dividends or other income derived from the investment  
3 of campaign funds;

4 (d) The payment for the services of an individual serving on behalf  
5 of a candidate or political committee, which payments are made by a third party;  
6 and

7 (e) The purchase of tickets for fundraising events such as dinners,  
8 rallies, raffles, etc. and the proceeds of collections at fundraising events.

9 (f) A coordinated expenditure.

10 (2) The term "contribution" does not include a volunteer's personal services  
11 provided without compensation or the travel or personal expenses of such a campaign  
12 worker.

13 F. *Coordinated expenditure* means an expenditure made:

14 (1) by an individual or entity other than a candidate or the candidate's  
15 political committee; and

16 (2) in cooperation, consultation or concert with, or at the request or  
17 suggestion of, a candidate, his/her representatives or agents or the candidate's political  
18 committee, including but not limited to, the following examples in subsection 9-  
19 3.3(F)(2)(a)-(d):

20 (a) there has been substantial discussion between the individual or  
21 entity making the expenditure and the candidate, candidate's political committee,  
22 or his/her representatives or agents. Substantial discussion includes, but is not  
23 limited to, an exchange of campaign strategies, polling information, voter lists or  
24 any other similar information that would facilitate the election or defeat of a  
25 candidate.

1 (b) an entity making the expenditure is directly or indirectly formed  
2 or established by or at the request or suggestion of, or with the encouragement of  
3 the candidate, candidate's political committee, or his/her representatives or  
4 agents;

5 (c) the candidate, candidate's political committee or his/her  
6 representatives or agents has solicited funds or engaged in other fundraising  
7 activities on behalf of the person or entity making the expenditure during the  
8 twelve-month (12) period preceding the date of the expenditure. Fundraising  
9 activities include, but are not limited to, exchanging names of potential donors or  
10 other lists to be used in engaging in fundraising activity, regardless of whether or  
11 not the individual or entity pays fair market value for the names or lists provided;  
12 or being a featured guest or speaker at a fundraising event for the benefit of the  
13 entity making the expenditure.

14 (d) if the individual or entity making the expenditure has employed,  
15 has in a leadership position, or has accepted a donation of the campaign related  
16 professional services of any person, who, during the twelve-month (12) period  
17 preceding the date of the expenditure, has been an employee of, has advised, or  
18 provided or is providing services to the candidate or candidate's political  
19 committee. These services include, but are not limited to, any services in support  
20 of the candidate's or candidate's political committee's campaign activities, such  
21 as advertising, message, strategy or policy services, polling, allocation of  
22 resources, fundraising or campaign operations.

23 (e) an expenditure is not a coordinated expenditure solely because:

24 (i) the individual or entity and a candidate or candidate's  
25 political committee use the same vendor to provide polling services,

1 printing or distribution services or physical space, provided that the  
2 vendor has in place prior to the expenditure a firewall to ensure that there  
3 is no exchange of information between the individual or entity and the  
4 candidate or campaign committee. Evidence of an adequate firewall is a  
5 vendor's formal written policy or a contractual agreement with the  
6 vendor prohibiting the exchange of information between the individual  
7 or entity and the candidate or candidate's political committee, which  
8 policy or contract is distributed to all relevant employees, consultants,  
9 and clients affected by the policy or contract. The firewall shall be  
10 designed and implemented to prohibit the flow of information between  
11 employees and consultants providing services to the individual and entity  
12 and to those currently or previously providing services to the candidate  
13 or candidate's political committee. Coordination will be presumed in the  
14 absence of such a firewall; or

15 (ii) the individual or entity making the expenditure  
16 interviews a candidate; has endorsed a candidate; has obtained from the  
17 candidate a biography of the candidate or a position paper, press release,  
18 or similar material about the candidate; has invited the candidate to make  
19 an appearance before the person's members, employees or shareholders;  
20 or has shared space with a candidate or candidate's political committee  
21 for one or more single events of limited duration.

22 G. *Election* means any regular or special Santa Fe municipal election.

23 H. *Expenditure* means a payment or transfer of anything of value in exchange for  
24 goods, services, property, facilities or anything of value for the purpose of supporting or opposing  
25 the election or defeat of any identifiable candidate or the approval or defeat of a ballot

1 proposition. This includes contributions, subscriptions, distributions, loans, advances, deposits, or  
2 gifts of money or anything of value, and includes a contract, a promise or agreement, whether or  
3 not legally enforceable, to make an expenditure. The term "expenditure" also means the transfer  
4 of funds or anything of value between political committees.

5 I. *Fund* means the public campaign finance fund created by subsection 9-3.4 SFCC  
6 1987.

7 J. *Non-participating candidate* means a candidate who is not a participating  
8 candidate.

9 K. *Participating candidate* means a candidate who has qualified and has been  
10 certified pursuant to subsection 9-3.9 SFCC 1987 as eligible to receive payments from the fund.

11 L. *Qualified elector* means a person who is registered to vote in the city of Santa Fe.

12 M. *Qualified small contribution* means a contribution of no more than one hundred  
13 dollars (\$100.00) made and accepted in compliance with the provisions of subsection 9-3.12  
14 SFCC 1987.

15 ~~[M.]~~ N. *Qualifying contribution* means a contribution of no more ~~[or]~~ and no less  
16 than five dollars (\$5.00) that is received from a qualified elector during the qualifying period by a  
17 candidate seeking to become a participating candidate. A candidate for councilor shall only  
18 receive qualifying contributions from qualified electors registered to vote in the council district in  
19 which the candidate is running.

20 ~~[N.]~~ O. *Qualifying period* means the period during which a candidate seeking to  
21 become a participating candidate is permitted to collect qualifying contributions and to apply for  
22 certification as a participating candidate. It begins one hundred eighty-three (183) days before the  
23 election and ends one hundred six (106) days before the election.

24 ~~[O.]~~ P. *Race* means the electoral process in which one (1) or more candidates run and  
25 one (1) candidate is elected to the office of mayor, municipal judge or city councilor for a

1 particular district.

2 [P-] Q. *Seed money contribution* means a contribution of no more than one hundred  
3 dollars (\$100.00) made and accepted in compliance with the provisions of subsection 9-3.6 SFCC  
4 1987 and used exclusively for the purposes specified in that section.

5 [Q-] R. *Uncontested race* means a race in which there is only one (1) candidate for  
6 the office sought.

7 **Section 2. Section 9-3.5 SFCC 1987 (being Ord. No. 2009-44, § 6, as amended) is**  
8 **amended to read:**

9 **9-3.5 Eligibility as a Participating Candidate.**

10 [~~Beginning with the election of 2012, a~~] Any candidate for municipal office may qualify  
11 as a participating candidate eligible to receive payments from the fund pursuant to subsections 9-  
12 3.10 and 9-3.13 SFCC 1987 if the candidate:

13 A. Meets the requisites to be listed on the ballot as a certified candidate for municipal  
14 office pursuant to the provisions of Section 3-8-27 (B) through (E) NMSA 1978 and Article IV  
15 Section 4.03 of the Santa Fe Municipal Charter;

16 B. Has collected the requisite number of qualifying contributions, as follows:

17 (1) For a candidate running for the office of mayor, six hundred (600)  
18 qualifying contributions from separate qualified electors;

19 (2) For a candidate running for the office of city councilor, one hundred fifty  
20 (150) qualifying contributions from separate qualified electors registered to vote in the  
21 council district in which the candidate is running;

22 (3) For a candidate running for the office of municipal judge, one hundred  
23 fifty (150) qualifying contributions from separate qualified electors.

24 C. Submits an application for certification pursuant to subsection 9-3.8 SFCC 1987  
25 setting forth the agreement and the averments and accompanied by the forms, reports and



1 payments that are required by that section.

2       **Section 3. Section 9-3.6 SFCC 1987 (being Ord. No. 2009-44, § 7, as amended) is**  
3 **amended to read:**

4       **9-3.6 Seed Money Contributions.**

5       A. A candidate seeking to become a participating candidate may solicit and accept  
6 seed money contributions to defray expenses incurred in obtaining qualifying contributions and in  
7 seeking certification as a participating candidate.

8       B. The aggregate amount of seed money contributions from any one contributor to  
9 any one candidate shall not exceed one hundred dollars (\$100.00), and the aggregate amount of  
10 seed money contributions accepted by a candidate shall not exceed ten percent (10%) of the  
11 amount payable under subsection 9-3.10 SFCC 1987 to a candidate in a contested election for the  
12 office sought.

13       C. Each seed money contribution shall be accompanied by a form signed by the  
14 contributor, which shall include the contributor's name, home address, telephone number,  
15 occupation and name of employer. The ethics and campaign review board may, by regulation,  
16 permit the use of an electronic signature on such forms.

17       D. No person shall knowingly make and no candidate shall knowingly receive a seed  
18 money contribution which is not from the person named on the form or for which the person  
19 named on the form has been or will be reimbursed or compensated by another person.

20       ~~[D.]~~ E. All seed money contributions received by a candidate shall be deposited in a non-  
21 interest-bearing account in a campaign depository to be established by the candidate before  
22 soliciting or accepting any such contributions. All expenditures of seed money shall be made  
23 from the campaign depository.

24       ~~[E.]~~ F. Seed money contributions shall be used only for the purposes specified in  
25 paragraph A. of this subsection, and all seed money contributions that have not been spent or used

1 for such purposes by the time the candidate applies for certification as a participating candidate or  
2 by the end of the qualifying period, whichever is sooner, shall then be paid over to the municipal  
3 clerk for deposit in the fund; provided, however, that if payment of all of the candidate's unspent  
4 seed money to the [municipal] city clerk would cause the bank account in the campaign  
5 depository to be closed, an amount of seed money necessary to keep the account open may be  
6 temporarily retained in the account and paid over to the [municipal] city clerk at a later time in  
7 compliance with paragraph C of subsection 9-3.10 SFCC 1987.

8       **Section 4. Section 9-3.7 SFCC 1987 (being Ord. No. 2009-44, § 8, as amended) is**  
9 **amended to read:**

10       **9-3.7 Qualifying Contributions.**

11       A. Each qualifying contribution shall be accompanied by a form signed by the  
12 contributor, which shall include the contributor's name, registered address and telephone number.  
13 The ethics and campaign review board may, by regulation, permit the use of an electronic  
14 signature on such forms.

15       B. No candidate or person acting on a candidate's behalf shall pay to any other person  
16 any form of compensation for soliciting or obtaining a qualifying contribution.

17       C. No person shall knowingly make and no candidate shall knowingly receive a  
18 qualifying contribution which is not from the person named on the form or for which the person  
19 named on the form has been or will be reimbursed or compensated by another person.

20       D. All qualifying contributions received by a candidate shall be deposited in a non-  
21 interest-bearing account in a campaign depository to be established by the candidate before  
22 soliciting or accepting any such contributions, and shall be paid over to the [municipal] city clerk  
23 for deposit in the fund when the candidate applies for certification as a participating candidate or  
24 when the qualifying period ends, whichever is sooner.

25       **Section 5. Section 9-3.8 SFCC 1987 (being Ord. No. 2009-44, § 9, as amended) is**

1 amended to read:

2 **9-3.8 Application for Certification as a Participating Candidate.**

3 A. A candidate who wishes to be certified as a participating candidate shall, before  
4 the end of the qualifying period, file an application for such certification with the ~~[municipal]~~ city  
5 clerk on a form prescribed by the ~~[municipal]~~ city clerk.

6 B. The application shall identify the candidate and the office that the candidate is  
7 seeking, and shall set forth:

8 (1) The candidate's averment under oath that the candidate satisfies the  
9 requisites for qualification and certification as a participating candidate prescribed by  
10 subsection 9-3.5 SFCC 1987;

11 (2) The candidate's averment under oath that the candidate has accepted no  
12 contributions to the candidate's current campaign other than qualifying contributions  
13 and seed money contributions solicited and accepted pursuant to subsections 9-3.6  
14 SFCC 1987 and 9-3.7 SFCC 1987;

15 (3) The candidate's averment under oath that the candidate has made no  
16 expenditures for his or her current campaign from any source other than seed money  
17 contributions; and

18 (4) The candidate's agreement that his or her current campaign will not  
19 solicit, direct or accept any further contributions or make any further expenditures  
20 from any sources other than payments received from the fund pursuant to subsection 9-  
21 3.10 and 9-3.13 SFCC 1987 and qualified small contributions received pursuant to  
22 subsection 9-3.12 SFCC 1987.

23 C. The application shall be accompanied by:

24 (1) Reports listing all seed money contributions and qualifying  
25 contributions received by the candidate and all expenditures of seed money

1 contributions made by the candidate, and showing the aggregate amounts of all such  
2 contributions and expenditures and the aggregate amounts of all contributions received  
3 from each contributor;

4 (2) Copies of forms signed by contributors for all seed money  
5 contributions and qualifying contributions received by the candidate; and

6 (3) A check or checks issued to the city of Santa Fe from the candidate's  
7 campaign depository for the amount of all qualifying contributions received by the  
8 candidate and all seed money contributions received by the candidate except:

9 (a) Amounts previously spent for the purposes specified in  
10 paragraph A of subsection 9-3.6 SFCC 1987; and

11 (b) The amount, if any, that has been temporarily retained by the  
12 candidate for the purpose of keeping open the bank account in the campaign  
13 depository pursuant to paragraph E of subsection 9-3.6 SFCC 1987.

14 **Section 6. Section 9-3.9 SFCC 1987 (being Ord. No. 2009-44, § 10, as amended) is**  
15 **amended to read:**

16 **9-3.9 Certification as a Participating Candidate.**

17 A. On or before the eighty-ninth (89th) day before the election the [municipal] city  
18 clerk shall make a determination whether the candidate's application complies with the  
19 requirements of subsection 9-3.8 SFCC 1987 and whether the candidate satisfies the requisites for  
20 certification as a participating candidate prescribed by subsection 9-3.5 SFCC 1987, and shall  
21 thereupon issue a decision, in accordance with the determination so made, granting or refusing  
22 such certification to the candidate.

23 B. The [municipal] city clerk may revoke a candidate's certification as a participating  
24 candidate for any violation by the candidate of the requirements of this section, and may require  
25 that any candidate whose certification has been revoked to pay over to the [municipal] city clerk

1 for deposit in the fund any amounts previously paid to the candidate pursuant to subsections 9-  
2 3.10 and 9-3.13 SFCC 1987.

3 **Section 7. Section 9-3.11 SFCC 1987 (being Ord. No. 2009-44, § 12, as amended) is**  
4 **amended to read:**

5 **9-3.11 Use of Payments from the Fund [~~the Fund as Exclusive Source~~].**

6 A. All payments received by a participating candidate from the fund shall be  
7 deposited in a separate non-interest-bearing account in the candidate's campaign depository and  
8 shall be used exclusively to pay expenses reasonably incurred in furtherance of the candidate's  
9 current campaign.

10 B. Payments received from the fund shall not be used for any other purpose,  
11 including:

12 (1) The candidate's personal living expenses or compensation to the  
13 candidate or the candidate's family;

14 (2) A contribution to another campaign of the candidate or a payment to  
15 retire debt from another such campaign;

16 (3) A contribution to the campaign of another candidate or to a political  
17 party or political committee or to a campaign supporting or opposing a ballot  
18 proposition;

19 (4) An expenditure supporting the election of another candidate or the  
20 passage or defeat of a ballot proposition or the defeat of any candidate other than an  
21 opponent of the participating candidate;

22 (5) Payment of legal expenses or any fine levied by a court or the ethics  
23 and campaign review board.

24 (6) Any gift or transfer for which compensating value is not received.

25 C. All payments from the fund received by a participating candidate which have not

1 been spent or obligated for the purposes specified in paragraph A of this subsection and any  
2 electronic, telecommunication or computer tangible assets purchased with such payments  
3 remaining in the possession of the campaign as of the date of the election shall be returned by the  
4 candidate and shall be conveyed to the ~~[municipal]~~ city clerk within forty-five (45) days after that  
5 date. Returned payments shall be deposited in the fund. Tangible assets shall be conveyed to the  
6 city for its use or disposition in accordance with the city's procurement code. Proceeds from such  
7 disposition shall be deposited in the fund.

8 D. In accordance with the agreement entered into pursuant to subparagraph B(4) of  
9 subsection 9-3.8 SFCC 1987, a candidate who has been certified as a participating candidate shall  
10 not thereafter accept any contribution to the candidate's campaign other than payments received  
11 from the fund pursuant to subsections 9-3.10 and 9-3.13 SFCC 1987 and qualified small  
12 contributions received pursuant to subsection 9-3.12 SFCC 1987, and shall not make any  
13 expenditure in support of the candidate's campaign from any source other than payments and  
14 contributions so received and previously deposited in the candidate's campaign depository.

15 **Section 8. A new Subsection 9-3.12 SFCC 1987 is ordained to read:**

16 **9-3.12 ~~[Reserved:]~~ [NEW MATERIAL] Qualified Small Contributions.**

17 A. A participating candidate may solicit and accept qualified small contributions  
18 beginning on the date on which the candidate is certified as a participating candidate pursuant to  
19 subsection 9-3.9(A) SFCC 1987.

20 B. The aggregate amount of qualified small contributions from any one contributor to  
21 any one candidate shall not exceed one hundred dollars (\$100.00).

22 C. Each qualified small contribution shall be accompanied by a form signed by the  
23 contributor, which shall include the contributor's name, home address, telephone number,  
24 occupation and name of employer. The ethics and campaign review board may, by regulation,  
25 permit the use of an electronic signature on such forms.

1        D. No person shall knowingly make and no candidate shall knowingly receive a  
2 qualified small contribution which is not from the person named on the form or for which the  
3 person named on the form has been or will be reimbursed or compensated by another person.

4        E. Before soliciting or accepting qualified small contributions, a candidate shall  
5 appoint a treasurer and establish a campaign depository in the manner required by subsection 9-  
6 2.8 SFCC 1987. All qualified small contributions received by a candidate shall be recorded by  
7 the candidate's campaign treasurer, deposited in a separate non-interest-bearing account in the  
8 campaign depository and used in the candidate's campaign or disposed of following the election  
9 in the manner required by subsection 9-2.9 SFCC 1987. All such contributions shall be timely  
10 reported in a campaign finance statement prepared in the manner and filed on the dates required  
11 by subsections 9-2.10 through 9-2.12 SFCC 1987. Campaign finance statements reporting the  
12 receipt of qualified small contributions shall be accompanied by copies of the forms signed by  
13 each contributor pursuant to paragraph C of this subsection.

14        **Section 9. A new Subsection 9-3.13 SFCC 1987 is ordained to read:**

15        **9-3.13    [Reserved.] [NEW MATERIAL] Additional Reports of Qualified Small**  
16 **Contributions; Additional Matching Payments from the Fund.**

17        A. In addition to the dates specified for the filing of campaign finance statements by  
18 subsection 9-2.10 SFCC 1987, a campaign finance statement reporting the receipt of qualified  
19 small contributions may also be filed by participating candidates on the fifty-seventh (57th) day  
20 preceding the election.

21        B. Within two (2) business days after the filing of a campaign finance statement by  
22 a participating candidate reporting the receipt of qualified small contributions and accompanied  
23 by copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.12  
24 SFCC 1987, the city clerk shall disburse to the candidate an additional payment from the fund  
25 equal to two (2) times the total amount of the qualified small contributions reported in the

1 campaign finance statement; provided, however, that no such additional matching payments shall  
2 be made for contributions reported in a campaign finance statement filed after the twenty-fifth  
3 (25th) day preceding the election.

4 C. Additional payments made to a participating candidate pursuant to paragraph B  
5 of this subsection shall be deposited in the separate account in the candidate's campaign  
6 depository that was established by the candidate for the deposit of payments received from the  
7 fund pursuant to paragraph A of subsection 9-3.11.

8 D. The aggregate amount of additional payments made to a participating candidate  
9 pursuant to paragraph B of this subsection shall not exceed two hundred percent (200%) of the  
10 amount initially paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

11 E. If the amounts required to be paid to candidates under paragraph B of this  
12 subsection exceed the total amount available in the fund, each payment shall be reduced in  
13 proportion to the amount of such excess.

14 **Section 10. Section 9-3.14 SFCC 1987 (being Ord. No. 2009-44, § 15, as amended) is**  
15 **amended to read:**

16 **9-3.14 Reports of Expenditures; Exemption from Certain Reporting Requirements.**

17 A. A participating candidate shall file with the [municipal] city clerk reports under  
18 oath of expenditures made from the payments received from the fund, indicating that the  
19 expenditures were made from that source and showing the date and amount of each such  
20 expenditure, the name and address of the person or organization to whom it was made, the  
21 purpose of the expenditure, the aggregate amount of such expenditures made to each person or  
22 organization and the aggregate amount of all such expenditures made by the candidate or by his  
23 or her campaign.

24 B. The reports required by paragraph A of this subsection shall be filed on each of  
25 the days prescribed for the filing of campaign finance statements by subsection 9-2.10 SFCC



1 1987.

2 C. A campaign finance statement filed by a participating candidate to report  
3 qualified small contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987 or  
4 paragraph A of subsection 9-3.13 SFCC 1987 shall also include a report of all expenditures made  
5 during the period covered by the statement from the separate account established by the candidate  
6 for the deposit of such contributions pursuant to paragraph E of subsection 9-3.12 SFCC 1987.  
7 The statement shall show that the expenditures were made from that source and shall contain all  
8 the information concerning the expenditures, account balances and funds on hand that is required  
9 for campaign finance statements filed pursuant to subsection 9-2.11 SFCC 1987.

10 ~~[C.]~~ D. Except as provided in paragraphs A ~~[and B]~~ through C of this subsection  
11 ~~[and]~~, paragraph C of subsection 9-3.8 SFCC 1987, paragraph E of subsection 9-3.12 SFCC  
12 1987 and paragraph A of subsection 9-3.13 SFCC 1987, participating candidates are exempt from  
13 the requirement to file campaign finance statements imposed by subsections 9-2.10 SFCC 1987  
14 through 9-2.12 SFCC 1987 and from the requirements to file campaign records with the  
15 ~~[municipal]~~ city clerk imposed by paragraph C of subsection 9-2.9 SFCC 1987; provided,  
16 however, that campaign records shall be maintained in the manner required by the applicable  
17 provisions of the Campaign Code (Section 9-2 SFCC 1987) and shall be made available upon  
18 request to the ~~[municipal]~~ city clerk and the ethics and campaign review board.

19 ~~[D.]~~ E. ~~[A]~~ Seed money and qualifying contribution reports, [and an] campaign  
20 finance statements and contribution and expenditure reports of a candidate for municipal judge  
21 are not required to be signed or acknowledged by the candidate.

22 **Section 11. Editor's Note: Chapter 9 SFCC 1987 (being Ordinance #1985-60, as**  
23 **amnded) is amended to delete all references to "municipal clerk" and insert in lieu thereof**  
24 **"city clerk".**  
25

Big John West City Attorney

*M/Legislation/Bills 2018/Public Campaign Finance Changes*

Summary of Amendments Proposed by the Santa Fe Ethics and Campaign Review Board  
Concerning Public Financing of Campaigns for Municipal Office

**Executive Summary**

To implement the requirement of the 2008 amended Santa Fe City Charter, the City Council has adopted a Public Campaign Finance Code, §9-3 SFCC. This ordinance creates a system whereby candidates for elected city offices who agree to forego all but minimal private fundraising may qualify for an allocation of public funds to conduct their campaigns. A public campaign finance fund is established, with funds allocated by the City Council and certain other deposits.

The effectiveness of this system has been undermined by the U.S. Supreme Court's 1976 ruling in *Buckley v. Valeo*. That case held that independent advocacy groups have a First Amendment right to support the campaigns of candidates with as much funding as they wish, so long as they do not coordinate their campaign activities with those of the candidates they support, or the candidates' committees. Oversight bodies may only require that these independent groups disclose their activity and expenditures.

All three candidates in the 2014 mayoral election accepted public funding and observed the limits on private fundraising. One candidate, however, received support from an independent group, greatly increasing the amount of money spent in support of his campaign. The Ethics and Campaign Review Board (ECRB), after conducting months of public hearings, subsequently proposed amendments to the City's Campaign Codes. The City Council accordingly clarified the definition of "coordinated expenditures," to provide guidance to candidates and independent groups as to which independent expenditures could exceed the limits permitted under the Public Campaign Finance Code. The Council also adopted reporting requirements to better ensure that the real donors behind the independent campaign activity are publicly identified.

While these measures have strengthened the public campaign financing system, one more amendment is needed, so that publicly financed candidates can better respond to unregulated independent expenditures on behalf of opponents: to allow publicly financed candidates to solicit and receive an unlimited number of small, qualified campaign contributions, not exceeding \$100 from any contributor. As these donations are reported to the city clerk, she would issue checks from the public campaign fund for double the amount of contributions reported. No candidate could receive in matching funds more than twice the amount to which that candidate was originally entitled, and if the fund were exhausted, no further distributions would be made for that election.

ECRB believes that allowing publicly financed candidates to collect small private contributions and matching funds will give those who do not have support from independent groups the opportunity to close the funding gap with those candidates who do. The plan will be acceptable to the courts because any candidate will be able to use this approach. ECRB urges the adoption of the amendments to implement this plan.

Summary of Amendments Proposed by the Santa Fe Ethics and Campaign Review Board  
Concerning Public Financing of Campaigns for Municipal Office

I. **Synopsis and Background**

**Synopsis**

The City of Santa Fe Ethics and Campaign Review Board (ECRB) proposes amendments to the Public Campaign Finance Code, §9-3 SFCC 1987 et seq. The purpose of these amendments is to preserve and strengthen the opportunity for candidates to run viable publicly financed campaigns regardless of whether they or their opponents are supported by independently financed, non-coordinating groups.

**Background**

In March 2008, the voters amended §4.05 of the Municipal Charter to require the City Council to provide for public financing of municipal elections. The Council did so the subsequent year by enacting Ordinance #2009-44. This ordinance began with findings that the existing system of private financing of campaigns for municipal office, among other things, undermined public confidence in the democratic process, created a danger of undue influence by large donors, diminished accountability to constituents, and forced officials to spend time fundraising, §9-3.2A. Its purposes included strengthening public confidence in the electoral process, the elimination of the danger of undue influence on elected officials caused by private financing of campaigns and increasing accountability to constituents, as well as providing candidates with sufficient resources to communicate with voters, §9-3.2B.

Accordingly, the ordinance established a public campaign finance fund, §9-3.4, to provide candidates the opportunity to support their campaigns without having to conduct extensive private fundraising. Pre-determined sums of public money would be awarded to candidates who satisfied two threshold criteria demonstrating their commitment and a level of public support: (1) a number of valid petition signatures, determined by a formula for each position, §9-3.5A; and (2) deposit into a public fund of a sufficient number of valid, small qualifying contributions of no more and no less than \$5.00. Candidates who qualified for and accepted public financing were prohibited from accepting private donations for their campaigns, apart from the qualifying contributions and certain seed money contributions to cover initial expenses, within strict limits permitted by the ordinance. Specifically, seed money contributions were limited to \$100.00 from any one contributor, and the total amount of seed money contributions accepted by a candidate was limited to no more than 10% of the amount payable to a candidate in a contested election by the public finance fund. §9-3.6B.

This public financing system was impacted by the U.S. Supreme Court decision in *Buckley v Valeo*, 424 U.S. 1 (1976). That case held that independent advocacy groups have a First

Amendment right to pay for advertisements and other campaign activities in support of a candidate, so long as they do not coordinate their campaign activities with those of the campaigns of either their candidates or those candidates' political committees. Government may not limit the amount of such an advocacy group's expenditures. The only requirement that government can place on those uncoordinated activities is to mandate the independent groups to report their funding sources, activities and expenditures to public authorities, so that the public will know who is supporting each candidate.

The effect of *Buckley v Valeo* on Santa Fe's elections was manifested in the 2014 city elections. Three candidates ran for mayor, all of whom qualified for and accepted public funding. All three candidates observed the restriction against private fundraising beyond the limited amounts permitted in the Public Campaign Finance Code. Yet several groups acting independently expended substantial funds in support of the campaign of one of the candidates; the other two had no such outside support. Because of the restrictions in the Public Finance Code, their resources were limited and they could not raise private funds to combat those independent expenditures. The candidate who received the support of independent groups was elected mayor, casting doubt for many observers on the value of the public financing system.

These circumstances do not reflect on the validity of that election or the qualifications of any candidates. The concern of the ECRB is whether candidates in future elections will choose to apply for public funding and commit not to fundraise privately, when opposing candidates who also accept public funding may benefit from unlimited expenditures by non-coordinating, independent groups. Candidates faced with opponents expected to receive strong support from advocacy groups may opt to fund their campaigns privately. Furthermore, potential candidates may be deterred from running at all if they believe their opponents can both accept public financing and receive the unlimited support of independent groups.

To address this issue, ECRB in 2015 proposed a set of amendments to the City's Public Campaign Finance Code as well as to its Campaign Code, §9-2 SFCC. The City Council enacted Ord. #2015-22 to amend the Public Finance Campaign Code, and Ord. #2015-23 to amend the Campaign Code. The most significant changes to those ordinances, for purposes of this discussion, were (1) to **define the term "coordinating expenditures"** in both these ordinances in greater detail; and (2) to **require public disclosure by non-coordinating campaign organizations of their funding sources and expenditures**, when their donations or expenditures exceed certain thresholds.

Revising the definition of "coordinated expenditures" will clarify for candidates and advocacy groups the kinds of campaign expenditures the groups can make and the campaigning actions they can perform, without becoming unlawful contributors to a publicly funded candidate's campaign. See §9-2.3 K (Campaign Code) and §9-3.3 F (Public Campaign Finance Code). Requiring detailed public disclosure of donations to and expenditures by independent advocacy groups will inform the public of the sources of a candidate's support, even if neither solicited by nor coordinated with the candidate. See §9-2.6 (Campaign Code). This enables the voters to

take those funding sources into consideration when they decide who the candidate may feel accountable to once elected.

While these two amendments have strengthened our public financing system for municipal elections as compared with its condition in 2014, one issue vital for the credibility of the public financing system remains unresolved. That issue is how to provide an opportunity for publicly funded candidates to compete with their opponents who are receiving independent support—or who are funding their campaigns privately.

## II. ECRB's Proposals

ECRB calls for one further set of amendments to the Public Campaign Finance Code, to restore the full value of the public financing system as supported by the voters in their adoption of the City Charter: namely, to allow publicly funded candidates to accept small campaign donations, and to match those donations, two-for-one, with public money.

This amendment would reduce the adverse impact of the *Buckley v Valeo* decision on our public financing system, through two provisions:

- first, it would allow publicly funded candidates to solicit unlimited small donations without losing eligibility for public funding. However, no one donor could contribute more than \$100 to any single candidate for the entire campaign; and
- second, a publicly funded candidate would report those private donations to the city clerk at specified intervals. The clerk would then allocate twice the amount of the qualified donations to the candidate from the public campaign fund, with certain limits to protect the fund.

Changing our current ordinance to allow publicly funded candidates to obtain private donations would provide them the opportunity to match the campaigns of publicly funded opponents who are receiving support from independent advocacy groups, or opponents who are privately funding their campaigns. Matching those small contributions two-for-one from the City's Public Campaign Finance Fund would further help publicly funded candidates to close the gap with an opponent receiving independent or private support. In the mayoral election of 2014, the candidates who did not receive the backing of independent advocacy groups understandably complained that, because they had committed not to fundraise, they could not catch up to their opponent who was receiving independent support. This amendment would alleviate that situation.

The next part of this memo will address questions that have been raised concerning earlier versions of this proposal.

### III. | Questions and Answers on ECRB's Proposals

- 1. Isn't the point of public financing to make candidates independent of private funders? Won't the amendment defeat that purpose by allowing candidates to seek private campaign contributions while also accepting public funding?**

Answer: That is indeed the point, and it is the reason why the current ordinance prevents candidates from soliciting all but the small amounts needed to establish their viability. It is also why even those qualifying contributions are ultimately deposited in the City's public campaign fund, not the candidate's campaign treasury. ECRB has supported that system.

But after *Buckley v Valeo* held that advocacy groups can collect and spend unlimited sums to support a candidate, we were faced with a new reality. Some candidates who accept public funds by agreeing to cease private fundraising may still have unlimited amounts of money spent on their behalf, while others will not. The public may then perceive that these independent groups will obtain extra influence after the election of their candidate.

With that concern in mind, the amendment provides that the donations that candidates may accept from any one person may not exceed \$100 per election. It is highly unlikely that anyone would perceive that so modest an amount could seriously influence an elected official. The public matching funds would add to the value of each contribution, but without using private funds to do so.

ECRB would rather see government regain the authority to impose limits on expenditures by advocacy groups, in which case this amendment would be unnecessary. But unless the Supreme Court reverses its 2010 ruling or the Constitution is amended to permit imposition of such limits, the proposal is the next best measure available.

- 2. Why not limit the matching allocation of public campaign funds to publicly funded candidates whose opponents actually *receive* support from independent advocacy groups? As the amendment is written, any candidate could solicit the small donations and receive the matching public funds—even the candidates who are supported by advocacy groups, or those whose opponents receive no such support.**

Answer: Great idea—except Arizona tried that approach and was struck down in *Arizona Free Enterprise Club vs. Bennett*, 564 U.S. 721 (2011).

- 3. Won't this cost the City more money for every election?**

Answer: This is possible, but unlikely. The amendment imposes two limits on the amount of additional money the City Clerk may award from the public campaign finance fund to candidates. One limit is that no candidate, regardless of how many \$100 donations he or she raises, will receive more than twice the amount of public funding he or she originally qualified

for. The second limit is that no further distributions will occur in any election once the total amount of the public campaign finance fund has been distributed.

Despite these limitations, there is one narrow set of circumstances under which the ECRB amendment could increase the cost to the City of the election process. While the Public Campaign Finance Code currently mandates the City to contribute \$150,000 annually to the fund, §9-3.4C also requires the Council to ensure certain minimum amounts are in the fund 119 days prior to each election. In years when the city elects its mayor and four councilors, that amount is \$600,000 (\$300,000 in non-mayoral election years). It is theoretically possible that enough candidates could claim their initial funding *plus* matching fund requests to bring the fund below the required minimum level before the next election, even after the city deposits its annual \$150,000 contributions. If that were to occur, it would require the Council to increase its appropriations to bring the fund up to the minimum pre-election level for the succeeding election cycle.

While that is a theoretical possibility, it is certainly not the case for the coming 2018 election. Given the low expenditures from the fund during the non-mayoral race of 2016, when only two races were contested, the City should be well on its way to ensuring the minimum fund balance for the 2018 mayoral race. ECRB believes, in any case, that the small, potential risk of needing additional contributions to sustain the required minimum fund balance must be weighed against the real harm that our public financing system has already experienced because of *Buckley v Valeo* and independent advocacy groups. That harm consists of the undermining of confidence in our public financing system when publicly financed candidates were unable to respond with private fundraising when confronted by an opponent who legally received substantial, unrequested support from independent advocacy groups.

**4. Can unopposed candidates raise the qualifying donations and claim the double funding from the public financing fund?**

Answer: Yes, but such candidates are only eligible to receive ten per cent of the public funds for which they would be entitled had they faced opposition. So the dollar limit on how much additional public funding such candidates could receive, twice the amount for which they are originally eligible, would be much lower.

**5. What good does the additional funding do a candidate when the election is almost over? Won't we be giving money to candidates when it is too late for them to put it to use?**

Answer: The amendment addresses this concern by limiting the two-for-one match to qualifying contributions reported on three dates. The last of these reports would be submitted 25 days prior to the election, when there is still ample time to spend the money effectively.



**6. What happens when the public campaign finance fund becomes depleted in an election cycle? Wouldn't the earliest candidates to claim the matching funding gain an advantage over those who apply later?**

Answer: In the unlikely event that the public campaign finance fund becomes exhausted, dispersals will end for that election cycle. But the amendment provides for only three reporting dates when candidates can receive additional public funds: after submitting a new report that would be due under the amendment 57 days before the election (amendment, §9-3.13 A and B); and after the already required reports filed forty days before the election (§9-2.10A (1)) and twenty-five days before the election (§9-2.10A (2)). If the dispersed funds must be reduced because funds are all used up, the deficit would be spread evenly among all the applicant candidates, and they would all have the same time to adapt. Candidates filing for matching funds would have some incentive to solicit their private qualifying contributions in time for the earlier reports, to help them obtain their full match. And even when the public funds have run out, the amended provision would still allow the publicly funded candidates to continue soliciting private donations of up to \$100.

But the more interesting aspect of this question is the implicit assumption that so many candidates would be collecting so many \$100 donations that the matching payments proposed by ECRB would exhaust the fund. Such a situation seems unlikely unless multiple candidates, perhaps in council as well as mayoral contests, are receiving support from independent advocacy groups.

If that assumption is correct, it underscores the urgency of this proposal. While the independent funding issue arose in the context of uncoordinated support for a single mayoral candidate in 2014, it might well arise in the future for multiple mayoral candidates and council races as well. Interest groups that want support from a majority of council members, even for a single policy or project, might find it worth their while to invest in the election of one or more specific candidates. If that were to happen, it would greatly diminish the value of the public financing system, undermining public confidence not only in the electoral process, but in the very integrity of city government.

**Conclusion**

The ECRB urges enactment of its proposal: to allow publicly funded candidates to solicit small qualifying donations which will be matched two-for-one with public funds, within the limits in the amendment. This will give all qualifying candidates an opportunity to benefit from public financing while also allowing them to add to their campaign funds through small private donations. It will advance the purposes and preserve the integrity of the Public Campaign Finance Code.

## City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

### Section A.      General Information

(Check) Bill:   X        Resolution: \_\_\_\_\_

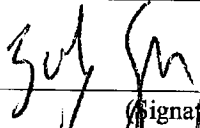
(A single FIR may be used for related bills and/or resolutions)

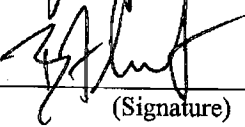
Short Title(s): AMENDING SECTION 9-3 SFCC 1987, THE PUBLIC CAMPAIGN FINANCE CODE, TO INCLUDE A DEFINITION FOR QUALIFIED SMALL CONTRIBUTION; ESTABLISHING A NEW SECTION REGARDING QUALIFIED SMALL CONTRIBUTIONS; ESTABLISHING A NEW SECTION MANDATING MATCHING PAYMENTS BY THE CITY; AND ESTABLISHING A NEW SECTION REGARDING REPORTING OF QUALIFIED SMALL CONTRIBUTIONS AND MATCHING PAYMENTS.

Sponsor(s): Councilor Romero-Wirth, Ives and Villarreal

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Zack Shandler      Date: 7/5/18      Phone: x6303

Reviewed by City Attorney:  Asst City Attorney      Date: 7/6/18  
(Signature)

Reviewed by Finance Director:       Date: 7-6-18  
(Signature)

### Section B.      Summary

Briefly explain the purpose and major provisions of the bill/resolution:

The current Code allows a publicly funded candidate after being certified as a "participating candidate" to receive a disbursement from the Public Campaign Finance Fund (i.e. \$15,000 for council/judge and \$60,000 for mayor).

This bill will amend the current Code to allow a publicly funded candidate to supplement their campaign funding in two ways.

\*First, a publicly funded candidate may raise "qualified small contributions" (i.e. \$100 or less) after being certified as a "public candidate" and use this money in the campaign.

\*Second, the publicly funded candidate may submit a campaign report documenting the amount of "qualified small contributions" raised and the City Clerk will then provide a supplemental Public Campaign Finance Fund Disbursement at 2:1 match within 2 days.

\*Please note, the publicly funded candidate may submit a campaign report documenting the amount of "qualified small contributions" at multiple times during the campaign.

\*The cumulative amount of the supplemental Public Campaign Finance Fund Disbursement match is capped at 200% ratio of the initial disbursement of money (i.e. if a mayor candidate gets \$60,000 from the Public Campaign Finance Fund in the initial disbursement—the most the City Clerk's cumulative match from the Public Campaign Finance Fund is capped twice that amount —\$120,000).

### Section C.      Fiscal Impact

Finance Director: \_\_\_\_\_

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

\_\_\_\_\_ Check here if no fiscal impact

Column #:

1	2	3	4	5	6	7	8
Expenditure Classification	FY 2018	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 2020	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$TBD	N	NR	\$TBD	N	NR	General Fund
Fringe**	\$			\$			
Capital Outlay	\$			\$			
Land/ Building	\$			\$			
Professional Services	\$			\$			
All Other Operating Costs	\$TBD (See Narrative below)	N	NR	\$TBD (see narrative below)	N	NR	Public Campaign Finance Fund
Total:	\$			\$			

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:

1	2	3	4	5	6
Type of Revenue	FY 2018	"R" Costs Recurring or "NR" Non-recurring	FY 2020	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
Total:	\$ _____		\$ _____		

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The revenue source is the Public Campaign Finance Fund.

The expenditures from the Public Campaign Finance Fund will depend on the facts of each campaign. As a hypothetical:

- Council Candidate A qualifies as a participating candidate.
- City Clerk distributes \$15,000 from the Public Campaign Finance Fund to Council Candidate A.
- Council Candidate A receives \$5,000 (in \$100 checks) in qualified small contributions. Council Candidate A can use this money in the campaign.
- Council Candidate A submits a campaign report showing the \$5,000 in qualified small contributions.
- City Clerk distributes a supplemental \$10,000 (2:1 match) from the Public Campaign Finance Fund to Council Candidate A. Council Candidate A can use this money in the campaign.
- Council Candidate A receives \$10,000 (in \$100 checks) more in qualified small contributions. Council Candidate A can use this money in the campaign.
- Council Candidate A submits a campaign report showing the \$10,000 in qualified small contributions.
- City Clerk distributes a supplemental \$20,000 (2:1 match) from the Public Campaign Finance Fund to Council Candidate A. Council Candidate A can use this money in the campaign.
- Council Candidate A receives \$2,000 (in \$100 checks) in qualified small contributions. Council Candidate A can use this money in the campaign.
- Council Candidate A submits a campaign report showing the \$2,000 in qualified small contributions.
- City Clerk cannot distribute any additional disbursements from the Public Campaign Finance Fund to Council Candidate A because the City Clerk has already distributed a cumulative supplemental amount of \$30,000 (200% of the initial distribution of \$15,000) in matching funds to Council Candidate A.
- Council Candidate A, however, can contribute to raise qualified small contributions.

**Notes:**

\*There is a current process that reduces the allotment of funds to candidates to avoid a "run on the bank" scenario. The current code in Section 9-3.10B provides that "if the amount to be paid to candidates ...exceed the total amount available in the fund, each payment shall be reduced in proportion to the amount of such excess. Any such proportionate reduction in the payment due to any candidate ... shall give the candidate the option to reject the payment and to withdraw as a participating candidate."

\*If the bill is adopted in its entirety, the City Clerk may have to review the additional workload and determine whether temporary workers need to be hired in order to handle the filing and the funding within the quick 2-day period.

---

**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

---

**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

Status quo

---

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

---

**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

**In July 2015, the City Council adopted some of the ECRB's recommended changes. This bill represents ECRB's additional recommendation changes. Please read ECRB's Executive Summary for an explanation of the state of the law in this area.**

---

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08





**CARDENAS, GERALYN F.**

---

**From:** VIGIL, YOLANDA Y.  
**Sent:** Monday, August 20, 2018 8:36 AM  
**To:** CARDENAS, GERALYN F.  
**Subject:** FW: more items for ECRB  
**Attachments:** SF pub fin one-pager 2018.docx; ATT00001.txt; SF pub fin 2018 relevant sections.doc; SF pub fin memo for ECRB 2018-2.docx

-----Original Message-----

**From:** James Harrington <harr77@earthlink.net>  
**Sent:** Friday, August 17, 2018 4:25 PM  
**To:** Justin Miller <Justin@bardackeallison.com>  
**Cc:** ROMERO-WIRTH, CAROL <cromero-wirth@ci.santa-fe.nm.us>; Heather Ferguson <HFerguson@commoncause.org>  
**Subject:** more items for ECRB

Justin -

In preparation for next week's ECRB meeting, I'm sending along a couple of other items that the board might find useful in reviewing Councilor Romero-Wirth's public financing matching bill. The first is a "one-pager" (morphed into a two-pager) summarizing the bill and explaining its rationale that I prepared for the sponsor a couple of months ago. The second consists of excerpts from the bill and the unamended sections of the existing law that bear upon the cost of the public financing system and of the bill. Although all these provisions were cited in the memo on costs that I sent you a couple of weeks ago (another copy is attached just in case), I didn't quote them in full because I know the board members are very familiar with them. It might be useful, however, to have these provisions handy at the hearing and perhaps to include them in any report the board may render to the Finance Committee, whose members may not be quite as well versed in this subject as the board is.

I hope you'll be able to pass these items along to the board. If you'd like me to send them to Zach and Yolanda too, please let me know.

See you next Thursday.

Jim



**MEMORANDUM TO: ETHICS AND CAMPAIGN REVIEW BOARD**  
**FROM: JIM HARRINGTON, COMMON CAUSE OF NEW MEXICO**  
**SUBJECT: COST ESTIMATE FOR PUBLIC FINANCING BILL**  
**DATE: JULY 23, 2018**

In estimating the cost of the matching system proposed by Councilor Romero-Wirth's bill, it is crucial to bear in mind that the payouts to candidates can never exceed the amount of money that has been deposited into the public financing fund (§9-3.10(B) SFCC; proposed new §9-3.13(E)). This means that the true determinants of the cost to the city are not the payouts to the candidates but rather the deposits into the fund. This in turn makes these costs reasonably predictable because, while the payouts to candidates are always impossible to foresee, the deposits into the fund are established by a simple formula set forth in the ordinance which has not changed since the public financing system was first adopted and would not be changed by this bill.

That formula, which appears in Section 9-3.4 SFCC, prescribes mandatory deposits into the fund of \$150,000 every year plus such additional sums as may be needed to ensure that the amount in the fund will be \$300,000 in advance of every judge-council election and \$600,000 in advance of every mayor-council election. The provision for contingent top-up payments before elections means that the total amount deposited during a given four-year cycle may vary somewhat, but, as will now be shown, this variation will always remain within a relatively narrow range.

No top-up deposit will ever be needed before a judge-council election because the two annual payments of \$150,000 following the mayoral election will always provide the required minimum fund balance of \$300,000 even if the mayoral election has reduced the balance to zero. On the other hand, there will frequently be a need for a top-up deposit before a mayoral election because the two intervening annual deposits of \$150,000 will often leave the balance short of the required minimum of \$600,000. The amount of this top-up deposit, however, will never exceed \$300,000, because that amount plus the two annual deposits of \$150,000 will bring the fund balance up to \$600,000 even if the fund has been completely drained by the preceding election.

Thus, the deposits to the fund in any four-year cycle will always fall between a minimum of \$600,000 – the sum of the four mandatory \$150,000 annual deposits – and a maximum of \$900,000 - the sum of those deposits plus the maximum possible top-up deposit of \$300,000 before the mayoral election. As long as the formula governing the amount of these deposits is not changed – and this bill would not change it - the cost of the system to the city will therefore always remain within these bounds.

This is not to say that the balance in the fund will not see wide variations. When payouts to candidates are lower than the payouts that were anticipated when the formula was established - as they have been during the years between the judicial invalidation of the original matching system and the long-awaited enactment of a replacement for that system - the fund balance can grow quite large. On the other hand, if the proposed new system succeeds in attracting more candidates to accept public financing and the candidates are successful in collecting matchable small contributions, the fund may sometimes be depleted and the candidates may find their payments capped by the proviso that limits these payments to the amount available from the fund. In either case, the governing body may eventually see fit to adjust the formula upward or downward to accomodate what has been occurring. This bill, however, would make no such adjustment, and its enactment therefore would not cause the quadrennial cost of the system to stray outside the range of \$600,000 to \$900,000 that is established by the existing formula.

**Summary.** The bill would:

1. Allow candidates who have qualified for public financing to raise private donations up to \$100 per donor.
2. Match these private contributions two to one with additional public payments to be made on the 57th, 40th and 25th days before the election.
3. Limit matching payments to twice the amount of the candidates' original allowances, with payments never permitted to exceed the amount previously appropriated to the public campaign finance fund.
4. Leave unchanged both the current system of qualifying for public funds by collecting \$5 qualifying contributions and the current funding mechanism of \$150K annual appropriations plus any "top-up" payments that are needed to bring the fund up to \$600K before mayor-council elections and \$300K before judge-council elections.

**Purpose and need:**

1. The bill is meant to replace the matching system that was included in the original 2009 ordinance, under which candidates were entitled to additional public funds to match the spending of their privately financed opponents and PACs. This system was invalidated by the US Supreme Court in 2011 because, they said, it effectively "discouraged" private spending.
2. The city then tried to run the public financing program without any additional matching payments, but the flaws of that system were exposed in the 2014 mayoral election, where PACs spent lavishly to support one candidate and the other two candidates were powerless to respond because their spending was limited to the amount of their original allowances. Seeing what had happened in 2014, three of the five mayoral candidates in 2018 rejected public financing and proceeded to raise large amounts from private sources.
3. It is therefore apparent that many candidates will not accept public financing and it won't serve its purpose of reducing the influence of large private contributors

unless additional funds are offered to help the publicly financed candidates deal with extravagant private spending.

4. Given the constitutional constraints, the proposed new system is the best way to do this that we could devise. It won't guarantee that publicly financed candidates can always match their private opponents – the courts won't let us do that - but at least it will give them a way to respond to heavy spending when it occurs.

**Funding and cost:**

1. The current funding mechanism, which the bill would not change, was designed to cover the cost of matching private opposition spending under the original system, and it has therefore proved to be very generous for the bare-bones system we've been operating. The city has even been able to skip one annual appropriation and divert \$135K from the fund for ranked-choice education, while still leaving the fund with a healthy current balance of almost \$500K.

2. The proposed new matching system would undoubtedly increase the payouts to candidates from the fund, but the magnitude of this effect would depend on how many candidates accept public financing and how many matchable small contributions they raise in each future election, and these things cannot be predicted with precision. A range of possible effects, however, can be illustrated by a couple of hypothetical scenarios, and these are reassuring. They show, for example, that even if we assume that the new system would double the payouts to candidates compared to the average payouts in the four elections previously conducted with public financing, the fund could still be financed exclusively from \$150K annual appropriations without any need for top-up payments for the indefinite future. And even on the extreme assumption that the payouts to candidates are tripled by the new system, this would increase the average annual cost of the system by only \$56,812.50, which still seems a reasonable price to pay for restoring the viability of Santa Fe's public financing system.

**EXCERPTS FROM THE CURRENT PUBLIC CAMPAIGN FINANCE CODE AND FROM COUNCILOR ROMERO-WIRTH'S MATCHING BILL, SHOWING THE PARTS OF THE CURRENT LAW AND THE BILL THAT INFLUENCE THE BILL'S POTENTIAL FINANCIAL IMPACT:**

**1. Paragraphs (B) and (C) of §9-3.4 SFCC, which are not included in the bill because they are not being amended by the bill, provide as follows:**

9-3.4 - Public campaign finance fund.

....

- B. Each fiscal year, except for fiscal year 2016-2017, the sum of one hundred fifty thousand dollars (\$150,000.00) shall be budgeted for and deposited in the fund.
- C. The governing body shall appropriate and deposit in the fund such additional sums, if any, as may be necessary to ensure:
  - (1) That the balance in the fund one hundred nineteen (119) days preceding each election for mayor and four (4) council seats is at least six hundred thousand dollars (\$600,000.00); and
  - (2) That the balance in the fund one hundred nineteen (119) days preceding each election for municipal judge and four (4) council seats is at least three hundred thousand dollars (\$300,000.00).

....

**2. Paragraphs (A) and (B) of §9-3.10 SFCC, which are not included in the bill because they are not being amended by the bill, provide as follows:**

9-3.10 - Payments to participating candidates.

- A. Within three (3) business days of certifying a candidate as a participating candidate, the municipal clerk shall disburse to the candidate from the fund:
  - (1) Sixty thousand dollars (\$60,000.00) for a candidate in a contested race for the office of mayor;
  - (2) Fifteen thousand dollars (\$15,000.00) for a candidate in a contested race for the office of city councilor;
  - (3) Fifteen thousand dollars (\$15,000.00) for a candidate in a contested race for the office of municipal judge; or
  - (4) For a candidate in an uncontested race, ten percent (10%) of the amount that would be due to a candidate in a contested race for the same office.
- B. If the amounts required to be paid to candidates under paragraph A of this subsection exceed the total amount available in the fund, each payment shall be reduced in proportion to the amount of such excess. Any such proportionate reduction in the payment due to any candidate under paragraph A of this subsection shall give the candidate the option to reject the payment and to withdraw as a participating candidate. A candidate who withdraws as a

participating candidate pursuant to this paragraph shall file an affidavit with the municipal clerk so stating and shall thenceforth be treated for all purposes as a non-participating candidate relieved of all obligations and restrictions and excluded from all benefits and exemptions imposed or conferred on a participating candidate by this Section 9-3 SFCC 1987.

....

**3. Paragraphs (B), (D) and (E) of Section 9 of the bill, which would enact a new §9-3.13 SFCC, provide as follows:**

Section 9. A new Subsection 9-3.13 SFCC 1987 is ordained to read:

9-3.13 [Reserved.] [NEW MATERIAL] Additional Reports of Qualified Small Contributions; Additional Matching Payments from the Fund.

....

B. Within two business days after the filing of a campaign finance statement by a participating candidate reporting the receipt of qualified small contributions and accompanied by copies of the forms signed by the contributors as required by paragraph C of subsection 9-3.12 SFCC 1987, the city clerk shall disburse to the candidate an additional payment from the fund equal to two times the total amount of the qualified small contributions reported in the campaign finance statement; provided, however, that no such additional matching payments shall be made for contributions reported in a campaign finance statement filed after the twenty-fifth day preceding the election.

....

D. The aggregate amount of additional payments made to a participating candidate pursuant to paragraph B of this subsection shall not exceed two hundred percent (200%) of the amount initially paid to the candidate pursuant to subsection 9-3.10 SFCC 1987.

E. If the amounts required to be paid to candidates under paragraph B of this subsection exceed the total amount available in the fund, each payment shall be reduced in proportion to the amount of such excess.







## CARDENAS, GERALYN F.

---

**From:** VIGIL, YOLANDA Y.  
**Sent:** Wednesday, August 22, 2018 9:36 AM  
**To:** CARDENAS, GERALYN F.  
**Subject:** FW: Campaign Review Board , regarding Public Funding proposed Amendments

Attn: Yolanda Vigil, City Clerk. Could you please make sure this gets to the Chair and members of the City's Ethics and Campaign Review Board prior to their meeting scheduled for this Thursday, Aug. 23, at 3 pm.

Thank you.

Berl Brechner

August 21, 2018

To: Santa Fe Ethics and Campaign Review Board Comments re: proposed amendments to Public Finance Law, agenda item for 8/23/18

Please consider these comments in your discussion on this item, and place these comments into the record of the matter.

Several questions come to mind, as I review the proposed amendments, particularly as it implements the sections regarding "qualified small contributions" and the matching public funds provision related to the qualified small contributions (Sections 9-3.12 and 9-3.13).

Questions/comments that come to mind for your consideration, if not already considered, are, in no particular order:

1. Has it been considered that the candidates who might be given for the most in matching funds (2 times amounts received from donors of up to \$100) may be the candidates who are already most popular, most known, and most likely to be able to raise individual small donations? The candidate who is well-known and well-connected is the one most likely to find many more donors toward this match than lesser known-candidates who may most need public funds. In short, it appears it may makes the city, in its distribution of pubic funds, complicit in making the playing field even more uneven (by giving a 2-times match to what can be raised).
2. Has it been considered that offering a two-times match of public funds may have the effect of allowing candidates and donors to "game" the system? For instance, A donor who, were the rules different, might be willing to give \$200 to a candidate (were higher amounts allowed and there was no match) may now say "I'll only have to give a hundred dollars, and the city will match that with \$100.... I don't have to give \$200, I can now give only \$100, but my candidate gets \$200." So, in effect, where individual donations might be available at a higher level, instead, the taxpayers add the extra. So, this creates a disincentive for giving of modest individual donations that might otherwise be higher than \$100, and places more of a burden on taxpayers.
3. Have you considered wether any "qualifying contribution" (Definition

9-3.3N) or "seed money" contribution (Definition 9-3.3Q) are separate from, or part of, the aggregate limitation of "qualified small contributions" (Section 9-3.12)? For example, if an individual has given \$5 in a qualifying contribution, can that donor now give \$100 as a "qualified small contribution", or would that donor be limited at that point to a gift of \$95, toward the match, since \$5 has already been given? Same with "seed money", where up to \$100 might have already been given. Can that donor now give another \$100, with the candidate now having received \$200 from that donor? If so, is the city's match for \$100, (city portion \$200) or for \$200 (city portion \$400)? And conversely, if a campaign donor gives a "qualifying contribution" and/or "seed money", and then gives a "qualified small contribution" (per Section 9-3.13) of \$100, has that donor (and perhaps the candidate) violated the proposed ordinance by giving aggregate donations in a greater amount than permitted? And, if both these sets of contributions need to be looked at and aggregated (before a match is granted), who's responsibility will that be — the donor, the candidate, or the city?

(NOTE: "qualifying contribution" and "qualified small contribution:" are two different things. The fact that they have similar names is confusing.)

4. Since a candidate for Council in the last election spent the bulk of the public money he was given on products/services of his own business, does the fact that the City may now offer more (the matching amounts), which can be generated through gifts by anybody (friends, family, employees, etc.) give the opportunity for even greater self-serving getting, and spending, of the public's money?

5. This, I don't believe, has happened yet here in Santa Fe. But as public campaign money might become available in greater amounts for campaigns, there will be, for sure, "one issue" candidates who will be incentivized (or will be supported in their effort by some organization or association) to take advantage of the forum that a publicly-paid-for candidacy can give. They may not be a serious or even qualified candidate for the office, but the public money will give them a platform for their cause.

There seem to be details in this proposal that may need to be sorted out, reviewed, or re-considered, and since the public has not had much of a chance to weigh other than at this meeting (assuming you were to vote on Aug. 23), there may not time for adequate vetting of these proposals. If nothing else, you may want to defer action pending further review, comment, and reflection on those comments.

It would seem that the "match portion" is problematic, and may not accomplish public funding of campaign objectives. Perhaps, more simply, the "qualified small contributions" should stay in place, and the matching provision be dropped. Perhaps, the small contribution amount could even be raised to \$200 (giving the candidate the opportunity to raise the equivalent of what \$100 might bring to the candidate (with the proposed public match).

But, more generally, the more this rule gets tweaked, the more complex it becomes for the average donor and candidate, the more the possibilities for "gaming" such rules, and the higher the cost to the taxpayer. Had this amendment been in place in the last election, and 5 mayoral candidates had taken advantage of this, and each raised the maximum donations for city additional match limit, the cost to the city would have been \$600,000, that amount turned over to five people for their campaigns.

(Of course, there would be additional costs for campaign funding granted also to council and judicial candidates.) So, while I'm asking questions and making suggestions, more broadly, I am greatly concerned about the concept of forcing taxpayers to support candidates they don't like, the cost, and the concept of making even more money available to anybody who meets the relatively simple qualification requirements.

Thanks for your consideration of these questions and comments.

Berl Brechner  
664 Camino Del Monte Sol  
Santa Fe, NM 87505

cc: Council member sponsors of this amendment