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SENATE BILL 12

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO PUBLIC FINANCING OF ELECTIONS; REMOVING SEED MONEY REQUIREMENTS; ALLOWING CERTAIN CONTRIBUTIONS; DEFINING TERMS; CHANGING DISTRIBUTION AND MATCHING FUND PROVISIONS; LIMITING DISTRIBUTION OF FUNDS TO CANDIDATES IN UNCONTESTED RACES; CLARIFYING PENALTY PROVISIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE VOTER ACTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 1-19A-1 NMSA 1978 (being Laws 2003, Chapter 14, Section 1) is amended to read:

"1-19A-1. SHORT TITLE.--~~[Sections 1 through 17 of this act]~~ Chapter 1, Article 19A NMSA 1978 may be cited as the "Voter Action Act"."

**SECTION 2.** Section 1-19A-2 NMSA 1978 (being Laws 2003, Chapter 14, Section 2, as amended) is amended to read:

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1 "1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

2 A. "applicant candidate" means a candidate who is  
3 running for a covered office and who is seeking to be a  
4 certified candidate in a primary or general election;

5 B. "certified candidate" means a candidate running  
6 for a covered office who chooses to obtain financing pursuant  
7 to the Voter Action Act and is certified as a Voter Action Act  
8 candidate;

9 C. "contested election" means an election in which  
10 there are more candidates for a position than the number to be  
11 elected to that position;

12 D. "contribution" means a gift, subscription, loan,  
13 advance or deposit of money or other thing of value, including  
14 the estimated value of an in-kind contribution, that is made or  
15 received for the purpose of supporting or opposing the  
16 nomination for election or election of a candidate for public  
17 office, including payment of a debt incurred in an election  
18 campaign and also including a coordinated expenditure, but  
19 "contribution" does not include the value of services provided  
20 without compensation or unreimbursed travel or other personal  
21 expenses of individuals who volunteer a portion or all of their  
22 time on behalf of a candidate;

23 E. "coordinated expenditure" means a campaign  
24 expenditure by a person other than a candidate's campaign that  
25 is made at the direction or request of, or in cooperation,

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1 consultation or concert with, that candidate's campaign or any  
2 agent or representative of that candidate's campaign;

3 ~~[D.]~~ F. "covered office" means any office of the  
4 judicial department subject to statewide elections and the  
5 office of public regulation commissioner;

6 ~~[E.]~~ G. "election cycle" means the primary and  
7 general elections for the same term of the same covered office,  
8 beginning on the day after the last general election for the  
9 office and ending with the general election. The primary  
10 election cycle begins on the first day of the election cycle  
11 and ends on the day of the primary election. The general  
12 election begins on the day after the primary election and ends  
13 on the day of the general election;

14 ~~[F.]~~ H. "fund" means the public election fund;

15 ~~[G.] "noncertified candidate" means either a~~  
16 ~~candidate running for a covered office who does not choose to~~  
17 ~~participate in the Voter Action Act and who is not seeking to~~  
18 ~~be a certified candidate or a candidate who files a declaration~~  
19 ~~of intent to participate but who fails to qualify;~~

20 ~~H.]~~ I. "qualifying contribution" means a donation  
21 of five dollars (\$5.00) in the form of cash or a check or money  
22 order payable to the fund in support of an applicant candidate  
23 that is:

24 (1) made by a ~~[registered]~~ voter who is  
25 eligible to vote for the covered office that the applicant

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1 candidate is seeking;

2 (2) made during the designated qualifying  
3 period and obtained through efforts made with the knowledge and  
4 approval of the applicant candidate; and

5 (3) acknowledged by a receipt that identifies  
6 the contributor's name and residential address on forms  
7 provided by the bureau of elections and that is signed by the  
8 contributor, one copy of which is attached to the list of  
9 contributors and sent to the bureau of elections;

10 [~~F.~~] J. "qualifying period" means:

11 (1) for major party applicant candidates for  
12 covered offices, the period beginning October 1 immediately  
13 preceding the election year and ending at 5:00 p.m. on the  
14 third Tuesday of March of the election year; and

15 (2) for independent and minor party  
16 candidates, the period beginning [~~February~~] January 1 of the  
17 election year and ending that year at 5:00 p.m. on the filing  
18 date for independent or minor party candidates for the office  
19 for which the candidate is running; and

20 [~~J.~~] K. "secretary" means the secretary of state or  
21 the office of the secretary of state [~~and~~

22 ~~K. "seed money" means a contribution raised for the~~  
23 ~~primary purpose of enabling applicant candidates to collect~~  
24 ~~qualifying contributions and petition signatures]."~~

25 SECTION 3. Section 1-19A-3 NMSA 1978 (being Laws 2003,

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1 Chapter 14, Section 3) is amended to read:

2 "1-19A-3. TERMS OF PARTICIPATION--DECLARATION OF  
3 INTENT.--

4 A. A ~~[candidate]~~ person choosing to obtain  
5 financing pursuant to the Voter Action Act shall first file  
6 with the secretary a declaration of intent to participate in  
7 that act as an applicant candidate for a stated covered office.  
8 The declaration of intent shall be filed with the secretary  
9 prior to or during the qualifying period according to forms and  
10 procedures developed by the secretary.

11 B. To become an applicant candidate ~~[choosing to]~~  
12 and participate in the Voter Action Act, a person shall submit  
13 a declaration of intent prior to collecting any qualifying  
14 contributions or other contributions and make explicit in the  
15 declaration that the candidate has complied with and will  
16 continue to comply with that act's contribution and expenditure  
17 limits and all other requirements set forth in that act and  
18 rules issued by the secretary.

19 C. A ~~[candidate]~~ person shall not be eligible to  
20 become an applicant candidate if the ~~[candidate]~~ person has  
21 accepted contributions totaling ~~[five hundred dollars (\$500) or~~  
22 ~~more or made expenditures totaling five hundred dollars (\$500)~~  
23 ~~or more between the beginning of the qualifying period and~~  
24 ~~filing a declaration of intent]~~ more than one hundred dollars  
25 (\$100), excluding any qualifying contributions, from any one

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1 contributor during the election cycle in which the person is  
2 running for office."

3 SECTION 4. Section 1-19A-6 NMSA 1978 (being Laws 2003,  
4 Chapter 14, Section 6) is amended to read:

5 "1-19A-6. CERTIFICATION.--

6 A. Upon receipt of a final submittal of qualifying  
7 contributions by an applicant candidate, the secretary shall  
8 determine from the applicant candidate's statement whether the  
9 applicant candidate has:

10 (1) signed and filed a declaration of intent  
11 to obtain financing pursuant to the Voter Action Act in  
12 accordance with the requirements of that act;

13 (2) collected and submitted the appropriate  
14 number of qualifying contributions after filing a declaration  
15 of intent;

16 (3) [~~qualified as~~] the qualifications to be a  
17 candidate pursuant to other applicable state election law;

18 (4) complied with [~~seed money~~] contribution  
19 and expenditure restrictions; and

20 (5) otherwise met the requirements for  
21 obtaining financing pursuant to the Voter Action Act.

22 B. The secretary shall certify applicant candidates  
23 complying with the requirements of this section as certified  
24 candidates as soon as possible and no later than ten days after  
25 final submittal of qualifying contributions and certification

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1 as a candidate pursuant to other applicable state election law.

2 C. A certified candidate shall comply with all  
3 requirements of the Voter Action Act after certification and  
4 throughout the primary election and general election cycles. A  
5 certified candidate who accepts public campaign finance funds  
6 for the primary election shall comply with all the requirements  
7 of the Voter Action Act for the remainder of the election cycle  
8 in question, even if ~~[he]~~ the certified candidate decides not  
9 to accept such funds for the general election."

10 SECTION 5. Section 1-19A-7 NMSA 1978 (being Laws 2003,  
11 Chapter 14, Section 7, as amended) is amended to read:

12 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS  
13 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

14 A. All money distributed to a certified candidate  
15 shall be used only for that candidate's campaign-related  
16 purposes in the election ~~[cycle]~~ in which the money was  
17 distributed.

18 B. Money from the fund received by a candidate  
19 shall not be used for:

20 (1) the candidate's personal living expenses  
21 or compensation to the candidate or the candidate's spouse,  
22 children or stepchildren;

23 (2) a contribution to another campaign of the  
24 candidate or a payment to retire debt from another such  
25 campaign;

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1                   (3) a contribution to the campaign of another  
2 candidate or to a political party or political committee or to  
3 a campaign supporting or opposing a ballot proposition;

4                   (4) an expenditure supporting the election of  
5 another candidate or the passage or defeat of a ballot  
6 proposition or the defeat of any candidate other than an  
7 opponent of the participating candidate;

8                   (5) payment of legal expenses or any fine  
9 levied by a court or the secretary of state; or

10                   (6) any gift or transfer for which  
11 compensating value is not received.

12                   ~~[B-]~~ C. A certified candidate shall return to the  
13 fund any amount that is unspent or unencumbered at the time  
14 that person ceases to be a candidate before a primary or  
15 general election for which the fund money was distributed.

16                   ~~[G-]~~ D. A certified candidate shall limit total  
17 campaign expenditures and debts to the amount of money  
18 distributed to that candidate from the fund, money received  
19 from a political party pursuant to Section 1-19A-8 NMSA 1978  
20 and contributions collected pursuant to Section 8 of this 2016  
21 act. A certified candidate shall not accept contributions or  
22 loans from any other source except the certified candidate's  
23 political party, as specified in Section 1-19A-8 NMSA 1978 and  
24 contributions collected pursuant to Section 8 of this 2016 act.

25                   ~~[D-]~~ E. A certified candidate that does not remain



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1 a candidate in the general election shall ~~[return to the~~  
2 ~~secretary]~~, within thirty days after the primary election, ~~[any~~  
3 ~~amount that is]~~ transfer to the secretary for deposit in the  
4 fund any amount received from the fund, from a political party  
5 pursuant to Section 1-19A-8 NMSA 1978 or from private  
6 contributors pursuant to Section 8 of this 2016 act that  
7 remains unspent or unencumbered by the date of the primary  
8 election. ~~[for direct deposit into the fund].~~

9 ~~E.]~~ F. A certified candidate shall ~~[return to the~~  
10 ~~secretary]~~, within thirty days after the general election, ~~[any~~  
11 ~~amount that is]~~ transfer to the secretary for deposit in the  
12 fund any amount received from the fund, from a political party  
13 pursuant to Section 1-19A-8 NMSA 1978 or from private  
14 contributors pursuant to Section 8 of this 2016 act that  
15 remains unspent or unencumbered by the date of the general  
16 election ~~[for direct deposit into the fund].~~

17 G. If a certified candidate withdraws or otherwise  
18 ceases to be a certified candidate, the candidate shall, within  
19 thirty days thereafter, transfer to the secretary for deposit  
20 in the fund any amount received from the fund, from a political  
21 party pursuant to Section 1-19A-8 NMSA 1978 or from private  
22 contributors pursuant to Section 8 of this 2016 act that  
23 remains unspent or unencumbered by the date the candidate  
24 withdraws or otherwise ceases to be a certified candidate."

25 **SECTION 6.** Section 1-19A-9 NMSA 1978 (being Laws 2003,

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1 Chapter 14, Section 9) is amended to read:

2 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

3 A. The secretary shall publish guidelines outlining  
4 permissible campaign-related expenditures and penalties for  
5 violations of the Voter Action Act by January 1, 2017.

6 B. Applicant candidates shall file a report listing  
7 [~~seed money~~] contributions and expenditures with their  
8 application for certification.

9 C. Applicant candidates shall file qualifying  
10 contributions with the secretary during the qualifying period  
11 according to procedures developed by the secretary. In  
12 developing these procedures, the secretary shall use existing  
13 campaign reporting procedures and deadlines whenever practical.

14 D. Certified candidates shall report all  
15 contributions and expenditures according to the campaign  
16 reporting [~~requirements~~] schedule specified in the [~~Election~~  
17 ~~Code.~~

18 ~~E. In addition to the campaign contribution and~~  
19 ~~expenditure reports specified in the Election Code, all~~  
20 ~~noncertified candidates who have as an opponent a certified~~  
21 ~~candidate shall report to the secretary ten days before the~~  
22 ~~primary and general elections the amount of money spent by that~~  
23 ~~noncertified candidate. This report shall include all~~  
24 ~~previously unreported transactions through 5:00 p.m. two days~~  
25 ~~before the report is due.~~

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1                   ~~F. A person or political committee that makes~~  
2 ~~expenditures to influence a race involving a certified~~  
3 ~~candidate shall report to the secretary the amount that person~~  
4 ~~or political committee has spent. These reports shall include~~  
5 ~~all previously unreported transactions through 5:00 p.m. two~~  
6 ~~days before the report is due, and shall be submitted as~~  
7 ~~follows:~~

8                   ~~(1) for the primary election, by 5:00 p.m. on~~  
9 ~~the second Monday in May, by 5:00 p.m. on the eleventh day~~  
10 ~~before the election and by 5:00 p.m. on the Thursday before the~~  
11 ~~election; and~~

12                   ~~(2) for the general election, by 5:00 p.m. the~~  
13 ~~first Tuesday in October, by 5:00 p.m. on the eleventh day~~  
14 ~~before the election and by 5:00 p.m. on the Thursday before the~~  
15 ~~election] Campaign Reporting Act."~~

16                   SECTION 7. Section 1-19A-10 NMSA 1978 (being Laws 2003,  
17 Chapter 14, Section 10, as amended) is amended to read:

18                   "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

19                   A. There is created in the state treasury the  
20 "public election fund" solely for the purposes of:

21                   (1) financing the election campaigns of  
22 certified candidates for covered offices;

23                   (2) paying administrative and enforcement  
24 costs of the Voter Action Act; and

25                   (3) carrying out all other specified

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1 provisions of the Voter Action Act.

2 B. The state treasurer shall invest the funds as  
3 other state funds are invested, and all income derived from the  
4 fund shall be credited directly to the fund. Remaining  
5 balances at the end of a fiscal year shall remain in the public  
6 election fund and not revert to the general fund.

7 C. Money received from the following sources shall  
8 be deposited directly into the fund:

9 (1) qualifying contributions that have been  
10 submitted to the secretary;

11 (2) any recurring balance of unspent fund  
12 money distributed to a certified candidate who does not remain  
13 a candidate through the primary or general election period for  
14 which the money was distributed;

15 (3) money that remains unspent or unencumbered  
16 by a certified candidate following the date of the primary  
17 election;

18 (4) money that remains unspent or unencumbered  
19 by a certified candidate following the date of the general  
20 election;

21 (5) unspent [~~seed money that cannot be used~~  
22 ~~for any other purpose~~] contributions to a candidate;

23 (6) money distributed to the fund from funds  
24 received pursuant to the Uniform Unclaimed Property Act (1995);  
25 and

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1 (7) money appropriated by the legislature.

2 D. A subaccount shall be established in the fund,  
3 and money in the subaccount shall only be used to pay the costs  
4 of carrying out the provisions of the Voter Action Act related  
5 to public regulation commission elections.

6 E. Two hundred thousand dollars (\$200,000) per year  
7 shall be collected and deposited in the subaccount for public  
8 regulation commission elections as follows:

9 (1) one hundred thousand dollars (\$100,000)  
10 from inspection and supervision fees collected pursuant to  
11 Section 62-8-8 NMSA 1978; and

12 (2) one hundred thousand dollars (\$100,000)  
13 from utility and carrier inspection fees collected pursuant to  
14 Section 63-7-20 NMSA 1978."

15 SECTION 8. A new section of the Voter Action Act is  
16 enacted to read:

17 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON  
18 COORDINATED EXPENDITURES--EXCEPTION.--

19 A. An applicant candidate may collect contributions  
20 during the sixty days immediately preceding the qualifying  
21 period and throughout the qualifying period from qualified  
22 electors registered to vote in the candidate's district. An  
23 applicant candidate shall not accept contributions from any  
24 other source.

25 B. A certified candidate may collect contributions

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1 from qualified electors registered to vote in the candidate's  
2 district. A certified candidate shall not accept contributions  
3 from any other source, except as allowed pursuant to Section  
4 1-19A-8 NMSA 1978.

5 C. Total contributions from a qualified elector to  
6 a candidate may not exceed one hundred dollars (\$100) per  
7 election cycle, excluding the amount of any qualifying  
8 contribution given by the qualified elector to the candidate."

9 SECTION 9. Section 1-19A-13 NMSA 1978 (being Laws 2003,  
10 Chapter 14, Section 13, as amended) is amended to read:

11 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

12 A. By ~~[August 1, 2007]~~ September 1 of each odd-  
13 numbered year, the secretary shall determine the amount of  
14 money to be distributed to each certified candidate for the  
15 election cycle ending with the next general election [~~in 2008~~],  
16 based on the type of election and the provisions of Subsections  
17 B through F of this section.

18 B. For contested primary elections, the amount of  
19 money to be distributed to a certified candidate is equal to  
20 the following:

21 (1) for the office of public regulation  
22 commissioner, twenty-five cents (\$.25) for each voter of the  
23 candidate's party in the district of the office for which the  
24 candidate is running; and

25 (2) for the office of justice of the supreme

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1 court and judge of the court of appeals, fifteen cents (\$.15)  
2 for each voter of the candidate's party in the state.

3 C. For uncontested primary elections, the amount of  
4 money to be distributed to a certified candidate is equal to  
5 [~~fifty~~] ten percent of the amount specified in Subsection B of  
6 this section.

7 D. For contested general elections, the amount of  
8 money to be distributed to a certified candidate is equal to  
9 the following:

10 (1) for the office of public regulation  
11 commissioner, twenty-five cents (\$.25) for each voter in the  
12 district of the office for which the candidate is running; and

13 (2) for the office of justice of the supreme  
14 court and judge of the court of appeals, fifteen cents (\$.15)  
15 for each voter in the state.

16 E. For uncontested general elections, except as  
17 provided in Subsection I of this section, the amount of money  
18 to be distributed to a certified candidate is equal to [~~fifty~~]  
19 ten percent of the amount specified in Subsection D of this  
20 section. If a general election race that is initially  
21 uncontested later becomes contested because of the  
22 qualification of an independent or minor party candidate to  
23 appear on the ballot for that race, an additional amount of  
24 money shall be distributed to the certified candidate to make  
25 that candidate's total distribution amount equal to the amount

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1 distributed pursuant to Subsection D of this section.

2 F. Once the certification for candidates for the  
3 primary election has been completed, the secretary shall  
4 calculate the total amount of money to be distributed in the  
5 primary election cycle, based on the number of certified  
6 candidates and the allocations specified in this section. [~~The~~  
7 ~~secretary shall increase the total amount by twenty percent to~~  
8 ~~provide funds for additional matching funds in the primary~~  
9 ~~election.~~] The secretary shall also prepare an estimate of the  
10 total amount of money that might be distributed in the general  
11 election cycle. [~~This estimate shall be increased by twenty~~  
12 ~~percent to provide funds for additional matching funds in the~~  
13 ~~general election.~~] If the total amount to be distributed in the  
14 primary election cycle [~~plus the added twenty percent~~] and the  
15 estimated total amount to be distributed in the general  
16 election cycle [~~plus the added twenty percent, all~~] taken  
17 together exceed the amount expected to be available in the  
18 fund, the secretary shall allocate the amount available between  
19 the primary and general election cycles. This allocation shall  
20 be based on the ratio of the two total amounts.

21 G. If the allocation specified in Subsection F of  
22 this section is greater than the total amount available for  
23 distribution, then the amounts to be distributed to individual  
24 candidates, specified in Subsections B through E of this  
25 section, shall each be reduced by the same percentage as the

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1 reduction by which the total amount needed has been reduced  
2 relative to the total amount available.

3 H. At least every two years after January 1, 2007,  
4 the secretary shall evaluate and modify as necessary the dollar  
5 values originally determined by Subsections B through E of this  
6 section and shall consider and account for inflation in the  
7 evaluations.

8 I. No money shall be distributed to candidates in  
9 judicial retention elections. No money shall be distributed to  
10 judicial candidates in uncontested general elections; provided  
11 that if a general election race that is initially uncontested  
12 later becomes contested, the certified judicial candidate shall  
13 receive a distribution in accordance with Subsection D of this  
14 section."

15 SECTION 10. Section 1-19A-17 NMSA 1978 (being Laws 2003,  
16 Chapter 14, Section 17) is amended to read:

17 "1-19A-17. PENALTIES.--

18 A. In addition to other penalties that may be  
19 applicable, a person who violates a provision of the Voter  
20 Action Act is subject to a civil penalty of up to ten thousand  
21 dollars (\$10,000) per violation. In addition to a fine, a  
22 certified candidate found in violation of that act may be  
23 required to return to the fund all amounts distributed to the  
24 candidate from the fund. If the secretary makes a  
25 determination that a violation of that act has occurred, the

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1 secretary shall impose a fine [~~or~~] and transmit the finding to  
2 the attorney general for criminal prosecution pursuant to  
3 Subsection B of this section. In determining whether a  
4 certified candidate is in violation of the expenditure limits  
5 of that act, the secretary may consider as a mitigating factor  
6 any circumstances out of the candidate's control.

7 B. A person who willfully or knowingly violates the  
8 provisions of the Voter Action Act or rules of the secretary or  
9 knowingly makes a false statement in a report required by that  
10 act or a report required by the Campaign Reporting Act is  
11 guilty of a fourth degree felony and, if [~~he~~] the person is a  
12 certified candidate, shall return to the fund all money  
13 distributed to that candidate."

14 SECTION 11. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA  
15 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as  
16 amended) are repealed.

17 SECTION 12. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is November 9, 2016.