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HOUSE BILL 646

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR REPORTING OF CONTRIBUTIONS TO CANDIDATES FOR SCHOOL DISTRICT BOARD MEMBER; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997.

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

Section 1. A new section of the School Election Law is enacted to read:

"[NEW MATERIAL] CAMPAIGN REPORTING ACT COMPLIANCE.--A candidate for membership on the board shall comply with the provisions of the Campaign Reporting Act."

Section 2. A new section of the Campaign Reporting Act is enacted to read:

"[NEW MATERIAL] CAMPAIGN CONTRIBUTION AND EXPENDITURE REPORTS FOR SCHOOL DISTRICT ELECTIONS--REPORTING SCHEDULE.--

A. The provisions of this section apply only to

1 school district elections and only to reporting individuals for
2 public officials, candidates, candidate committees or political
3 committees that accept contributions or make expenditures
4 related to a school district election.

5 B. For a school district election, all reporting
6 individuals and school board members who are not candidates in
7 that election shall file reports of all expenditures made and
8 contributions received according to the following schedule:

9 (1) by 5:00 p.m. on the second Monday in
10 December in the year before the election, a report of all
11 expenditures made and contributions received on or before the
12 first Monday in December and not previously reported;

13 (2) by 5:00 p.m. on the Thursday before the
14 election, a report of all expenditures made and contributions
15 received by 5:00 p.m. on the Tuesday before the election. Any
16 contribution or pledge to contribute that is received after
17 5:00 p.m. on the Tuesday before the election and that is for
18 five hundred dollars (\$500) or more, shall be reported to the
19 proper filing officer either in a supplemental report on a
20 prescribed form within twenty-four hours of receipt or in the
21 report to be filed by 5:00 p.m. on the Thursday before the
22 election, except that any such contribution or pledge to
23 contribute that is received after 5:00 p.m. on the Friday
24 before the election may be reported by 12:00 noon on the Monday
25 before the election; and

1 (3) by 5:00 p.m. on the thirtieth day after
2 the election, a report of all expenditures made and
3 contributions received on or before the twenty-fifth day after
4 the election and not previously reported.

5 C. A report of expenditures and contributions filed
6 after a deadline set forth in this section shall not be deemed
7 to have been timely filed.

8 D. A reporting individual shall file a report of
9 expenditures and contributions annually on the second Monday in
10 August of all expenditures made and contributions received on
11 or before the first Monday in August and not previously
12 reported. Reports shall be required until the reporting
13 individual delivers a report to the proper filing officer
14 stating that:

15 (1) there are no outstanding campaign debts;

16 (2) all money has been expended in accordance
17 with the provisions of Section 1-19-29.1 NMSA 1978; and

18 (3) the bank account of the reporting
19 individual has been closed.

20 E. Each treasurer of a political committee shall
21 file a report of expenditures and contributions annually
22 pursuant to the filing schedule set forth in this section until
23 the treasurer files a report that affirms that the committee
24 has dissolved or no longer exists and that its bank account has
25 been closed.

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1 F. Reports required by this section shall be
2 subscribed and sworn to by the candidate or the treasurer of
3 the political committee. A report filed electronically shall
4 be electronically authenticated by the candidate or the
5 treasurer of the political committee using an electronic
6 signature in conformance with the Electronic Authentication of
7 Documents Act and the Uniform Electronic Transactions Act. For
8 the purposes of the Campaign Reporting Act, a report that is
9 electronically authenticated in accordance with the provisions
10 of this subsection shall be deemed to have been subscribed and
11 sworn to by the candidate or the treasurer of the political
12 committee who was required to file the report.

13 G. Reports required by this section shall be filed
14 electronically by all reporting individuals.

15 H. Reporting individuals may apply to the secretary
16 of state for exemption from electronic filing in case of
17 hardship, which shall be defined by the secretary of state."

18 Section 3. Section 1-19-26 NMSA 1978 (being Laws 1979,
19 Chapter 360, Section 2, as amended) is amended to read:

20 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
21 Act:

22 A. "advertising campaign" means an advertisement or
23 series of advertisements used for a political purpose and
24 disseminated to the public either in print, by radio or
25 television broadcast or by any other electronic means,

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1 including telephonic communications, and may include direct or
2 bulk mailings of printed materials;

3 B. "anonymous contribution" means a contribution
4 the contributor of which is unknown to the candidate or [~~his~~]
5 the candidate's agent or the political committee or its agent
6 who accepts the contribution;

7 C. "bank account" means an account in a financial
8 institution located in New Mexico;

9 D. "campaign committee" means two or more persons
10 authorized by a candidate to raise, collect or expend
11 contributions on the candidate's behalf for the purpose of
12 electing [~~him~~] the candidate to office;

13 E. "candidate" means an individual who seeks or
14 considers an office in an election covered by the Campaign
15 Reporting Act, including a public official, who either has
16 filed a declaration of candidacy or nominating petition or:

17 (1) for a non-statewide office, has received
18 contributions or made expenditures of one thousand dollars
19 (\$1,000) or more or authorized another person or campaign
20 committee to receive contributions or make expenditures of one
21 thousand dollars (\$1,000) or more for the purpose of seeking
22 election to the office; or

23 (2) for a statewide office, has received
24 contributions or made expenditures of two thousand five hundred
25 dollars (\$2,500) or more or authorized another person or

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1 campaign committee to receive contributions or make
2 expenditures of two thousand five hundred dollars (\$2,500) or
3 more for the purpose of seeking election to the office or for
4 candidacy exploration purposes in the years prior to the year
5 of the election;

6 F. "contribution" means a gift, subscription, loan,
7 advance or deposit of money or other thing of value, including
8 the estimated value of an in-kind contribution, that is made or
9 received for a political purpose, including payment of a debt
10 incurred in an election campaign, but does not include the
11 value of services provided without compensation or unreimbursed
12 travel or other personal expenses of individuals who volunteer
13 a portion or all of their time on behalf of a candidate or
14 political committee, nor does it include the administrative or
15 solicitation expenses of a political committee that are paid by
16 an organization that sponsors the committee;

17 G. "deliver" or "delivery" means to deliver by
18 certified or registered mail, telecopier, electronic
19 transmission or facsimile or by personal service;

20 H. "election" means any primary, general or
21 statewide special election in New Mexico and includes county
22 and judicial retention elections but excludes municipal [~~school~~
23 ~~board~~] and special district elections;

24 I. "election year" means an even-numbered year in
25 which an election covered by the Campaign Reporting Act is held

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1 or in the case of school district elections, an odd-numbered
2 year;

3 J. "expenditure" means a payment, transfer or
4 distribution or obligation or promise to pay, transfer or
5 distribute any money or other thing of value for a political
6 purpose, including payment of a debt incurred in an election
7 campaign or pre-primary convention, but does not include the
8 administrative or solicitation expenses of a political
9 committee that are paid by an organization that sponsors the
10 committee;

11 K. "person" means an individual or entity;

12 L. "political committee" means two or more persons,
13 other than members of a candidate's immediate family or
14 campaign committee or a husband and wife who make a
15 contribution out of a joint account, who are selected,
16 appointed, chosen, associated, organized or operated primarily
17 for a political purpose; and "political committee" includes:

18 (1) political action committees or similar
19 organizations composed of employees or members of any
20 corporation, labor organization, trade or professional
21 association or any other similar group that raises, collects,
22 expends or contributes money or any other thing of value for a
23 political purpose;

24 (2) a single individual [~~who by his~~] whose
25 actions [~~represents~~] represent that [~~he~~] the individual is a

1 political committee; and

2 (3) a person or an organization of two or more
3 persons that within one calendar year expends funds in excess
4 of five hundred dollars (\$500) to conduct an advertising
5 campaign for a political purpose;

6 M. "political purpose" means influencing or
7 attempting to influence an election or pre-primary convention,
8 including a constitutional amendment or other question
9 submitted to the voters;

10 N. "prescribed form" means a form or electronic
11 format prepared and prescribed by the secretary of state;

12 O. "proper filing officer" means either the
13 secretary of state or the county clerk as provided in Section
14 1-19-27 NMSA 1978;

15 P. "public official" means a person elected to an
16 office in an election covered by the Campaign Reporting Act or
17 a person appointed to an office that is subject to an election
18 covered by that act;

19 Q. "reporting individual" means every public
20 official, candidate or treasurer of a campaign committee and
21 every treasurer of a political committee; and

22 R. "statement of exception" or "statement" means
23 the prescribed form subscribed and sworn to by a candidate to
24 indicate that the candidate does not intend to raise or expend
25 the minimum amount required for the filing of a report of

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1 expenditures and contributions as provided in Section 1-19-33
2 NMSA 1978."

3 Section 4. Section 1-19-29 NMSA 1978 (being Laws 1993,
4 Chapter 46, Section 5, as amended) is amended to read:

5 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

6 A. The provisions of this section do not apply to
7 school district elections or to reporting individuals for
8 public officials, candidates, candidate committees or political
9 committees that only accept contributions or make expenditures
10 related to school district elections.

11 [~~A-~~] B. Annually, except as otherwise provided in
12 this section, all reporting individuals shall file with the
13 proper filing officer by 5:00 p.m. on the second Monday in May
14 a report of all expenditures made and contributions received on
15 or before the first Monday in May and not previously reported.
16 The report shall be filed annually until the reporting
17 individual's bank account has been closed and the other
18 provisions specified in Subsection [~~F~~] G of this section have
19 been satisfied.

20 [~~B-~~] C. In an election year, in addition to the May
21 report provided for in Subsection [~~A~~] B of this section, all
22 reporting individuals, except for persons who file a statement
23 of exception pursuant to Section 1-19-33 NMSA 1978, candidates
24 who file a statement of no activity and public officials who
25 are not candidates in an election that year, shall file reports

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1 of all expenditures made and contributions received according
2 to the following schedule:

3 (1) by 5:00 p.m. on the second Monday in
4 October, a report of all expenditures made and contributions
5 received on or before the first Monday in October and not
6 previously reported;

7 (2) by 5:00 p.m. on the Thursday before a
8 primary, general or statewide special election, a report of all
9 expenditures made and contributions received by 5:00 p.m. on
10 the Tuesday before the election. Any contribution or pledge to
11 contribute that is received after 5:00 p.m. on the Tuesday
12 before the election and that is for five hundred dollars (\$500)
13 or more in a legislative or non-statewide judicial election, or
14 two thousand five hundred dollars (\$2,500) or more in a
15 statewide election, shall be reported to the proper filing
16 officer either in a supplemental report on a prescribed form
17 within twenty-four hours of receipt or in the report to be
18 filed by 5:00 p.m. on the Thursday before a primary, general or
19 statewide special election, except that any such contribution
20 or pledge to contribute that is received after 5:00 p.m. on the
21 Friday before the election may be reported by 12:00 noon on the
22 Monday before the election; and

23 (3) by 5:00 p.m. on the thirtieth day after a
24 primary, general or statewide special election, a report of all
25 expenditures made and contributions received on or before the

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1 twenty-fifth day after the election and not previously
2 reported.

3 ~~[G.]~~ D. If a candidate has not received any
4 contributions and has not made any expenditures since the
5 candidate's last report was filed with the proper filing
6 officer, the candidate shall only be required to file a
7 statement of no activity, which shall not be required to be
8 notarized, in lieu of a full report when that report would
9 otherwise be due and shall not be required to file a full
10 report until the next required filing date occurring after an
11 expenditure is made or a contribution is received.

12 ~~[D.]~~ E. Notwithstanding the other provisions of
13 this section, the report due on the thirtieth day after an
14 election need be the only report filed after the annual May
15 report if the candidate is not opposed in the election and if
16 the report includes all expenditures made and contributions
17 received for that election and not previously reported.

18 ~~[E.]~~ F. A report of expenditures and contributions
19 filed after a deadline set forth in this section shall not be
20 deemed to have been timely filed.

21 ~~[F.]~~ G. Except for candidates who file a statement
22 of no activity, each reporting individual shall file a report
23 of expenditures and contributions annually pursuant to the
24 filing schedule set forth in this section, regardless of
25 whether any expenditures were made or contributions were

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1 received during the reporting period. Reports shall be
2 required until the reporting individual delivers a report to
3 the proper filing officer stating that:

- 4 (1) there are no outstanding campaign debts;
5 (2) all money has been expended in accordance
6 with the provisions of Section 1-19-29.1 NMSA 1978; and
7 (3) the bank account has been closed.

8 [~~G.~~] H. Each treasurer of a political committee
9 shall file a report of expenditures and contributions annually
10 pursuant to the filing schedule set forth in this section until
11 the treasurer files a report that affirms that the committee
12 has dissolved or no longer exists and that its bank account has
13 been closed.

14 [~~H.~~] I. A reporting individual who is a candidate
15 within the meaning of the Campaign Reporting Act because of the
16 amount of contributions the candidate receives or expenditures
17 the candidate makes and who does not ultimately file a
18 declaration of candidacy or a nominating petition with the
19 proper filing officer and does not file a statement of no
20 activity shall nevertheless file a report, not later than the
21 second Monday in May for a primary election or the second
22 Monday in October for a general election, of all contributions
23 received and expenditures made on or before the first Monday in
24 May for a primary election or the first Monday in October for a
25 general election and not previously reported.

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1 ~~[F.]~~ J. Reports required by this section shall be
2 subscribed and sworn to by the candidate or the treasurer of
3 the political committee. A report filed electronically shall
4 be electronically authenticated by the candidate or the
5 treasurer of the political committee using an electronic
6 signature in conformance with the Electronic Authentication of
7 Documents Act and the Uniform Electronic Transactions Act. For
8 the purposes of the Campaign Reporting Act, a report that is
9 electronically authenticated in accordance with the provisions
10 of this subsection shall be deemed to have been subscribed and
11 sworn to by the candidate or the treasurer of the political
12 committee who was required to file the report.

13 ~~[J.]~~ K. Reports required by this section shall be
14 filed electronically by all reporting individuals.

15 ~~[K.]~~ L. Reporting individuals may apply to the
16 secretary of state for exemption from electronic filing in case
17 of hardship, which shall be defined by the secretary of state."

18 Section 5. Section 1-19-32.1 NMSA 1978 (being Laws 1981,
19 Chapter 331, Section 9, as amended) is amended to read:

20 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
21 REPORTS.--

22 A. The secretary of state shall conduct a thorough
23 examination of at least ten percent of all reports filed during
24 a year by reporting individuals, selected at random at least
25 forty days after the general election [~~and~~], ten days after the

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1 May reports are filed in [~~a nonelection~~] the following year and
2 for school district election reports, ten days after the August
3 reports are filed, to determine compliance with the provisions
4 of the Campaign Reporting Act. The examination may include an
5 investigation of any discrepancies, including a cross-reference
6 to reports filed by any other reporting individual. A
7 reporting individual shall be notified in writing if a
8 discrepancy is found in the report filed and shall be permitted
9 to file a written explanation for the discrepancy within ten
10 working days of the date of the notice. The notice, penalty
11 and arbitration provisions set forth in Section 1-19-34.4 NMSA
12 1978 shall apply to examinations conducted under this section.

13 B. After the date stated in the notice of final
14 action for submission of a written explanation, the secretary
15 of state shall prepare an annual report of any unresolved
16 discrepancies found after examination of the random sample
17 provided for in Subsection A of this section. A copy of this
18 report shall be transmitted to the attorney general for
19 enforcement pursuant to the provisions of Section 1-19-36 NMSA
20 1978. This report is a public record open to public inspection
21 and subject to the retention and destruction provisions set
22 forth in Section 1-19-32 NMSA 1978.

23 C. A county clerk shall deliver to the secretary of
24 state, within forty-eight hours of the county clerk's receipt,
25 each report of expenditures and contributions or statement of

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1 exception filed with the county clerk's office. Within forty-
2 eight hours of receipt of a report of expenditures and
3 contributions or statement of exception filed by a legislative
4 candidate for a multicounty district, the secretary of state
5 shall deliver to each county clerk in the multicounty
6 legislative district a copy of the report or statement filed."

7 Section 6. Section 1-19-33 NMSA 1978 (being Laws 1979,
8 Chapter 360, Section 9, as amended) is amended to read:

9 "1-19-33. EXCLUSION OF CERTAIN CANDIDATES FROM
10 REPORTING--STATEMENT OF EXCEPTION.--

11 A. Except for persons seeking election to a school
12 board, in a year in which a primary, general or special
13 statewide election is held, a person who seeks or considers a
14 public office covered by the Campaign Reporting Act and who
15 anticipates receiving or expending for the election less than
16 one thousand dollars (\$1,000) for a non-statewide office, or
17 two thousand five hundred dollars (\$2,500) for a statewide
18 office, may file, in lieu of filing a report of expenditures
19 and contributions, a statement of exception to that effect
20 before the election on a prescribed form and under penalty of
21 perjury. The statement of exception shall be filed by 5:00
22 p.m. on the second Monday in May for a primary or special
23 statewide election or by 5:00 p.m. on the second Monday in
24 October for a general or special statewide election. The
25 statement shall be filed with the proper filing officer.

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1 B. Upon the filing of the statement of exception,
2 the candidate shall not be required to file a report of
3 expenditures and contributions except as provided in Subsection
4 D of this section.

5 C. A statement of exception that is not timely
6 filed or that includes false or incomplete information shall be
7 subject to the notice, penalty and arbitration provisions set
8 forth in Section 1-19-34.4 NMSA 1978.

9 D. If at any time after filing a statement of
10 exception a candidate receives or expends in an election more
11 than the threshold amounts provided in Subsection A of this
12 section, the candidate shall file reports of expenditures and
13 contributions according to the reporting schedule provided in
14 Section 1-19-29 NMSA 1978."

15 Section 7. Section 1-19-35 NMSA 1978 (being Laws 1979,
16 Chapter 360, Section 11, as amended by Laws 1997, Chapter 12,
17 Section 2 and also by Laws 1997, Chapter 112, Section 5) is
18 amended to read:

19 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--
20 FAILURE TO FILE.--

21 A. Except for the report required to be filed and
22 delivered the Thursday prior to the election and any
23 supplemental report, as required in Paragraph (2) of Subsection
24 B of Section 1-19-29 NMSA 1978 or as required in a school
25 district election, that is due prior to the election, and

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1 subject to the provisions of Section 1-19-34.4 NMSA 1978, if a
2 statement of exception or a report of expenditures and
3 contributions contains false or incomplete information or is
4 filed after any deadline imposed by the Campaign Reporting Act,
5 the responsible reporting individual or political committee, in
6 addition to any other penalties or remedies prescribed by the
7 Election Code, shall be liable for and shall pay to the
8 secretary of state fifty dollars (\$50.00) per day for each
9 regular working day after the time required by the Campaign
10 Reporting Act for the filing of statements of exception or
11 reports of expenditures and contributions until the complete or
12 true statement or report is filed, up to a maximum of five
13 thousand dollars (\$5,000).

14 B. If any reporting individual files a false,
15 intentionally incomplete or late report of expenditures and
16 contributions due on the Thursday prior to the election, the
17 reporting individual or political committee shall be liable and
18 pay to the secretary of state five hundred dollars (\$500) for
19 the first working day and fifty dollars (\$50.00) for each
20 subsequent working day after the time required for the filing
21 of the report until the true and complete report is filed, up
22 to a maximum of five thousand dollars (\$5,000).

23 C. If a reporting individual fails to file or files
24 a late supplemental report of expenditures and contributions as
25 required in Paragraph (2) of Subsection B of Section 1-19-29

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1 NMSA 1978 or as required in a school district election, the
2 reporting individual or political committee shall be liable for
3 and pay to the secretary of state a penalty equal to the amount
4 of each contribution received or pledged after the Tuesday
5 before the election that was not timely filed.

6 D. All sums collected for the penalty shall be
7 deposited in the state general fund. A report or statement of
8 exception shall be deemed timely filed only if it is received
9 by the proper filing officer by the date and time prescribed by
10 law.

11 E. Any candidate who fails or refuses to file a
12 report of expenditures and contributions or statement of
13 exception or to pay a penalty imposed by the secretary of state
14 as required by the Campaign Reporting Act shall not, in
15 addition to any other penalties provided by law:

16 (1) have [~~his~~] the candidate's name printed
17 upon the ballot if the violation occurs before and through the
18 final date for the withdrawal of candidates; or

19 (2) be issued a certificate of nomination or
20 election, if the violation occurs after the final date for
21 withdrawal of candidates or after the election, until the
22 candidate satisfies all reporting requirements of the Campaign
23 Reporting Act and pays all penalties owed.

24 F. Any candidate who loses an election and who
25 failed or refused to file a report of expenditures and

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1 contributions or a statement of exception or to pay a penalty
2 imposed by the secretary of state as required by the Campaign
3 Reporting Act shall not be, in addition to any other penalties
4 provided by law, permitted to file a declaration of candidacy
5 or nominating petition for any future election until the
6 candidate satisfies all reporting requirements of that act and
7 pays all penalties owed."

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