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SENATE BILL 165

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

INTRODUCED BY

Eric G. Griego

AN ACT

RELATING TO ELECTIONS; ENACTING THE PUBLIC CAMPAIGN ACT;  
PROVIDING FOR VOLUNTARY PUBLIC CAMPAIGN FINANCING OF ELECTIONS  
FOR GOVERNOR, LIEUTENANT GOVERNOR, ATTORNEY GENERAL,  
COMMISSIONER OF PUBLIC LANDS, STATE TREASURER, STATE AUDITOR,  
SECRETARY OF STATE AND STATE LEGISLATORS; PRESCRIBING  
PENALTIES; MAKING AN APPROPRIATION.

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

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

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of  
this act may be cited as the "Public Campaign Act"."

Section 2. A new section of the Election Code is enacted  
to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Public

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1 Campaign 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 Public Campaign Act and is certified as a Public  
8 Campaign Act 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. "covered office" means the office of governor,  
13 lieutenant governor, attorney general, commissioner of public  
14 lands, state treasurer, state auditor, secretary of state,  
15 state senator and state representative;

16 E. "election cycle" means the primary and general  
17 elections for the same term of the same covered office,  
18 beginning on the day after the last general election for the  
19 office and ending with the general election; the primary  
20 election cycle begins on the first day of the election cycle  
21 and ends on the day of the primary election; the general  
22 election begins on the day after the primary election and ends  
23 on the day of the general election;

24 F. "fund" means the public election fund;

25 G. "noncertified candidate" means either a

1 candidate running for a covered office who does not choose to  
2 participate in the Public Campaign Act and who is not seeking  
3 to be a certified candidate or a candidate who declares the  
4 intent to participate but who fails to qualify;

5 H. "qualifying contribution" means a donation of  
6 between five dollars (\$5.00) and one hundred dollars (\$100) in  
7 the form of cash or a check or money order payable to the  
8 candidate or candidate's campaign committee in support of an  
9 applicant candidate that is:

10 (1) made by a registered voter who is eligible  
11 to vote for the covered office that the applicant candidate is  
12 seeking;

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

16 (3) acknowledged by a receipt that identifies  
17 the contributor's name and residential address on forms  
18 provided by the bureau of elections and that is signed by the  
19 contributor, one copy of which is attached to the list of  
20 contributors and sent to the bureau of elections;

21 I. "qualifying period" means:

22 (1) for major party candidates, the period  
23 beginning December 1 immediately preceding the election year  
24 and ending at 5:00 p.m. on the third Tuesday of March of the  
25 election year; and

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1 (2) for independent and minor party  
2 candidates, the period beginning February 1 of the election  
3 year and ending that year at 5:00 p.m. on the filing date for  
4 independent or minor party candidates for the office for which  
5 the candidate is running; and

6 J. "secretary" means the secretary of state or the  
7 office of the secretary of state."

8 Section 3. A new section of the Election Code is enacted  
9 to read:

10 "[NEW MATERIAL] TERMS OF PARTICIPATION--DECLARATION OF  
11 INTENT.--

12 A. A candidate choosing to obtain financing  
13 pursuant to the Public Campaign Act shall first file with the  
14 secretary a declaration of intent to participate in that act as  
15 an applicant candidate for a stated covered office. The  
16 declaration of intent shall be filed with the secretary prior  
17 to or during the qualifying period on forms and according to  
18 procedures developed by the secretary.

19 B. An applicant candidate choosing to participate  
20 in the Public Campaign Act shall submit a declaration of intent  
21 prior to collecting any qualifying contributions and make  
22 explicit in the declaration that the candidate has complied  
23 with and will continue to comply with that act's contribution  
24 limits and all other requirements set forth in that act and  
25 rules issued by the secretary.

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1           C. A candidate shall not be eligible to become an  
2 applicant candidate if the candidate has accepted contributions  
3 totaling five hundred dollars (\$500) or more or made  
4 expenditures totaling five hundred dollars (\$500) or more  
5 between the beginning of the qualifying period and filing a  
6 declaration of intent."

7           Section 4. A new section of the Election Code is enacted  
8 to read:

9           "[NEW MATERIAL] QUALIFYING CONTRIBUTIONS.--Applicant  
10 candidates shall obtain qualifying contributions as follows:

11           A. an applicant candidate running for the office of  
12 governor or lieutenant governor shall obtain qualifying  
13 contributions from that number of voters that is equal to at  
14 least one percent of the total voters in the state;

15           B. an applicant candidate running for the office of  
16 state senator or state representative shall obtain qualifying  
17 contributions from that number of voters that is equal to at  
18 least one percent of the total voters in the district of the  
19 office for which the candidate is running;

20           C. an applicant candidate for any other covered  
21 office shall obtain qualifying contributions from that number  
22 of voters that is equal to at least one fourth percent of the  
23 total voters in the state;

24           D. applicant candidates may accept qualifying  
25 contributions from persons who become registered within the

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1 statutory time frame that would enable that person to vote in  
2 the primary election;

3 E. voters registered as independent are not  
4 excluded from making qualifying contributions but shall be  
5 registered within the statutory time frame as independent; and

6 F. no payment, gift or anything of value shall be  
7 given in exchange for a qualifying contribution."

8 Section 5. A new section of the Election Code is enacted  
9 to read:

10 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS AND MATCHING  
11 FUNDS.--

12 A. A certified candidate may collect contributions  
13 from qualified electors registered to vote in the candidate's  
14 district in amounts of no more than one hundred dollars (\$100)  
15 per donor per election cycle. A certified candidate shall not  
16 accept contributions from any other source.

17 B. The secretary shall distribute matching funds  
18 from the fund to a certified candidate in an amount four times  
19 the total of contributions a certified candidate has collected  
20 after the candidate is certified pursuant to the Public  
21 Campaign Act, subject to the limitation in Subsection C of this  
22 section. Matching funds shall be distributed as soon as  
23 possible after the certified candidate has filed a campaign  
24 report required by the Campaign Reporting Act that indicates  
25 the candidate has collected additional contributions in

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1 accordance with the provisions of Subsection A of this section.

2 C. The amount of all public money distributed to a  
3 certified candidate in an election is limited to three times  
4 the amount of the initial distribution allowed for that  
5 candidate pursuant to Section 10 of the Public Campaign Act.

6 D. No matching funds shall be distributed to a  
7 candidate in an uncontested race."

8 Section 6. A new section of the Election Code is enacted  
9 to read:

10 "[NEW MATERIAL] CERTIFICATION.--

11 A. Upon receipt of a final submission of the total  
12 amount and proof of the required number of qualifying  
13 contributions by an applicant candidate, the secretary shall  
14 determine whether the applicant candidate has:

15 (1) signed and filed a declaration of intent  
16 to obtain financing pursuant to the Public Campaign Act in  
17 accordance with the requirements of that act;

18 (2) submitted the appropriate number of  
19 qualifying contributions and reported the total of  
20 contributions received;

21 (3) qualified as a candidate pursuant to other  
22 applicable state election law; and

23 (4) otherwise met the requirements for  
24 obtaining financing pursuant to the Public Campaign Act.

25 B. The secretary shall certify applicant candidates

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1 complying with the requirements of this section as certified  
2 candidates as soon as possible and no later than ten days after  
3 final submittal of proof of qualifying contributions and  
4 certification as a candidate pursuant to other applicable state  
5 election law.

6 C. A certified candidate shall comply with all  
7 requirements of the Public Campaign Act after certification and  
8 throughout the primary election and general election cycles. A  
9 certified candidate who accepts public campaign finance funds  
10 for the primary election shall comply with all the requirements  
11 of the Public Campaign Act for the remainder of the election  
12 cycle in question, even if the candidate decides not to accept  
13 such funds for the general election."

14 Section 7. A new section of the Election Code is enacted  
15 to read:

16 "[NEW MATERIAL] GUIDELINES AND RESTRICTIONS FOR  
17 CONTRIBUTIONS TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

18 A. All money distributed to a certified candidate  
19 shall be used for that candidate's campaign-related purposes in  
20 the election cycle in which the money was distributed.

21 B. A certified candidate shall return to the fund  
22 any amount that is unspent or unencumbered at the time that  
23 person ceases to be a candidate before a primary or general  
24 election for which the fund money was distributed.

25 C. A certified candidate shall limit total campaign

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1 expenditures and debts to the amount of money distributed to  
2 that candidate from the fund plus any contributions raised by  
3 the candidate in accordance with the provisions of the Public  
4 Campaign Act.

5 D. A certified candidate shall return to the  
6 secretary, within two weeks after the primary election, any  
7 amount of distributed funds that is unspent or unencumbered by  
8 the date of the primary election for direct deposit into the  
9 fund.

10 E. A certified candidate shall return to the  
11 secretary, within two weeks after the general election, any  
12 amount of funds distributed to or collected by the candidate  
13 that is unspent or unencumbered by the date of the general  
14 election for direct deposit into the fund."

15 Section 8. A new section of the Election Code is enacted  
16 to read:

17 "[NEW MATERIAL] CANDIDATE REPORTING REQUIREMENTS.--

18 A. The secretary shall publish guidelines outlining  
19 permissible campaign-related expenditures.

20 B. Applicant candidates shall file reports of  
21 qualifying contributions with the secretary during the  
22 qualifying period according to procedures developed by the  
23 secretary. In developing these procedures, the secretary shall  
24 use existing campaign reporting procedures and deadlines  
25 whenever practical.

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1 C. Certified candidates shall report contributions  
2 and expenditures according to the campaign reporting  
3 requirements specified in the Campaign Reporting Act."

4 Section 9. A new section of the Election Code is enacted  
5 to read:

6 "[NEW MATERIAL] TIMING OF FUND DISTRIBUTION.--

7 A. Beginning with the election cycle that ends with  
8 the general election in 2012, the secretary shall distribute  
9 money from the fund to certified candidates.

10 B. For a primary election certified candidate, the  
11 secretary shall distribute the amount due to that certified  
12 candidate for that covered office within one week of  
13 certification.

14 C. For a candidate certified for the general  
15 election, the secretary shall distribute the amount due to that  
16 certified candidate for that covered office within one week  
17 after the primary election or, for a minor party or independent  
18 candidate, within one week after certification of the  
19 candidate."

20 Section 10. A new section of the Election Code is enacted  
21 to read:

22 "[NEW MATERIAL] AMOUNT OF FUND DISTRIBUTION.--

23 A. For contested primary elections, the amount of  
24 money to be distributed to a certified candidate is equal to  
25 the following:

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1 (1) for the office of governor, one dollar  
2 fifty cents (\$1.50) for each voter of the candidate's party in  
3 the state;

4 (2) for the office of lieutenant governor,  
5 twenty-five cents (\$.25) for each voter of the candidate's  
6 party in the state;

7 (3) for the offices of commissioner of public  
8 lands and attorney general, seventy-five cents (\$.75) for each  
9 voter of the candidate's party in the state;

10 (4) for the offices of secretary of state,  
11 state treasurer and state auditor, fifteen cents (\$.15) for  
12 each voter of the candidate's party in the state; and

13 (5) for the office of state legislator, one  
14 dollar fifty cents (\$1.50) for each voter of the candidate's  
15 party in the candidate's legislative district.

16 B. For uncontested primary elections, the amount of  
17 money to be distributed to a certified candidate is equal to  
18 fifty percent of the amount specified in Subsection A of this  
19 section for candidates for statewide office and ten percent of  
20 that amount for candidates for legislative offices.

21 C. For contested general elections, the amount of  
22 money to be distributed to a certified candidate is equal to  
23 the following:

24 (1) for the office of governor, one dollar  
25 fifty cents (\$1.50) for each voter in the state;

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1 (2) for the office of lieutenant governor,  
2 twenty-five cents (\$.25) for each voter in the state;

3 (3) for the offices of commissioner of public  
4 lands and attorney general, seventy-five cents (\$.75) for each  
5 voter in the state;

6 (4) for the offices of secretary of state,  
7 state treasurer and state auditor, fifteen cents (\$.15) for  
8 each voter in the state; and

9 (5) for the office of state legislator, one  
10 dollar fifty cents (\$1.50) for each voter in the candidate's  
11 legislative district.

12 D. For uncontested general elections, the amount of  
13 money to be distributed to a certified candidate is equal to  
14 fifty percent of the amount specified in Subsection C of this  
15 section for a candidate for statewide office and ten percent of  
16 that amount for a candidate for legislative office. If a  
17 general election race that is initially uncontested later  
18 becomes contested because of the qualification of an  
19 independent or minor party candidate to appear on the ballot  
20 for that race, an additional amount of money shall be  
21 distributed to the certified candidate to make that candidate's  
22 total distribution amount equal to the amount distributed  
23 pursuant to Subsection C of this section.

24 E. Once the certification for candidates for the  
25 primary election has been completed, the secretary shall

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

18 F. If the allocation specified in Subsection E of  
19 this section is greater than the total amount available for  
20 distribution, then the amounts to be distributed to individual  
21 candidates, specified in Subsections B through D of this  
22 section, shall each be reduced by the same percentage as the  
23 reduction by which the total amount needed has been reduced  
24 relative to the total amount available."

25 Section 11. A new section of the Election Code is enacted

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1 to read:

2 "[NEW MATERIAL] ADMINISTRATION--SECRETARY OF  
3 STATE--DUTIES.--

4 A. The secretary shall adopt rules to ensure  
5 effective administration of the Public Campaign Act.

6 B. The rules shall include procedures for:

7 (1) qualifications, certification and  
8 disbursement of revenues and return of unspent fund revenues;

9 (2) obtaining qualifying contributions;

10 (3) certification of candidates;

11 (4) collection of revenues; and

12 (5) return of fund disbursements and other  
13 money to the fund."

14 Section 12. A new section of the Election Code is enacted  
15 to read:

16 "[NEW MATERIAL] APPEALS.--A challenge of a certification  
17 or distribution decision by the secretary may be filed and  
18 heard in accordance with the provisions of Section 1-19A-16  
19 NMSA 1978."

20 Section 13. A new section of the Election Code is enacted  
21 to read:

22 "[NEW MATERIAL] PENALTIES.--

23 A. In addition to other penalties that may be  
24 applicable, a person who violates a provision of the Public  
25 Campaign Act is subject to a civil penalty of up to ten

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1 thousand dollars (\$10,000) per violation. In addition to a  
2 fine, a certified candidate found in violation of that act may  
3 be required to return to the fund all amounts distributed to  
4 the candidate from the fund. If the secretary makes a  
5 determination that a violation of the Public Campaign Act has  
6 occurred, the secretary shall impose a fine or transmit the  
7 finding to the attorney general for prosecution. In  
8 determining whether a certified candidate is in violation of  
9 the expenditure limits of the Public Campaign Act, the  
10 secretary may consider as a mitigating factor any circumstances  
11 out of the candidate's control.

12 B. A person who willfully or knowingly violates the  
13 provisions of the Public Campaign Act or rules of the secretary  
14 or knowingly makes a false statement in a report required by  
15 the Campaign Reporting Act is guilty of a fourth degree felony  
16 and, if the person is a certified candidate, shall return to  
17 the fund all money distributed to that candidate."

18 Section 14. SEVERABILITY.--If any part of or application  
19 of the Public Campaign Act is held invalid, the remainder of  
20 its provisions or its application to other situations or  
21 persons shall not be affected.

22 Section 15. Section 1-19A-10 NMSA 1978 (being Laws 2003,  
23 Chapter 14, Section 10, as amended) is amended to read:

24 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

25 A. There is created in the state treasury the

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1 "public election fund" solely for the purposes of carrying out  
2 the provisions of the Voter Action Act and the Public Campaign  
3 Act, including:

- 4 (1) financing the election campaigns of  
5 certified candidates for covered offices;
- 6 (2) paying administrative and enforcement  
7 costs of the Voter Action Act and the Public Campaign Act; and
- 8 (3) carrying out all other specified  
9 provisions of the Voter Action Act and the Public Campaign Act.

10 B. The state treasurer shall invest the funds as  
11 other state funds are invested, and all income derived from the  
12 fund shall be credited directly to the fund. Remaining  
13 balances at the end of a fiscal year shall remain in the  
14 election fund and not revert to the general fund.

15 C. Money received from the following sources shall  
16 be deposited directly into the fund:

- 17 (1) qualifying contributions that have been  
18 submitted to the secretary;
- 19 (2) any recurring balance of unspent fund  
20 money distributed to a certified candidate who does not remain  
21 a candidate through the primary or general election period for  
22 which the money was distributed;
- 23 (3) money that remains unspent or unencumbered  
24 by a certified candidate following the date of the primary  
25 election;

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1 (4) money that remains unspent or unencumbered  
2 by a certified candidate following the date of the general  
3 election;

4 (5) unspent seed money that cannot be used for  
5 any other purpose;

6 (6) money distributed to the fund from funds  
7 received pursuant to the Uniform Unclaimed Property Act (1995);  
8 and

9 (7) money appropriated by the legislature.

10 D. A subaccount shall be established in the fund,  
11 and money in the subaccount shall only be used to pay the costs  
12 of carrying out the provisions of the Voter Action Act related  
13 to public regulation commission elections.

14 E. Three hundred thousand dollars (\$300,000) per  
15 year shall be collected and deposited in the subaccount for  
16 public regulation commission elections as follows:

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

20 (2) one hundred thousand dollars (\$100,000)  
21 from utility and carrier inspection fees collected pursuant to  
22 Section 63-7-20 NMSA 1978; and

23 (3) one hundred thousand dollars (\$100,000)  
24 from the insurance premium tax collected pursuant to Section  
25 59A-6-2 NMSA 1978."

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1           Section 16. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is November 3, 2010.

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