SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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

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

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

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

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

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

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

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

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

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

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

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

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

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candidate is seeking;

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

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

[~~I.~~] J. "qualifying period" means:

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

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

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

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

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

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Chapter 14, Section 3) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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as a candidate pursuant to other applicable state election law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Chapter 14, Section 9) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) carrying out all other specified

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provisions of the Voter Action Act.

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

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

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

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

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

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

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

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

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(7) money appropriated by the legislature.

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

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

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

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

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

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

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

B. A certified candidate may collect contributions

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

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

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

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

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

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

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

(2) for the office of justice of the supreme

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

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

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

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

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

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

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distributed pursuant to Subsection D of this section.

F. Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be distributed in the primary election cycle, based on the number of certified candidates and the allocations specified in this section. [~~The secretary shall increase the total amount by twenty percent to provide funds for additional matching funds in the primary election.~~] The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. [~~This estimate shall be increased by twenty percent to provide funds for additional matching funds in the general election.~~] If the total amount to be distributed in the primary election cycle [~~plus the added twenty percent~~] and the estimated total amount to be distributed in the general election cycle [~~plus the added twenty percent, all~~] taken together exceed the amount expected to be available in the fund, the secretary shall allocate the amount available between the primary and general election cycles. This allocation shall be based on the ratio of the two total amounts.

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

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

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

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

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

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

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

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

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

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

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

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