

1 SENATE BILL 294

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Eric G. Griego

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10 AN ACT

11 RELATING TO THE VOTER ACTION ACT; REMOVING SEED MONEY
12 REQUIREMENTS FROM THE ACT; CHANGING DISTRIBUTION AND MATCHING
13 FUND AMOUNTS; MAKING CANDIDATES FOR CERTAIN STATE OFFICES
14 ELIGIBLE FOR PUBLIC FINANCING OF CAMPAIGNS; CLARIFYING PENALTY
15 PROVISIONS FOR VIOLATIONS OF THE ACT; AMENDING AND REPEALING
16 SECTIONS OF THE NMSA 1978.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

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

25 B. "certified candidate" means a candidate running

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1 for a covered office who chooses to obtain financing pursuant
2 to the Voter Action Act and is certified as a Voter Action Act
3 candidate;

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

7 D. "covered office" means any office of the
8 judicial department subject to statewide elections and the
9 ~~[office]~~ offices of public regulation commissioner, governor,
10 lieutenant governor, attorney general, state treasurer, state
11 auditor, secretary of state, commissioner of public lands,
12 state senator and state representative;

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

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

22 G. "noncertified candidate" means either a
23 candidate running for a covered office who does not choose to
24 participate in the Voter Action Act and who is not seeking to
25 be a certified candidate or a candidate who files a declaration

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1 of intent to participate but who fails to qualify;

2 H. "qualifying contribution" means a donation of
3 five dollars (\$5.00) in the form of cash or a check or money
4 order payable to the ~~[fund]~~ candidate or candidate's campaign
5 committee in support of an applicant candidate that is:

6 (1) made by a ~~[registered]~~ voter who is
7 eligible to vote for the covered office that the applicant
8 candidate is seeking;

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

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

17 I. "qualifying period" means:

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

22 (2) for independent and minor party
23 candidates, the period beginning February 1 of the election
24 year and ending that year at 5:00 p.m. on the filing date for
25 independent or minor party candidates for the office for which

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1 the candidate is running; and

2 J. "secretary" means the secretary of state or the
3 office of the secretary of state [~~and~~

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

7 SECTION 2. Section 1-19A-4 NMSA 1978 (being Laws 2003,
8 Chapter 14, Section 4, as amended) is amended to read:

9 "1-19A-4. QUALIFYING CONTRIBUTIONS.--

10 A. Applicant candidates shall obtain qualifying
11 contributions as follows:

12 (1) for all statewide judicial elective
13 offices, the number of qualifying contributions equal to one-
14 tenth of one percent of the number of voters in the state;
15 [~~and~~

16 (2) for the office of public regulation
17 commissioner, the number of qualifying contributions equal to
18 one-tenth of one percent of the number of voters in the
19 district of the office for which the candidate is running;

20 (3) for the office of governor or lieutenant
21 governor, the number of qualifying contributions from that
22 number of voters that is equal to at least one percent of the
23 total voters in the state;

24 (4) for the office of state senator or state
25 representative, the number of qualifying contributions from

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1 that number of voters that is equal to at least one percent of
2 the total voters in the district of the office for which the
3 candidate is running; and

4 (5) for any other covered office, the number
5 of qualifying contributions from that number of voters that is
6 equal to at least one-fourth percent of the total voters in the
7 state.

8 B. Applicant candidates may accept qualifying
9 contributions from persons who become registered within the
10 statutory time frame that would enable that person to vote in
11 the primary election.

12 C. Voters registered [~~as independent~~] without party
13 affiliation are not excluded from making qualifying
14 contributions but shall be registered as such within the
15 statutory time frame [~~as independent~~].

16 D. No payment, gift or anything of value shall be
17 given in exchange for a qualifying contribution."

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

20 "1-19A-6. CERTIFICATION.--

21 A. Upon receipt of a final submittal of qualifying
22 contributions by an applicant candidate, the secretary shall
23 determine whether the applicant candidate has:

24 (1) signed and filed a declaration of intent
25 to obtain financing pursuant to the Voter Action Act in

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1 accordance with the requirements of that act;

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

5 (3) qualified as a candidate pursuant to other
6 applicable state election law;

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

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

11 B. The secretary shall certify applicant candidates
12 complying with the requirements of this section as certified
13 candidates as soon as possible and no later than ten days after
14 final submittal of qualifying contributions and certification
15 as a candidate pursuant to other applicable state election law.

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

24 SECTION 4. Section 1-19A-7 NMSA 1978 (being Laws 2003,
25 Chapter 14, Section 7, as amended) is amended to read:

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

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

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

10 C. A certified candidate shall limit total campaign
11 expenditures and debts to the amount of money distributed to
12 that candidate from the fund, money received from a political
13 party pursuant to Section 1-19A-8 NMSA 1978 and contributions
14 collected pursuant to Subsection A of Section 1-19A-14 NMSA
15 1978. A certified candidate shall not accept contributions or
16 loans from any other source except the certified candidate's
17 political party, as specified in Section 1-19A-8 NMSA 1978 and
18 contributions collected pursuant to Section 1-19A-14 NMSA 1978.

19 D. A certified candidate shall return to the
20 secretary, within thirty days after the primary election, any
21 amount that is unspent or unencumbered by the date of the
22 primary election for direct deposit into the fund.

23 E. A certified candidate shall return to the
24 secretary, within thirty days after the general election, any
25 amount that is unspent or unencumbered by the date of the

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1 general election for direct deposit into the fund."

2 SECTION 5. Section 1-19A-9 NMSA 1978 (being Laws 2003,
3 Chapter 14, Section 9) is amended to read:

4 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

5 A. The secretary shall publish guidelines outlining
6 permissible campaign-related expenditures and penalties for
7 violations of the Voter Action Act by October 1, 2011.

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

11 ~~G.]~~ B. Applicant candidates shall file qualifying
12 contributions with the secretary during the qualifying period
13 according to procedures developed by the secretary. In
14 developing these procedures, the secretary shall use existing
15 campaign reporting procedures and deadlines whenever practical.

16 ~~[D.]~~ C. Certified candidates shall report
17 expenditures according to the campaign reporting requirements
18 specified in the ~~[Election Code]~~ Campaign Reporting Act.

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

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1 ~~before the report is due.~~

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

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

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

17 SECTION 6. Section 1-19A-10 NMSA 1978 (being Laws 2003,
18 Chapter 14, Section 10, as amended) is amended to read:

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

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

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

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

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1 (3) carrying out all other specified
2 provisions of the Voter Action Act.

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

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

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

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

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

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

22 ~~[(5) unspent seed money that cannot be used
23 for any other purpose;~~

24 ~~(6)]~~ (5) money distributed to the fund from
25 funds received pursuant to the Uniform Unclaimed Property Act

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1 (1995); and

2 [~~(7)~~] (6) money appropriated by the
3 legislature.

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

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

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

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

17 (3) one hundred thousand dollars (\$100,000)
18 from the insurance premium tax collected pursuant to Section
19 59A-6-2 NMSA 1978."

20 SECTION 7. Section 1-19A-13 NMSA 1978 (being Laws 2003,
21 Chapter 14, Section 13, as amended) is amended to read:

22 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

23 A. By [~~August 1, 2007~~] September 1 of each odd-
24 numbered year, the secretary shall determine the amount of
25 money to be distributed to each certified candidate for the

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1 election cycle ending with the general election [~~in 2008~~] of
2 the following year, based on the type of election and the
3 provisions of Subsections B through F of this section.

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

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

11 ~~(2) for the office of justice of the supreme~~
12 ~~court and judge of the court of appeals, fifteen cents (\$.15)~~
13 ~~for each voter of the candidate's party in the state.~~

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

18 ~~D. For contested general 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 in the~~
23 ~~district of the office for which the candidate is running; and~~

24 ~~(2) for the office of justice of the supreme~~
25 ~~court and judge of the court of appeals, fifteen cents (\$.15)~~

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1 ~~for each voter in the state.]~~

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

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

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

11 (4) for the offices of justice of the supreme
12 court, judge of the court of appeals, secretary of state, state
13 treasurer and state auditor, fifteen cents (\$.15) for each
14 voter of the candidate's party in the state;

15 (5) for the office of public regulation
16 commissioner, twenty-five cents (\$.25) for each voter of the
17 candidate's party in the candidate's district; and

18 (6) for the office of state legislator, one
19 dollar fifty cents (\$1.50) for each voter of the candidate's
20 party in the candidate's legislative district.

21 C. For uncontested primary elections, the amount of
22 money to be distributed to a certified candidate is equal to
23 fifty percent of the amount specified in Subsection B of this
24 section for candidates for statewide office and public
25 regulation commissioner and ten percent of that amount for

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1 candidates for legislative offices.

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

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

7 (2) for the offices of lieutenant governor and
8 justice of the supreme court, twenty-five cents (\$.25) for each
9 voter in the state;

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

13 (4) for the offices of judge of the court of
14 appeals, secretary of state, state treasurer and state auditor,
15 fifteen cents (\$.15) for each voter in the state;

16 (5) for the office of public regulation
17 commissioner, twenty-five cents (\$.25) for each voter in the
18 candidate's district; and

19 (6) for the office of state legislator, one
20 dollar fifty cents (\$1.50) for each voter in the candidate's
21 legislative district.

22 E. For uncontested general elections, except as
23 provided in Subsection I of this section, the amount of money
24 to be distributed to a certified candidate is equal to fifty
25 percent of the amount specified in Subsection D of this section

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1 for a candidate for statewide office or public regulation
2 commissioner and ten percent of that amount for a candidate for
3 legislative office. If a general election race that is
4 initially uncontested later becomes contested because of the
5 qualification of an independent or minor party candidate to
6 appear on the ballot for that race, an additional amount of
7 money shall be distributed to the certified candidate to make
8 that candidate's total distribution amount equal to the amount
9 distributed pursuant to Subsection D of this section.

10 F. Once the certification for candidates for the
11 primary election has been completed, the secretary shall
12 calculate the total amount of money to be distributed in the
13 primary election cycle, based on the number of certified
14 candidates and the allocations specified in this section. The
15 secretary shall increase the total amount by twenty percent to
16 provide funds for additional matching funds in the primary
17 election. The secretary shall also prepare an estimate of the
18 total amount of money that might be distributed in the general
19 election cycle. This estimate shall be increased by twenty
20 percent to provide funds for additional matching funds in the
21 general election. If the total amount to be distributed in the
22 primary election cycle, plus the added twenty percent and the
23 estimated total amount to be distributed in the general
24 election cycle, plus the added twenty percent, all taken
25 together, exceed the amount expected to be available in the

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1 fund, the secretary shall allocate the amount available between
2 the primary and general election cycles. This allocation shall
3 be based on the ratio of the two total amounts.

4 G. If the allocation specified in Subsection F of
5 this section is greater than the total amount available for
6 distribution, then the amounts to be distributed to individual
7 candidates, specified in Subsections B through E of this
8 section, shall each be reduced by the same percentage as the
9 reduction by which the total amount needed has been reduced
10 relative to the total amount available.

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

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

23 SECTION 8. Section 1-19A-14 NMSA 1978 (being Laws 2003,
24 Chapter 14, Section 14, as amended) is amended to read:

25 "1-19A-14. ALLOWABLE CONTRIBUTIONS AND MATCHING FUNDS.--

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1 ~~[When a certified or noncertified candidate has one or more~~
2 ~~opponents who are certified candidates and the candidate's~~
3 ~~campaign finance report or group of reports shows that the sum~~
4 ~~of the candidate's expenditures and obligations made, or funds~~
5 ~~raised or borrowed, whichever is greater, alone or in~~
6 ~~conjunction with expenditures made independently of the~~
7 ~~candidate to influence the election on behalf of the candidate,~~
8 ~~exceeds the amount distributed to an opposing certified~~
9 ~~candidate, the secretary shall issue immediately to any~~
10 ~~opposing certified candidate an additional amount equivalent to~~
11 ~~the excess amount reported by the opposing candidate. Total~~
12 ~~matching funds to a certified candidate in an election are~~
13 ~~limited to twice the amount originally distributed to that~~
14 ~~candidate pursuant to Section 1-19A-13 NMSA 1978.]~~

15 A. A certified candidate may collect contributions
16 from qualified electors registered to vote in the candidate's
17 district in amounts of no more than one hundred dollars (\$100)
18 per donor per election cycle. A certified candidate shall not
19 accept contributions from any other source; provided that a
20 candidate may accept contributions otherwise allowed pursuant
21 to Section 1-19A-8 NMSA 1978.

22 B. The secretary shall distribute matching funds
23 from the fund to a certified candidate in an amount four times
24 the total of contributions a certified candidate has collected
25 after the candidate is certified pursuant to the Voter Action

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1 Act, subject to the limitation in Subsection C of this section.
2 Matching funds shall be distributed within three days after the
3 certified candidate has filed a campaign report required by the
4 Campaign Reporting Act that indicates the candidate has
5 collected additional contributions in accordance with the
6 provisions of Subsection A of this section.

7 C. The amount of all public money distributed to a
8 certified candidate in an election is limited to three times
9 the amount of the initial distribution allowed for that
10 candidate pursuant to Section 1-19A-13 NMSA of the Voter Action
11 Act.

12 D. No matching funds shall be distributed to a
13 candidate in an uncontested election."

14 SECTION 9. Section 1-19A-17 NMSA 1978 (being Laws 2003,
15 Chapter 14, Section 17) is amended to read:

16 "1-19A-17. PENALTIES.--

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

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

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

13 SECTION 10. REPEAL.--Section 1-19A-5 NMSA 1978 (being
14 Laws 2003, Chapter 14, Section 5, as amended) is repealed.