

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 229

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JOSEPH A. FIDEL

FOR THE GOVERNMENTAL ETHICS OVERSIGHT COMMITTEE

AN ACT

RELATING TO GOVERNMENTAL ETHICS; AMENDING, ENACTING AND
RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Campaign Reporting Act is
enacted to read:

"[NEW MATERIAL] RULES AND REGULATIONS. --The secretary of
state may adopt and promulgate rules and regulations to
implement the provisions of the Campaign Reporting Act."

Section 2. Section 1-19-29 NMSA 1978 (being Laws 1993,
Chapter 46, Section 5, as amended) is amended to read:

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

A. Annually, all reporting individuals shall file
with the proper filing officer by 5:00 p.m. on the second Monday
in May a report of all expenditures made and contributions

Underscored material = new
[bracketed material] = delete

1 received on or before the first Monday in May and not previously
2 reported. The report shall be filed annually until the
3 reporting individual's bank account has been closed and the
4 other provisions specified in Subsection E of this section have
5 been satisfied.

6 B. In an election year, in addition to the May
7 report provided for in Subsection A of this section, all
8 reporting individuals, except for persons who file a statement
9 of exception pursuant to Section 1-19-33 NMSA 1978 and except
10 for public officials who are not candidates in an election that
11 year, shall file reports of all expenditures made and
12 contributions received according to the following schedule:

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

17 (2) by [~~12:00 noon~~] 5:00 p.m. on the [~~Friday~~]
18 Thursday before a primary, general or statewide special
19 election, a report of all expenditures made and contributions
20 received by 5:00 p.m. on the Tuesday before the election. Any
21 contribution or pledge to contribute that is received after 5:00
22 p.m. on the Tuesday before the election and that is for five
23 hundred dollars (\$500) or more in a legislative or nonstatewide
24 judicial election, or two thousand five hundred dollars (\$2,500)
25 or more in a statewide election, shall be reported to the proper

. 114021. 1

1 filing officer either in a supplemental report on a prescribed
2 form within twenty-four hours of receipt or in the report to be
3 filed by 5:00 p.m. on the Thursday before a primary, general or
4 statewide special election, except that any such contribution or
5 pledge to contribute that is received after 5:00 p.m. on the
6 Friday before the election may be reported by 12:00 noon on the
7 Monday before the election; and

8 (3) by 5:00 p.m. on the thirtieth day after a
9 primary, general or statewide special election, a report of all
10 expenditures made and contributions received on or before the
11 twenty-fifth day after the election and not previously reported.

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

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

21 E. Each reporting individual shall file a report of
22 expenditures and contributions annually pursuant to the filing
23 schedule set forth in this section, regardless of whether any
24 expenditures were made or contributions were received during the
25 reporting period. Reports shall be required until the reporting

Underscored material = new
[bracketed material] = delete

1 individual delivers a report to the proper filing officer
2 stating that:

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

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

13 G. A reporting individual who is a candidate within
14 the meaning of the Campaign Reporting Act because of the amount
15 of contributions he receives or expenditures he makes and who
16 does not ultimately file a declaration of candidacy or a
17 nominating petition with the proper filing officer shall
18 nevertheless file a report, not later than the second Monday in
19 May for a primary election or the second Monday in October for a
20 general election, of all contributions received and expenditures
21 made on or before the first Monday in May for a primary election
22 or the first Monday in October for a general election, and not
23 previously reported. "

24 Section 3. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
25 Chapter 46, Section 15, as amended) is amended to read:

. 114021. 1

Underscored material = new
[bracketed material] = delete

1 "1-19-34. 4. EDUCATION AND VOLUNTARY COMPLIANCE. --
2 INVESTIGATIONS-- BINDING ARBITRATION-- REFERRALS FOR ENFORCEMENT. --

3 A. The secretary of state shall advise and seek to
4 educate all persons required to perform duties under the Campaign
5 Reporting Act of those duties. This includes advising all known
6 reporting individuals at least annually of [~~the Campaign~~
7 ~~Reporting~~] that act's deadlines for submitting required reports
8 and statements of exception. The secretary of state, in
9 consultation with the attorney general, shall issue advisory
10 opinions, when requested in writing to do so, on matters
11 concerning [~~the Campaign Reporting~~] that act. All prescribed
12 forms prepared shall be clear and easy to complete.

13 B. The secretary of state may initiate investigations
14 to determine whether any provision of the Campaign Reporting Act
15 has been violated. Additionally, any person who believes that a
16 provision of that act has been violated may file a written
17 complaint with the secretary of state [~~anytime~~] any time prior to
18 ninety days after an election, except that no complaints from the
19 public may be filed within eight days prior to an election. The
20 secretary of state shall adopt procedures for issuing advisory
21 opinions and processing complaints and notifications of
22 violations.

23 C. The secretary of state shall at all times seek to
24 ensure voluntary compliance with the provisions of the Campaign
25 Reporting Act. If the secretary of state determines that a

Underscored material = new
[bracketed material] = delete

1 provision of that act for which a penalty may be imposed has been
2 violated, the secretary of state shall by written notice set forth
3 the violation and the fine imposed and inform the reporting
4 individual that he has ten working days from the date of the
5 letter to correct the matter and to provide a written explanation,
6 under penalty of perjury, stating any reason why the violation
7 occurred. If a timely explanation is filed and the secretary of
8 state determines that good cause exists to waive the fine imposed,
9 the secretary of state may by a written notice of final action
10 partially or fully waive any fine imposed for any late, incomplete
11 or false report or statement of exception. A written notice of
12 final action shall be sent by certified mail.

13 D. Upon receipt of the notice of final action, the
14 person against whom the penalty has been imposed may protest the
15 secretary of state's determination, including an advisory opinion,
16 by submitting on a prescribed form a written request for binding
17 arbitration to the secretary of state within ten working days of
18 the date of the notice of final action. Any fine imposed shall
19 [~~not~~] be due and payable [~~until the arbitration decision is~~
20 ~~issued, and~~] within ten working days of the date of notice of
21 final action. No additional fine shall accrue pending the
22 issuance of the arbitration decision. Fines paid pursuant to a
23 notice of final action that are subsequently reduced or dismissed
24 shall be reimbursed with interest within ten working days after
25 the filing of the arbitration decision with the secretary of

Underscored material = new
[bracketed material] = delete

1 state. Interest on the reduced or dismissed portion of the fine
2 shall be the same as the rate of interest earned by the secretary
3 of state's escrow account.

4 E. An arbitration hearing shall be conducted by a
5 ~~[panel of three persons. The person against whom the penalty has~~
6 ~~been imposed shall choose one panel member and submit that panel~~
7 ~~member's name with the request for arbitration]~~ single arbitrator
8 selected by the person against whom the penalty has been imposed
9 from a list of five arbitrators provided by the secretary of
10 state. The secretary of state shall ~~[choose one panel member and]~~
11 provide notice of the selection within fifteen days of receipt of
12 the request for arbitration. ~~[The two panel members shall then~~
13 ~~choose the third panel member. If no agreement is reached on a~~
14 ~~third panel member within thirty days of receipt of the request~~
15 ~~for arbitration, the presiding judge of the district court for the~~
16 ~~first judicial district shall appoint the third panel member~~
17 ~~within ten days thereafter.]~~ Neither the secretary of state nor a
18 person subject to the Campaign Reporting Act, Lobbyist Regulation
19 Act or Financial Disclosure Act may serve as ~~[a panel member.~~
20 ~~Panel members shall be paid per diem and mileage by the secretary~~
21 ~~of state in accordance with the provisions of the Per Diem and~~
22 ~~Mileage Act plus reimbursement for reasonable actual expenses.]~~ an
23 arbitrator. Arbitrators selected by the secretary of state shall
24 be considered to be independent contractors, not public officers
25 or employees, and shall not be paid per diem and mileage.

Underscored material = new
[bracketed material] = delete

1 F. The ~~[arbitration panel]~~ arbitrator shall conduct
2 the hearing within ~~[sixty]~~ thirty days of the request for
3 arbitration. The ~~[arbitration panel]~~ arbitrator may impose any
4 penalty the secretary of state is authorized to impose. The
5 ~~[panel]~~ arbitrator shall state the reasons for ~~[its]~~ his decision
6 in a written document that shall be a public record. The decision
7 shall be final and binding. The decision shall be issued and
8 filed with the secretary of state within ~~[forty-five]~~ thirty days
9 of the conclusion of the hearing. Unless otherwise provided for
10 in this section or by rule or regulation adopted by the secretary
11 of state, the procedures for the arbitration shall be governed by
12 the Uniform Arbitration Act ~~[including the procedures set forth in~~
13 ~~Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas]~~.
14 No ~~[panel member]~~ arbitrator shall be subject to liability for
15 actions taken pursuant to this section.

16 G. The secretary of state may refer a matter to the
17 attorney general or a district attorney for a civil injunctive or
18 other appropriate order or for criminal enforcement. "

19 Section 4. Section 1-19-35 NMSA 1978 (being Laws 1979,
20 Chapter 360, Section 11, as amended) is amended to read:

21 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--
22 FAILURE TO FILE. --

23 A. Except for the report required to be filed and
24 delivered the ~~[Friday]~~ Thursday prior to the election and any
25 supplemental report, as required in Paragraph (2) of Subsection B

Underscored material = new
[bracketed material] = delete

1 of Section 1-19-29 NMSA 1978, that is due prior to the election,
2 and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a
3 statement of exception or a report of expenditures and
4 contributions contains false or incomplete information or is filed
5 after any deadline imposed by the Campaign Reporting Act, the
6 responsible reporting individual or political committee, in
7 addition to any other penalties or remedies prescribed by the
8 Election Code, shall be liable for and shall pay to the secretary
9 of state fifty dollars (\$50.00) per day for each regular working
10 day after the time required by the Campaign Reporting Act for the
11 filing of statements of exception or reports of expenditures and
12 contributions until the complete or true statement or report is
13 filed, up to a maximum of five thousand dollars (\$5,000).

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

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

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

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

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

14 (1) have his name printed upon the ballot if the
15 violation occurs before and through the final date for the
16 withdrawal of candidates; or

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

22 F. Any candidate who loses an election and who failed
23 or refused to file a report of expenditures and contributions or a
24 statement of exception or to pay a penalty imposed by the
25 secretary of state as required by the Campaign Reporting Act shall

Underscored material = new
[bracketed material] = delete

1 not be, in addition to any other penalties provided by law,
2 permitted to file a declaration of candidacy or nominating
3 petition for any future election until the candidate satisfies all
4 reporting requirements of the Campaign Reporting Act and pays all
5 penalties owed. "

6 Section 5. Section 2-11-6 NMSA 1978 (being Laws 1977,
7 Chapter 261, Section 6, as amended) is amended to read:

8 "2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--
9 REPORTING PERIODS.--

10 A. Each lobbyist or lobbyist's employer who makes or
11 incurs expenditures or political contributions for the benefit of
12 a state legislator or candidate for the state legislature, a state
13 public officer or candidate for state public office, a board or
14 commission member or state employee who is involved in an official
15 action affecting the lobbyist's employer or in support of or in
16 opposition to a ballot issue or pending legislation or official
17 action shall file an expenditure report with the secretary of
18 state on a prescribed form or in an electronic format approved by
19 the secretary of state. The expenditure report shall include a
20 sworn statement that sets forth:

21 (1) the cumulative total of the expenditures
22 made or incurred, separated into categories that identify the
23 total separate amounts spent on:

- 24 (a) meals and beverages;
25 (b) other entertainment expenditures;

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(c) gifts; and

(d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on his behalf.

B. If the expenditure report is filed electronically, the report shall be subscribed and sworn to in an independent affidavit that shall be delivered to the secretary of state within forty-eight hours after the expenditure report is electronically filed.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person

Underscored material = new
[bracketed material] = delete

1 who received or was benefited by the expenditure; provided, in the
2 case of special events, including parties, dinners, athletic
3 events, entertainment and other functions, to which all members of
4 the legislature, to which all members of either house or any
5 legislative committee or to which all members of a board or
6 commission are invited, expenses need not be allocated to each
7 individual who attended, but the date, location, name of the body
8 invited and total expenses incurred shall be reported.

9 D. The reports required pursuant to the provisions of
10 the Lobbyist Regulation Act shall be filed:

11 (1) by January 15 for all expenditures and
12 political contributions made or incurred during the preceding year
13 and not previously reported;

14 (2) within ~~[ten days after a legislative session~~
15 ~~ends]~~ forty-eight hours for each separate expenditure made or
16 incurred during ~~[the]~~ a legislative session that was for five
17 hundred dollars (\$500) or more; and

18 (3) by May 1 for all expenditures and political
19 contributions made or incurred ~~[since the January filing]~~ through
20 April 25 of the current year and not previously reported.

21 E. A lobbyist's personal living expenses and the
22 expenses incidental to establishing and maintaining an office in
23 connection with lobbying activities or compensation paid to a
24 lobbyist by a lobbyist's employer need not be reported.

25 F. A lobbyist or lobbyist's employer shall obtain and

1 preserve all records, accounts, bills, receipts, books, papers and
2 documents necessary to substantiate the financial statements
3 required to be made under the Lobbyist Regulation Act for a period
4 of two years from the date of filing of the report containing such
5 items. When the lobbyist is required under the terms of his
6 employment to turn over any such records to his employer,
7 responsibility for the preservation of them as required by this
8 section and the filing of reports required by this section shall
9 rest with the employer. Such records shall be made available to
10 the secretary of state or attorney general upon written request.

11 G. Any lobbyist's employer who also engages in
12 lobbying shall comply with the provisions of the Lobbyist
13 Regulation Act.

14 H. An organization of two or more persons, including
15 an individual who holds himself out as an organization, that
16 within one calendar year expends funds in excess of two thousand
17 five hundred dollars (\$2,500) not otherwise reported under the
18 Lobbyist Regulation Act to conduct an advertising campaign for the
19 purpose of lobbying shall register with the secretary of state
20 within forty-eight hours after expending two thousand five hundred
21 dollars (\$2,500). Such registration shall indicate the name of
22 the organization and the names, addresses and occupations of any
23 of its principals, organizers or officers and shall include the
24 name of any lobbyist or lobbyist's employer who is a member of the
25 organization. Within fifteen days after a legislative session,

Underscored material = new
[bracketed material] = delete

1 the organization shall report the contributions, pledges to
2 contribute, expenditures and commitments to expend for the
3 advertising campaign for the purpose of lobbying, including the
4 names, addresses and occupations of the contributors, to the
5 secretary of state on a prescribed form. "

6 Section 6. Section 10-16A-3 NMSA 1978 (being Laws 1993,
7 Chapter 46, Section 41, as amended) is amended to read:

8 "10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES AND
9 PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON BALLOT
10 OR APPOINTMENT. --

11 A. At the time of filing a declaration of candidacy
12 or nominating petition, a candidate for legislative or statewide
13 office shall file with the proper filing officer, as defined in
14 Section 1-8-25 NMSA 1978, a financial disclosure statement on a
15 prescribed form. In addition, each year thereafter during the
16 month of January, a legislator and a person holding a statewide
17 office shall file with the proper filing officer a financial
18 disclosure statement. If the proper filing officer is not the
19 secretary of state, the proper filing officer shall forward a copy
20 of the financial disclosure statement to the secretary of state
21 within seventy-two hours.

22 B. A state agency head or official whose appointment
23 to a board or commission is subject to confirmation by the senate
24 shall file with the secretary of state a financial disclosure
25 statement within thirty days of appointment and during the month

Underscored material = new
[bracketed material] = delete

1 of January every year thereafter that he holds public office.

2 C. The financial disclosure statement shall include
3 for any person identified in Subsection A or B of this section and
4 the person's spouse the following information for the prior
5 calendar year:

6 (1) the full name, mailing address and residence
7 address of each person covered in the disclosure statement, except
8 the address of the spouse need not be disclosed; the name and
9 address of the person's and spouse's employer and the title or
10 position held; and a brief description of the nature of the
11 business or occupation;

12 (2) all sources of gross income of more than
13 five thousand dollars (\$5,000) to each person covered in the
14 disclosure statement, identified by general category descriptions
15 that disclose the nature of the income source, in the following
16 broad categories: law practice or consulting operation or similar
17 business, finance and banking, farming and ranching, medicine and
18 health care, insurance (as a business and not as payment on an
19 insurance claim), oil and gas, transportation, utilities, general
20 stock market holdings, bonds, government, education,
21 manufacturing, real estate, consumer goods sales with a general
22 description of the consumer goods and the category "other", with
23 direction that the income source be similarly described. In
24 describing a law practice, consulting operation or similar
25 business of the person or spouse, the major areas of

. 114021. 1

Underscored material = new
[bracketed material] = delete

1 specialization or income sources shall be described, and if the
2 spouse or a person in the reporting person's or spouse's law firm,
3 consulting operation or similar business is or was during the
4 reporting calendar year or the prior calendar year a registered
5 lobbyist under the Lobbyist Regulation Act, the names and
6 addresses of all clients represented for lobbying purposes during
7 those two years shall be disclosed;

8 (3) a general description of the type of real
9 estate owned in New Mexico, other than a personal residence, and
10 the county where it is located;

11 (4) all other New Mexico business interests not
12 otherwise listed of ten thousand dollars (\$10,000) or more in a
13 New Mexico business or entity, including any position held and a
14 general statement of purpose of the business or entity;

15 (5) all memberships held by the reporting
16 individual and his spouse on boards of for-profit businesses in
17 New Mexico;

18 (6) all New Mexico professional licenses held;

19 (7) each state agency that was sold goods or
20 services in excess of five thousand dollars (\$5,000) during the
21 prior calendar year by a person covered in the disclosure
22 statement;

23 (8) each state agency, other than a court,
24 before which a person covered in the disclosure statement
25 represented or assisted clients in the course of his employment

1 during the prior calendar year; and

2 (9) a general category that allows the person
3 filing the disclosure statement to provide whatever other
4 financial interest or additional information the person believes
5 should be noted to describe potential areas of interest that
6 should be disclosed.

7 D. A complete financial disclosure statement shall be
8 filed every year. [~~The secretary of state shall mail each person
9 required to file a financial disclosure statement a copy of any
10 statement the person filed the previous year.~~]

11 E. The financial disclosure statements filed pursuant
12 to this section are public records open to public inspection
13 during regular office hours and shall be retained by the state for
14 five years from the date of filing.

15 F. A person who files a financial disclosure
16 statement may file an amended statement at any time to reflect
17 significant changed circumstances that occurred since the last
18 statement was filed.

19 G. Any candidate for a legislative or statewide
20 office who fails or refuses to file a financial disclosure
21 statement required by this section before the final date for the
22 withdrawal of candidates provided for in the Election Code shall
23 not have his name printed on the election ballot.

24 H. For a state agency head or an official whose
25 appointment to a board or commission is subject to confirmation by

Underscored material = new
~~[bracketed material] = delete~~

1 the senate, the filing of the financial disclosure statement
2 required by this section is a condition of entering upon and
3 continuing in state employment or holding an appointed position. "

4 Section 7. TEMPORARY PROVISION--RECOMPILATION.--Section
5 10-16-16 NMSA 1978 (being Laws 1980, Chapter 86, Section 1) is
6 recompiled as Section 27-2-12.7 NMSA 1978.

7 - 19 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

SB 229/a

1

2

3

February 14, 1997

4

Mr. President:

5

6

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

7

8

SENATE BILL 229

9

10

has had it under consideration and reports same with recommendation

11

that it DO PASS, amended as follows:

12

13

1. On page 7, line 3, after "account" insert "to be

14

established by the department of finance and administration".

15

16

2. On page 7, line 8, after "selected" insert "within ten

17

days".

18

19

3. On page 7, line 10, after the period strike the remainder

20

of the line, strike lines 11 and 12 through the period.

21

22

4. On page 7, line 23, after "Arbitrators" strike "selected by

23

the secretary of state".

24

25

5. On page 11, line 4, strike "the Campaign Reporting Act" and

insert in lieu thereof "that act".

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SPAC/SB 229

Page 21

6. On page 15, between lines 5 and 6, insert a new section to read:

Section 6. Section 2-11-8.2 NMSA 1978 (being Laws 1977, Chapter 261, Section 4, as amended) is amended to read:

"2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
BINDING ARBITRATION--CIVIL PENALTIES.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

Page 22

examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated.

Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SPAC/SB 229

Page 23

charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall ~~[not]~~ be due and payable ~~[until the arbitration decision is issued, and]~~ within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a ~~[panel of three persons. The person against whom the penalty has been imposed shall choose one panel member and submit the panel member's~~

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SPAC/SB 229

Page 24

~~name with the request for arbitration. The secretary of state shall choose one panel member and provide notice of the selection within fifteen days of receipt of the request for arbitration. The two members shall then choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member within ten days thereafter]~~ single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state.
Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act may serve as ~~[a panel member. Panel members shall be paid per diem and mileage by the secretary of state in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses]~~ an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The ~~[arbitration panel]~~ arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The ~~[panel]~~ arbitrator shall state the reasons for ~~[its]~~ his decision in a written document that shall be a public record. The

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

Page 25

decision shall be final and binding. The decision shall be issued and filed with the secretary of state within ~~[forty-five]~~ thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. ~~[including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas]~~ No ~~[panel member]~~ arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

Page 26

dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement."

7. Renumber succeeding sections accordingly.

8. On page 18, lines 8, 9 and 10, remove the brackets and line-through.

9. On page 18, line 8, strike "person" and insert in lieu thereof "elected official".

10. On page 19, between lines 3 and 4, insert a new section:

Section 8. Section 10-16A-6 NMSA 1978 (being Laws 1993, Chapter 46, Section 44) is amended to read:

"10-16A-6. INVESTIGATIONS-- BINDING ARBITRATION-- FINES-- ENFORCEMENT. --

A. The secretary of state may conduct thorough

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

Page 27

examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a ~~[panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two~~

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SPAC/SB 229

Page 28

~~members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member]~~ single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No [panel member] arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. [Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.] Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The ~~[arbitration panel]~~ arbitrator may take any action the secretary of state is authorized to take. The ~~[panel]~~ arbitrator shall state the reasons for ~~[its]~~ his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within ~~[forty-five]~~ thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

arbitration shall be governed by the Uniform Arbitration Act
~~[including the procedures set forth in Section 44-7-7 NMSA 1978~~
~~authorizing the issuance of subpoenas].~~ No ~~[panel member]~~
arbitrator shall be subject to liability for actions taken pursuant
to this section.

E. Any person who files a statement or report after the
deadline imposed by the Financial Disclosure Act or any person who
files a false or incomplete statement or report ~~[shall be]~~ is liable
for and shall pay to the secretary of state, at or from the time
initially required for the filing, fifty dollars (\$50.00) per day
for each regular working day after the time required for the filing
of the statement or report until the complete report is filed, up to
a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the
attorney general or a district attorney for a civil injunctive or
other appropriate order or enforcement. "".

11. Renumber the succeeding section accordingly.

Respectfully submitted,

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SPAC/SB 229

Page 30

Shannon Robinson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Boitano, Feldman, Vernon

Absent: None

S0229PA1 . 116709. 1

. 116990. 1

. 114021. 1

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 13, 1997

Mr. Speaker:

Your VOTERS AND ELECTIONS COMMITTEE, to whom has
been referred

SENATE BILL 229, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 19, after the period insert:

"In adopting and promulgating these rules and regulations, the
secretary of state shall comply with the provisions of the
Administrative Procedures Act. In addition to any other
notification required pursuant to the provisions of Paragraph (2) of
Subsection A of Section 12-8-4 NMSA 1978, the secretary of state
shall notify all qualified political parties in the state and the
New Mexico legislative council prior to adopting, amending or
repealing any rule or regulation.".,

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HVEC/SB 229

Page 32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Edward C. Sandoval, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: M H. Garcia, Lujan, Nicely, Sanchez

Absent: None

118793.1

M \S0229

. 114021.1

Underscored material = new
[bracketed material] = delete