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SENATE BILL 97

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Peter Wirth

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 "1-19A-2. DEFINITIONS.--As used in the Voter Action 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 Voter Action Act and is certified as a Voter Action Act
8 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. "contribution" means a gift, subscription, loan,
13 advance or deposit of money or other thing of value, including
14 the estimated value of an in-kind contribution, that is made or
15 received for the purpose of supporting or opposing the
16 nomination for election or election of a candidate for public
17 office, including payment of a debt incurred in an election
18 campaign and also including a coordinated expenditure, but
19 "contribution" does not include the value of services provided
20 without compensation or unreimbursed travel or other personal
21 expenses of individuals who volunteer a portion or all of their
22 time on behalf of a candidate;

23 E. "coordinated expenditure" means an expenditure
24 that is made:

25 (1) by a person other than a candidate or

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1 campaign committee;

2 (2) at the request or suggestion of, or in
3 cooperation, consultation or concert with, a candidate,
4 campaign committee or political party or any agent or
5 representative of such a candidate, campaign committee or
6 political party; and

7 (3) for the purpose of:

8 (a) supporting or opposing the
9 nomination or election of a candidate; or

10 (b) paying for an advertisement that
11 refers to a clearly identified candidate and that is published
12 and disseminated to the relevant electorate in New Mexico
13 within thirty days before the primary election or sixty days
14 before the general election in which the candidate is on the
15 ballot;

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

19 [~~E-~~] G. "election cycle" means the primary and
20 general elections for the same term of the same covered office,
21 beginning on the day after the last general election for the
22 office and ending with the general election. The primary
23 election cycle begins on the first day of the election cycle
24 and ends on the day of the primary election. The general
25 election cycle begins on the day after the primary election and

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1 ends on the day of the general election;

2 H. "expenditure" means a payment, transfer or
3 distribution of, or a promise to pay, transfer or distribute,
4 any money or other thing of value for the purpose of supporting
5 or opposing the nomination or election of a candidate;

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

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

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

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

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

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

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1 contributors and sent to the bureau of elections;

2 [~~F.~~] K. "qualifying period" means:

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

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

12 [~~J.~~] L. "secretary" means the secretary of state or
13 the office of the secretary of state [~~and~~

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

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

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

21 A. A [~~candidate~~] person choosing to obtain
22 financing pursuant to the Voter Action Act shall first file
23 with the secretary a declaration of intent to participate in
24 that act as an applicant candidate for a stated covered office.
25 The declaration of intent shall be filed with the secretary

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1 prior to or during the qualifying period according to forms and
2 procedures developed by the secretary.

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

11 C. A [~~candidate~~] person shall not be eligible to
12 become an applicant candidate if the [~~candidate~~] person has
13 accepted contributions totaling [~~five hundred dollars (\$500) or~~
14 ~~more or made expenditures totaling five hundred dollars (\$500)~~
15 ~~or more between the beginning of the qualifying period and~~
16 ~~filing a declaration of intent~~] more than one hundred dollars
17 (\$100), excluding any qualifying contributions, from any one
18 contributor during the election cycle in which the person is
19 running for office."

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

22 "1-19A-6. CERTIFICATION.--

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

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1 applicant candidate has:

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

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

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

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

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

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

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

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1 to accept such funds for the general election."

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

4 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
5 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

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

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

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

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

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

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

25 (5) payment of legal expenses or any fine

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1 levied by a court or the secretary; or

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

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

8 ~~[G.]~~ D. A certified candidate shall limit total
9 campaign expenditures and debts to the amount of money
10 distributed to that candidate from the fund, money received
11 from a political party pursuant to Section 1-19A-8 NMSA 1978
12 and contributions collected pursuant to Section 8 of this 2017
13 act. A certified candidate shall not accept contributions or
14 loans from any other source except the certified candidate's
15 political party, as specified in Section 1-19A-8 NMSA 1978 and
16 contributions collected pursuant to Section 8 of this 2017 act.

17 ~~[D.]~~ E. A certified candidate that does not remain
18 a candidate in the general election shall ~~[return to the~~
19 ~~secretary]~~, within thirty days after the primary election, ~~[any~~
20 ~~amount that is]~~ transfer to the secretary for deposit in the
21 fund any amount received from the fund, from a political party
22 pursuant to Section 1-19A-8 NMSA 1978 or from private
23 contributors pursuant to Section 8 of this 2017 act that
24 remains unspent or unencumbered by the date of the primary
25 election. ~~[for direct deposit into the fund.]~~

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1 E.] F. A certified candidate shall [~~return to the~~
2 ~~secretary~~], within thirty days after the general election, [~~any~~
3 ~~amount that is~~] transfer to the secretary for deposit in the
4 fund any amount received from the fund, from a political party
5 pursuant to Section 1-19A-8 NMSA 1978 or from private
6 contributors pursuant to Section 8 of this 2017 act that
7 remains unspent or unencumbered by the date of the general
8 election [~~for direct deposit into the fund~~].

9 G. If a certified candidate withdraws or otherwise
10 ceases to be a certified candidate, the candidate shall, within
11 thirty days thereafter, transfer to the secretary for deposit
12 in the fund any amount received from the fund, from a political
13 party pursuant to Section 1-19A-8 NMSA 1978 or from private
14 contributors pursuant to Section 8 of this 2017 act that
15 remains unspent or unencumbered by the date the candidate
16 withdraws or otherwise ceases to be a certified candidate."

17 **SECTION 6.** Section 1-19A-9 NMSA 1978 (being Laws 2003,
18 Chapter 14, Section 9) is amended to read:

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

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

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

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

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

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

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

25 ~~(1) for the primary election, by 5:00 p.m. on~~

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1 ~~the second Monday in May, by 5:00 p.m. on the eleventh day~~
2 ~~before the election and by 5:00 p.m. on the Thursday before the~~
3 ~~election; and~~

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

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

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

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

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

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

17 (3) carrying out all other specified
18 provisions of the Voter Action Act.

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

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

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

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

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

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

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

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

18 (7) money appropriated by the legislature.

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

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

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

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

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

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

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

17 B. A certified candidate may collect contributions
18 from qualified electors registered to vote in the candidate's
19 district. A certified candidate shall not accept contributions
20 from any other source, except as allowed pursuant to Section
21 1-19A-8 NMSA 1978.

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

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

3 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

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

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

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

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

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

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1 the following:

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

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

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

19 F. Once the certification for candidates for the
20 primary election has been completed, the secretary shall
21 calculate the total amount of money to be distributed in the
22 primary election cycle, based on the number of certified
23 candidates and the allocations specified in this section. ~~[The~~
24 ~~secretary shall increase the total amount by twenty percent to~~
25 ~~provide funds for additional matching funds in the primary~~

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1 ~~election.~~] The secretary shall also prepare an estimate of the
2 total amount of money that might be distributed in the general
3 election cycle. ~~[This estimate shall be increased by twenty~~
4 ~~percent to provide funds for additional matching funds in the~~
5 ~~general election.]~~ If the total amount to be distributed in the
6 primary election cycle ~~[plus the added twenty percent]~~ and the
7 estimated total amount to be distributed in the general
8 election cycle ~~[plus the added twenty percent, all]~~ taken
9 together exceed the amount expected to be available in the
10 fund, the secretary shall allocate the amount available between
11 the primary and general election cycles. This allocation shall
12 be based on the ratio of the two total amounts.

13 G. If the allocation specified in Subsection F of
14 this section is greater than the total amount available for
15 distribution, then the amounts to be distributed to individual
16 candidates, specified in Subsections B through E of this
17 section, shall each be reduced by the same percentage as the
18 reduction by which the total amount needed has been reduced
19 relative to the total amount available.

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

25 I. No money shall be distributed to candidates in

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

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

9 "1-19A-17. PENALTIES.--

10 A. In addition to other penalties that may be
11 applicable, a person who violates a provision of the Voter
12 Action Act is subject to a civil penalty of up to ten thousand
13 dollars (\$10,000) per violation. In addition to a fine, a
14 certified candidate found in violation of that act may be
15 required to return to the fund all amounts distributed to the
16 candidate from the fund. If the secretary makes a
17 determination that a violation of that act has occurred, the
18 secretary shall impose a fine [~~or~~] and transmit the finding to
19 the attorney general for criminal prosecution pursuant to
20 Subsection B of this section. In determining whether a
21 certified candidate is in violation of the expenditure limits
22 of that act, the secretary may consider as a mitigating factor
23 any circumstances out of the candidate's control.

24 B. A person who willfully or knowingly violates the
25 provisions of the Voter Action Act or rules of the secretary or

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1 knowingly makes a false statement in a report required by that
2 act or a report required by the Campaign Reporting Act is
3 guilty of a fourth degree felony and, if ~~[he]~~ the person is a
4 certified candidate, shall return to the fund all money
5 distributed to that candidate."

6 SECTION 11. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA
7 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as
8 amended) are repealed.

9 SECTION 12. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2017.