

SENATE BILL 4

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Peter Wirth

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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:

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"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:

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

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

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

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

D. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of supporting or opposing the nomination for election or election of a candidate for public office, including payment of a debt incurred in an election campaign and also including a coordinated expenditure, but "contribution" does not include:

(1) a qualifying contribution;

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(2) the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate; or

(3) the value of the incidental use of the candidate's personal property, home or business office for campaign purposes; SJC→provided that for each occurrence, the fair market value does not exceed fifty dollars (\$50.00);←SJC

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

(1) by a person other than a candidate or campaign committee;

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

(3) for the purpose of:

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

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

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ballot;

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

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

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

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

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

H.] I. "qualifying contribution" means a donation of five dollars (\$5.00) in the form of cash SJC→~~or a check or money order~~←SJC SJC→, a check, a money order or an electronic

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form of payment, as prescribed by the secretary, and←SJC

payable to the fund in support of an applicant candidate that is:

- (1) made by a [~~registered~~] voter who is eligible to vote for the covered office that the applicant candidate is seeking;
- (2) made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and
- (3) acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the bureau of elections and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the bureau of elections;

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

- (1) for [~~major party applicant candidates for covered offices~~] candidates who are seeking public financing for a primary election or for both a primary and a general election, the period beginning October 1 immediately preceding the election year and ending at 5:00 p.m. on the third Tuesday of March of the election year; and
- (2) for [~~independent and minor party~~] candidates who are seeking public financing only for a general election, the period beginning [~~February~~] January 1 of the election year and ending that year at 5:00 p.m. on the [~~filing~~

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~~date for independent or minor party candidates]~~ twenty-third
day following the primary election for the office for which the
candidate is running; and

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

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

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

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

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

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

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limits and all other requirements set forth in that act and rules issued by the secretary.

C. Except as provided in Subsection D of this section, a ~~[candidate]~~ person shall not be eligible to become an applicant candidate if the ~~[candidate]~~ person has accepted contributions totaling ~~[five hundred dollars (\$500) or more or made expenditures totaling five hundred dollars (\$500) or more between the beginning of the qualifying period and filing a declaration of intent]~~ more than one hundred dollars (\$100) from any one contributor during the election cycle in which the person is running for office.

D. A person who has accepted contributions of more than one hundred dollars (\$100) from any one contributor during the election cycle in which the person decides to run for a covered office is still eligible to become an applicant candidate if:

(1) the contributions were for a candidacy for an office other than a covered office and no money was raised for or expended on any campaign-related activity for a covered office during the time those contributions were made;

(2) the person does not solicit or accept contributions for a candidacy for an office other than a covered office or for the purpose of supporting or opposing a ballot measure or another candidate after the person declares candidacy for a covered office or becomes an applicant

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candidate;

(3) the person places all campaign account money that was collected before the person became an applicant candidate in a segregated bank account and does not transfer any money into or out of that account for the duration of the person's campaign for a covered office; and

(4) the person agrees that, if elected to the covered office, the person will transfer all money in the campaign account to the fund."

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

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

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

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

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

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

(4) complied with [~~seed money~~] contribution

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and expenditure restrictions; and

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

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

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

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

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

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

B. Money from the fund received by a candidate

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shall not be used for:

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

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

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

(4) an expenditure supporting the election of another candidate or the passage or defeat of a ballot proposition or the defeat of any candidate other than an opponent of the SJC→participating←SJC SJC→certified←SJC candidate SJC→; provided that a certified candidate may purchase joint advertisements or services with other certified candidates←SJC;

(5) payment of a fine levied by a court or the secretary; or

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

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

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~~[G.]~~ D. A certified candidate shall limit total campaign expenditures ~~[and debts]~~ to the amount of money distributed to that candidate from the fund, money received from a political party pursuant to Section 1-19A-8 NMSA 1978 and contributions collected pursuant to Section 8 of this 2019 act. A certified candidate shall not accept contributions ~~[or loans]~~ from any other source except the certified candidate's political party, as specified in Section 1-19A-8 NMSA 1978 and contributions collected pursuant to Section 8 of this 2019 act.

~~[D.]~~ E. A certified candidate who does not remain a candidate in the general election shall ~~[return to the secretary]~~, within thirty days after the primary election, ~~[any amount that is]~~ transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date of the primary election. ~~[for direct deposit into the fund.]~~

~~E.]~~ F. A certified candidate shall ~~[return to the secretary]~~, within thirty days after the general election, ~~[any amount that is]~~ transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date of the general

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election [~~for direct deposit into the fund~~].

G. If a certified candidate ceases to be a certified candidate for any reason, the previously certified candidate or candidate's campaign committee shall, within thirty days thereafter, transfer to the secretary for deposit in the fund any amount received from the fund, from a political party pursuant to Section 1-19A-8 NMSA 1978 or from private contributors pursuant to Section 8 of this 2019 act that remains unspent or unencumbered by the date the candidate ceases to be a certified candidate."

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

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

A. The secretary shall publish guidelines outlining permissible campaign-related expenditures and penalties for violations of the Voter Action Act by September 1, 2019.

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

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

D. Certified candidates shall report all

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contributions and expenditures according to the campaign reporting [~~requirements~~] schedule specified in the [Election Code].

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

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

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

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

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~~election~~] Campaign Reporting Act."

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

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

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

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

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

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

- (1) qualifying contributions that have been submitted to the secretary;
- (2) any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period for which the money was distributed;

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

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

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

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

(7) money appropriated by the legislature or as otherwise provided by law.

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

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

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

(2) one hundred thousand dollars (\$100,000) from utility and carrier inspection fees collected pursuant to

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Section 63-7-20 NMSA 1978."

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

"[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS.--

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

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

C. Total contributions from a qualified elector to a candidate shall not exceed one hundred dollars (\$100) per election cycle."

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

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

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

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B through HJC→~~F~~ ~~G~~←HJC of this section.

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

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

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

C. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office HJC→and that candidate's primary is contested←HJC, the amount of money to be distributed to a certified candidate is equal to [fifty] twenty percent of the amount specified in Subsection B of this section.

HJC→D. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office, but no primary for the office is contested, the amount of money to be distributed to a certified candidate is equal to the average of the amount each candidate would receive pursuant to

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Subsection B of this section.←HJC

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

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

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

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

HJC→F. G.←HJC Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be

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

HJC→~~G~~. H.←HJC If the allocation specified in Subsection HJC→~~F~~ G←HJC of this section is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates, specified in Subsections B through HJC→~~E~~ F←HJC of this section, shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.

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HJC→~~H.~~ ~~I.~~←HJC At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through HJC→~~E~~ ~~F~~←HJC of this section and shall [~~consider and account for inflation in the evaluations~~] increase the amounts by the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor.

HJC→~~I.~~ ~~J.~~←HJC No money shall be distributed to candidates in judicial retention elections [~~No money shall be distributed to judicial candidates in uncontested general elections; provided that if a general election race that is initially uncontested later becomes contested, the certified judicial candidate shall receive a distribution in accordance with Subsection D of this section~~], and except as provided in Subsections C HJC→~~and E~~←HJC HJC→, ~~D and F~~←HJC of this section, no money shall be distributed to a candidate in an uncontested election."

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

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

A. In addition to other penalties that may be applicable, a person who violates a provision of the Voter Action Act is subject to a civil penalty of up to ten thousand

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dollars (\$10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine [or] and transmit the finding to the attorney general for criminal prosecution pursuant to Subsection B of this section. In determining whether a certified candidate is in violation of the expenditure limits of that act, the secretary may consider as a mitigating factor any circumstances out of the candidate's control.

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

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

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.