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SENATE BILL 642

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO ELECTIONS; ENACTING THE JUDICIAL CAMPAIGN FUNDING ACT; PROVIDING FOR VOLUNTARY PUBLIC CAMPAIGN FINANCING OF NON-RETENTION ELECTIONS FOR THE NEW MEXICO SUPREME COURT AND COURT OF APPEALS; PRESCRIBING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- This act may be cited as the "Judicial Campaign Funding Act". "

Section 2. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS. -- As used in the Judicial Campaign Funding Act:

A. "applicant candidate" means a candidate who is

1 running for a covered office and who is seeking to be a  
2 certified candidate in a primary or general election;

3 B. "certified candidate" means a candidate running  
4 for a covered office who chooses to obtain financing pursuant  
5 to the Judicial Campaign Funding Act and who is certified as a  
6 Judicial Campaign Funding Act candidate;

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

10 D. "covered office" means justice of the supreme  
11 court or judge of the court of appeals;

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

20 F. "fund" means the judicial election fund;

21 G. "noncertified candidate" means either a  
22 candidate running for a covered office who does not choose to  
23 participate in the Judicial Campaign Funding Act and who is not  
24 seeking to be a certified candidate or a candidate who declares  
25 an intent to participate but who fails to qualify;

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

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

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

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

16           I. "qualifying period" means:

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

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

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1 J. "secretary" means the secretary of state or the  
2 office of the secretary of state;

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

6 L. "total vote" means the total number of votes  
7 cast in the last general election for all candidates for  
8 governor in the district in which the candidate is running. "

9 Section 3. A new section of the Election Code is enacted  
10 to read:

11 "[NEW MATERIAL] TERMS OF PARTICIPATION-- DECLARATION OF  
12 INTENT. --

13 A. A candidate choosing to obtain financing  
14 pursuant to the Judicial Campaign Funding Act shall first file  
15 with the secretary a declaration of intent to participate in  
16 that act as an applicant candidate for a stated covered office.  
17 The declaration of intent shall be filed with the secretary  
18 prior to or during the qualifying period according to forms and  
19 procedures developed by the secretary.

20 B. An applicant candidate choosing to participate  
21 in the Judicial Campaign Funding Act shall submit a declaration  
22 of intent prior to collecting any qualifying contributions and  
23 make explicit in the declaration that the candidate has  
24 complied with and will continue to comply with that act's  
25 contribution and expenditure limits and all other requirements

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1 set forth in that act and rules issued by the secretary.

2 C. A candidate shall not be eligible to become an  
3 applicant candidate if the candidate has accepted contributions  
4 totaling five hundred dollars (\$500) or more or made  
5 expenditures totaling five hundred dollars (\$500) or more  
6 between the beginning of the qualifying period and filing a  
7 declaration of intent. "

8 Section 4. A new section of the Election Code is enacted  
9 to read:

10 "[NEW MATERIAL] QUALIFYING CONTRIBUTIONS. -- Applicant  
11 candidates shall obtain qualifying contributions as follows:

12 A. the applicant candidate shall obtain qualifying  
13 contributions from that number of registered voters that is  
14 equal to at least one-tenth of one percent of the total vote;

15 B. applicant candidates may accept qualifying  
16 contributions from persons who become registered within the  
17 statutory time frame that would enable that person to vote in  
18 the primary election;

19 C. voters registered as independent are not  
20 excluded from making qualifying contributions, but shall be  
21 registered within the statutory time frame as independent; and

22 D. no payment, gift or anything of value shall be  
23 given in exchange for a qualifying contribution. "

24 Section 5. A new section of the Election Code is enacted  
25 to read:

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1           "[NEW MATERIAL] SEED MONEY. --

2           A. An applicant candidate may collect seed money  
3 from individual donors and political action committees in  
4 amounts of no more than one hundred dollars (\$100) per donor or  
5 committee. An applicant candidate may contribute an amount of  
6 seed money from the candidate's own funds up to the limits  
7 specified in Subsection H of this section.

8           B. An applicant candidate may collect and spend  
9 seed money during the sixty days immediately preceding the  
10 qualifying period and throughout the qualifying period.

11          C. An applicant candidate may not collect seed  
12 money from a corporation, association or partnership formed  
13 under state law or from labor organizations.

14          D. An applicant candidate may not collect or spend  
15 seed money for any purpose after certification and before the  
16 end of the election cycle for which the candidate was  
17 certified, but after the election cycle may carry forward to  
18 the next election cycle any unspent seed money to be used as  
19 seed money.

20          E. If a certified candidate is defeated or is  
21 elected and decides not to run again as an applicant candidate,  
22 any unspent seed money shall be forfeited to the fund.

23          F. After becoming an applicant candidate and prior  
24 to certification, an applicant candidate shall not accept  
25 contributions, except for seed money or qualifying

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1        contributions.

2                G.    An incumbent elected prior to 2008 who was not  
3        an applicant candidate when elected but declares the intent to  
4        become an applicant candidate in accordance with the Judicial  
5        Campaign Funding Act may transfer from the candidate's campaign  
6        fund for use as seed money up to the limits for contributions  
7        and expenditures specified in Subsection H of this section.

8                H.    An applicant candidate shall limit seed money  
9        contributions and expenditures to fifteen thousand dollars  
10       (\$15,000). "

11               Section 6.    A new section of the Election Code is enacted  
12        to read:

13                "[NEW MATERIAL] CERTIFICATION. --

14                A.    Upon receipt of a final submittal of qualifying  
15        contributions by an applicant candidate, the secretary shall  
16        determine whether the applicant candidate has:

17                        (1)    signed and filed a declaration of intent  
18        to obtain financing pursuant to the Judicial Campaign Funding  
19        Act in accordance with the requirements of that act;

20                        (2)    submitted the appropriate number of  
21        qualifying contributions;

22                        (3)    qualified as a candidate pursuant to other  
23        applicable state election law;

24                        (4)    complied with seed money contribution and  
25        expenditure restrictions; and

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1 (5) otherwise met the requirements for  
2 obtaining financing pursuant to the Judicial Campaign Funding  
3 Act.

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

9 C. A certified candidate shall comply with all  
10 requirements of the Judicial Campaign Funding Act after  
11 certification and throughout the primary election and general  
12 election cycles. A certified candidate who accepts public  
13 campaign finance funds for the primary election shall comply  
14 with all the requirements of the Judicial Campaign Funding Act  
15 for the remainder of the election cycle in question, even if  
16 the candidate decides not to accept such funds for the general  
17 election. "

18 Section 7. A new section of the Election Code is enacted  
19 to read:

20 "[NEW MATERIAL] GUIDELINES AND RESTRICTIONS FOR  
21 CONTRIBUTIONS TO AND EXPENDITURES OF CERTIFIED CANDIDATES. --

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

25 B. A certified candidate shall return to the fund



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1 any amount that is unspent or unencumbered at the time that  
2 person ceases to be a candidate before a primary or general  
3 election for which the fund money was distributed.

4 C. A certified candidate shall limit total campaign  
5 expenditures and debts to the amount of money distributed to  
6 that candidate from the fund. A certified candidate shall not  
7 accept contributions or loans from any other source except the  
8 candidate's political party, as specified in Section 8 of the  
9 Judicial Campaign Funding Act.

10 D. A certified candidate shall return to the  
11 secretary, within two weeks after the primary election, any  
12 amount that is unspent or unencumbered by the date of the  
13 primary election for direct deposit into the fund.

14 E. A certified candidate shall return to the  
15 secretary, within two weeks after the general election, any  
16 amount that is unspent or unencumbered by the date of the  
17 general election for direct deposit into the fund."

18 Section 8. A new section of the Election Code is enacted  
19 to read:

20 "[NEW MATERIAL] POLITICAL PARTY EXPENDITURES--  
21 CONTRIBUTIONS TO CERTIFIED CANDIDATES.--

22 A. A certified candidate may accept monetary or in-  
23 kind contributions from a political party; provided that the  
24 aggregate amount of such contributions from all political party  
25 committees combined does not exceed the equivalent of ten

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1 percent of the value of that candidate's aggregate public  
2 financing per election cycle.

3 B. All in-kind contributions from a political party  
4 distributed to certified candidates shall be used for campaign-  
5 related purposes.

6 C. Nothing in this section shall prevent political  
7 party funds from being used for general operating expenses of  
8 the party; conventions; nominating and endorsing candidates;  
9 identifying, researching and developing the party's position on  
10 issues; party platform activities; noncandidate-specific voter  
11 registration; noncandidate-specific get-out-the-vote drives;  
12 travel expenses for noncandidate party leaders and staff; and  
13 other noncandidate-specific party building activities. "

14 Section 9. A new section of the Election Code is enacted  
15 to read:

16 "[NEW MATERIAL] CANDIDATE REPORTING REQUIREMENTS. --

17 A. The secretary shall publish guidelines outlining  
18 permissible campaign-related expenditures.

19 B. Applicant candidates shall file a report listing  
20 seed money contributions and expenditures with their  
21 application for certification.

22 C. Applicant candidates shall file qualifying  
23 contributions with the secretary during the qualifying period  
24 according to procedures developed by the secretary. In  
25 developing these procedures, the secretary shall use existing

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1 campaign reporting procedures and deadlines whenever practical.

2 D. Certified candidates shall report expenditures  
3 according to the campaign reporting requirements specified in  
4 the Election Code.

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

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

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

24 (2) for the general election, by 5:00 p.m. the  
25 first Tuesday in October, by 5:00 p.m. on the eleventh day

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1 before the election and by 5:00 p.m. on the Thursday before the  
2 election. "

3 Section 10. A new section of the Election Code is enacted  
4 to read:

5 "[NEW MATERIAL] JUDICIAL ELECTION FUND-- CREATION-- USE. --

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

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

10 (2) paying administrative and enforcement  
11 costs of the Judicial Campaign Funding Act; and

12 (3) carrying out all other specified  
13 provisions of the Judicial Campaign Funding Act.

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

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

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

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

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1 which the money was distributed;

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

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

8 (5) unspent seed money that cannot be used for  
9 any other purpose; and

10 (6) money appropriated by the legislature.

11 D. The fund shall also be funded by voluntary  
12 contributions from attorneys and members of the public. Money  
13 in the fund is appropriated to the secretary to carry out the  
14 purposes of the Judicial Campaign Funding Act. "

15 Section 11. A new section of the Election Code is enacted  
16 to read:

17 "[NEW MATERIAL] DETERMINATION OF FUND AMOUNT. --

18 A. By January 1, 2009, and every two years  
19 thereafter, the secretary shall prepare and provide to the  
20 legislature a report documenting, evaluating and making  
21 recommendations relating to the administration, implementation  
22 and enforcement of the Judicial Campaign Funding Act.

23 B. In the report, the secretary shall set out the  
24 revenues received to date, the expected costs to the fund for  
25 the next election cycle and the amount of any annual

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1 appropriation from the legislature that will be required to  
2 meet this need. "

3 Section 12. A new section of the Election Code is enacted  
4 to read:

5 "[NEW MATERIAL] TIMING AND AMOUNT OF FUND DISTRIBUTION. --

6 A. Beginning with the election cycle that ends with  
7 the general election in 2008, the secretary shall distribute  
8 money from the fund to certified candidates.

9 B. For a primary election certified candidate in a  
10 contested election, the secretary shall distribute the twenty-  
11 five thousand dollars (\$25,000) to that certified candidate  
12 within one week of certification.

13 C. For a general election certified candidate in a  
14 contested election, the secretary shall distribute one hundred  
15 thousand dollars (\$100,000) to that candidate within one week  
16 after the primary election or, for a minor party or independent  
17 candidate, within one week after certification of the  
18 candidate.

19 D. For a primary election certified candidate in an  
20 uncontested primary election, but who will face an opponent in  
21 the general election who is competing in a contested primary  
22 election, ten thousand dollars (\$10,000) shall be distributed  
23 to that certified candidate within one week after  
24 certification.

25 E. For retention elections and all other

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1 uncontested races, no money shall be distributed to the  
2 candidates. "

3 Section 13. A new section of the Election Code is enacted  
4 to read:

5 "[NEW MATERIAL] ADJUSTMENTS TO FUND DISTRIBUTION. --

6 A. Once the certification for candidates for the  
7 primary election has been completed, the secretary shall  
8 calculate the total amount of money to be distributed in the  
9 primary election cycle, based on the number of certified  
10 candidates and the allocations specified in Section 12 of the  
11 Judicial Campaign Funding Act. The secretary shall increase  
12 the total amount by twenty percent to provide funds for  
13 additional matching funds in the primary election. The  
14 secretary shall also prepare an estimate of the total amount of  
15 money that may be distributed in the general election cycle.  
16 This estimate shall be increased by twenty percent to provide  
17 funds for additional matching funds in the general election.  
18 If the total amount to be distributed in the primary election  
19 cycle, plus the added twenty percent and the estimated total  
20 amount to be distributed in the general election cycle, plus  
21 the added twenty percent, all taken together, exceed the amount  
22 expected to be available in the fund, the secretary shall  
23 allocate the amount available between the primary and general  
24 election cycles. This allocation shall be based on the ratio  
25 of the two total amounts.

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1           B. If the allocation specified in Subsection A of  
2 this section is greater than the total amount available for  
3 distribution, then the amounts to be distributed to individual  
4 candidates shall each be reduced by the same percentage as the  
5 reduction by which the total amount needed has been reduced  
6 relative to the total amount available. "

7           Section 14. A new section of the Election Code is enacted  
8 to read:

9           "[NEW MATERIAL] MATCHING FUNDS. --When a noncertified  
10 candidate has one or more opponents who are certified  
11 candidates and the noncertified candidate's campaign finance  
12 report or group of reports shows that the sum of the  
13 noncertified candidate's expenditures and obligations made, or  
14 funds raised or borrowed, whichever is greater, alone or in  
15 conjunction with expenditures made independently of the  
16 candidate to influence the election on behalf of the candidate,  
17 exceeds the amount distributed to the certified candidate, the  
18 secretary shall issue immediately to any opposing certified  
19 candidate an additional amount equivalent to the excess amount  
20 reported by the nonparticipating opposing candidate. Total  
21 matching funds to a certified candidate in an election are  
22 limited to twice the amount originally distributed to that  
23 candidate pursuant to Section 13 of the Judicial Campaign  
24 Funding Act. "

25           Section 15. A new section of the Election Code is enacted

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1 to read:

2 " [NEW MATERIAL] ADMINISTRATION-- SECRETARY-- DUTIES. --

3 A. The secretary shall adopt rules to ensure  
4 effective administration of the Judicial Campaign Funding Act.

5 B. The rules shall include procedures for:

6 (1) qualifications, certification and  
7 disbursement of revenues and return of unspent fund revenues;

8 (2) obtaining qualifying contributions;

9 (3) certification of candidates;

10 (4) collection of revenues; and

11 (5) return of fund disbursements and other  
12 money to the fund. "

13 Section 16. A new section of the Election Code is enacted  
14 to read:

15 " [NEW MATERIAL] APPEALS. -- The procedure for challenging a  
16 certification decision by the secretary is as follows:

17 A. a person aggrieved by a certification decision  
18 or a decision regarding the distribution of matching funds may  
19 appeal to the secretary within three days of the decision. The  
20 appeal shall be in writing and shall set forth the reasons for  
21 appeal;

22 B. within five days after an appeal is properly  
23 made, and after due notice is given to the parties in dispute,  
24 the secretary shall hold a hearing whereby:

25 (1) the appellant has the burden of providing

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1 evidence to demonstrate that the secretary's decision was  
2 improper; and

3 (2) the secretary shall rule on the appeal  
4 within three days after the completion of the hearing;

5 C. the parties in dispute may appeal the decision  
6 of the secretary by commencing an action in district court; and

7 D. certified candidates whose certification is  
8 revoked on appeal shall return to the secretary any unspent  
9 money distributed from the fund. If the secretary or court  
10 finds that an appeal was made frivolously or to result in delay  
11 or hardship, the secretary or court may sanction the moving  
12 party by requiring the party to pay costs of the administrative  
13 hearing, the court hearing and the opposing parties. "

14 Section 17. A new section of the Election Code is enacted  
15 to read:

16 "[NEW MATERIAL] PENALTIES. --

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

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1 impose a fine or transmit the finding to the attorney general  
2 for prosecution. In determining whether a certified candidate  
3 is in violation of the expenditure limits of the Judicial  
4 Campaign Funding Act, the secretary may consider as a  
5 mitigating factor any circumstances out of the candidate's  
6 control.

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

13 Section 18. SEVERABILITY.--If any part or application of  
14 the Judicial Campaign Funding Act is held invalid, the  
15 remainder or its application to other situations or persons  
16 shall not be affected.

17 Section 19. APPROPRIATION.--Fifty thousand dollars  
18 (\$50,000) is appropriated from the general fund to the judicial  
19 election fund for expenditure in fiscal year 2006 and  
20 subsequent fiscal years to carry out the purposes of the  
21 Judicial Campaign Funding Act. Any unexpended or unencumbered  
22 balance remaining at the end of a fiscal year shall not revert  
23 to the general fund.