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SENATE BILL 58

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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 AMOUNTS; PROHIBITING 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 a campaign
24 expenditure by a person other than a candidate's campaign that
25 is made at the direction or request of, or in cooperation,

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1 consultation or concert with, that candidate's campaign or any
2 agent or representative of that candidate's campaign;

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

6 [E-] G. "election cycle" means the primary and
7 general elections for the same term of the same covered office,
8 beginning on the day after the last general election for the
9 office and ending with the general election; the primary
10 election cycle begins on the first day of the election cycle
11 and ends on the day of the primary election; the general
12 election begins on the day after the primary election and ends
13 on the day of the general election;

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

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

20 [H-] I. "qualifying contribution" means a donation
21 of five dollars (\$5.00) in the form of cash or a check or money
22 order payable to the fund in support of an applicant candidate
23 that is:

24 (1) made by a [registered] voter who is
25 eligible to vote for the covered office that the applicant

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1 candidate is seeking;

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

5 (3) acknowledged by a receipt that identifies
6 the contributor's name and residential address on forms
7 provided by the bureau of elections and that is signed by the
8 contributor, one copy of which is attached to the list of
9 contributors and sent to the bureau of elections;

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

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

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

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

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

25 SECTION 3. Section 1-19A-3 NMSA 1978 (being Laws 2003,

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1 Chapter 14, Section 3) is amended to read:

2 "1-19A-3. TERMS OF PARTICIPATION--DECLARATION OF
3 INTENT.--

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

11 B. To become an applicant candidate ~~[choosing to]~~
12 and participate in the Voter Action Act, a person shall submit
13 a declaration of intent prior to collecting any qualifying
14 contributions or other contributions and make explicit in the
15 declaration that the candidate has complied with and will
16 continue to comply with that act's contribution and expenditure
17 limits and all other requirements set forth in that act and
18 rules issued by the secretary.

19 C. A ~~[candidate]~~ person shall not be eligible to
20 become an applicant candidate if the ~~[candidate]~~ person has
21 accepted contributions totaling ~~[five hundred dollars (\$500) or~~
22 ~~more or made expenditures totaling five hundred dollars (\$500)~~
23 ~~or more between the beginning of the qualifying period and~~
24 ~~filing a declaration of intent]~~ more than one hundred dollars
25 (\$100), excluding any qualifying contributions, from any one

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1 contributor during the election cycle in which the person is
2 running for office."

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

5 "1-19A-6. CERTIFICATION.--

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

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

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

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

18 (4) complied with [~~seed money~~] contribution
19 and expenditure restrictions; and

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

22 B. The secretary shall certify applicant candidates
23 complying with the requirements of this section as certified
24 candidates as soon as possible and no later than ten days after
25 final submittal of qualifying contributions and certification

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1 as a candidate pursuant to other applicable state election law.

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

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

12 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
13 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

14 A. All money distributed to a certified candidate
15 shall be used for that candidate's campaign-related purposes in
16 the election ~~[cycle]~~ in which the money was distributed. Money
17 received from the fund shall not be used for any other purpose,
18 including:

19 (1) the candidate's personal living expenses
20 or compensation to the candidate or the candidate's family;

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

24 (3) a contribution to the campaign of another
25 candidate or to a political party or political committee or to

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1 a campaign supporting or opposing a ballot proposition;

2 (4) an expenditure supporting the election of
3 another candidate or the passage or defeat of a ballot
4 proposition or the defeat of any candidate other than an
5 opponent of the participating candidate;

6 (5) payment of legal expenses or any fine
7 levied by a court or the secretary of state; or

8 (6) any gift or transfer for which
9 compensating value is not received.

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

14 C. A certified candidate shall limit total campaign
15 expenditures and debts to the amount of money distributed to
16 that candidate from the fund, money received from a political
17 party pursuant to Section 1-19A-8 NMSA 1978 and contributions
18 collected pursuant to Section 8 of this 2015 act. A certified
19 candidate shall not accept contributions or loans from any
20 other source except the certified candidate's political party,
21 as specified in Section 1-19A-8 NMSA 1978 and contributions
22 collected pursuant to Section 8 of this 2015 act.

23 D. A certified candidate that does not remain a
24 candidate in the general election shall [~~return to the~~
25 ~~secretary~~], within thirty days after the primary election, [~~any~~

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1 ~~amount that is~~] transfer to the secretary for deposit in the
2 fund any amount received from the fund, from a political party
3 pursuant to Section 1-19A-8 NMSA 1978 or from private
4 contributors pursuant to Section 8 of this 2015 act that
5 remains unspent or unencumbered by the date of the primary
6 election [~~for direct deposit into the fund~~].

7 E. A certified candidate shall [~~return to the~~
8 ~~secretary~~], within thirty days after the general election, [~~any~~
9 ~~amount that is~~] transfer to the secretary for deposit in the
10 fund any amount received from the fund, from a political party
11 pursuant to Section 1-19A-8 NMSA 1978 or from private
12 contributors pursuant to Section 8 of this 2015 act that
13 remains unspent or unencumbered by the date of the general
14 election [~~for direct deposit into the fund~~].

15 F. If a certified candidate withdraws his or her
16 candidacy or otherwise ceases to be a certified candidate, the
17 candidate shall, within thirty days thereafter, transfer to the
18 secretary for deposit in the fund any amount received from the
19 fund, from a political party pursuant to Section 1-19A-8 NMSA
20 1978 or from private contributors pursuant to Section 8 of this
21 2015 act that remains unspent or unencumbered by the date
22 the candidate withdraws or otherwise ceases to be a certified
23 candidate."

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

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

2 A. The secretary shall publish guidelines outlining
3 permissible campaign-related expenditures and penalties for
4 violations of the Voter Action Act by January 1, 2016.

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

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

13 D. Certified candidates shall report all
14 contributions and expenditures according to the campaign
15 reporting [~~requirements~~] schedule specified in the [~~Election~~
16 ~~Code.~~

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

25 ~~F. A person or political committee that makes~~

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

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

11 ~~(2) for the general election, by 5:00 p.m. the~~
12 ~~first Tuesday in October, by 5:00 p.m. on the eleventh day~~
13 ~~before the election and by 5:00 p.m. on the Thursday before the~~
14 ~~election] Campaign Reporting Act. In addition, to receive~~
15 ~~matching fund distributions, certified candidates may file~~
16 ~~matching fund contribution reports in accordance with Section~~
17 ~~1-19A-14 NMSA 1978. Each matching fund contribution report~~
18 ~~need only list the contributions received and not previously~~
19 ~~reported by a candidate since the candidate's last matching~~
20 ~~fund contribution report, along with each contributor's~~
21 ~~identification information."~~

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

24 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

25 A. There is created in the state treasury the

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1 "public election fund" solely for the purposes of:

2 (1) financing the election campaigns of
3 certified candidates for covered offices;

4 (2) paying administrative and enforcement
5 costs of the Voter Action Act; and

6 (3) carrying out all other specified
7 provisions of the Voter Action Act.

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

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

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

17 (2) any recurring balance of unspent fund
18 money distributed to a certified candidate who does not remain
19 a candidate through the primary or general election period for
20 which the money was distributed;

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

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

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1 election;

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

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

7 (7) money appropriated by the legislature.

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

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

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

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

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

23 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON
24 COORDINATED EXPENDITURES--EXCEPTION.--

25 A. An applicant candidate may collect contributions

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1 during the sixty days immediately preceding the qualifying
2 period and throughout the qualifying period from qualified
3 electors registered to vote in the candidate's district. An
4 applicant candidate shall not accept contributions from any
5 other source.

6 B. A certified candidate may collect contributions
7 from qualified electors registered to vote in the candidate's
8 district. A certified candidate shall not accept contributions
9 from any other source except as allowed pursuant to Section
10 1-19A-8 NMSA 1978.

11 C. Total contributions from a qualified elector to
12 a candidate may not exceed one hundred dollars (\$100) per
13 election cycle, excluding the amount of any qualifying
14 contribution given by the qualified elector to the candidate."

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

17 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

24 B. For contested primary 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 of the
4 candidate's party in the district of the office for which the
5 candidate is running; and

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

9 C. For uncontested primary elections, [~~the amount~~
10 ~~of~~] no money [~~to~~] shall be distributed to a certified candidate
11 [~~is equal to fifty percent of the amount specified in~~
12 ~~Subsection B of this section~~].

13 D. For contested general elections, the amount of
14 money to be distributed to a certified candidate is equal to
15 the following:

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

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

22 E. For uncontested general elections, [~~except as~~
23 ~~provided in Subsection I of this section, the amount of~~] no
24 money [~~to~~] shall be distributed to a certified candidate [~~is~~
25 ~~equal to fifty percent of the amount specified in Subsection D~~

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1 ~~of this section]~~. If a general election race that is initially
2 uncontested later becomes contested ~~[because of the~~
3 ~~qualification of an independent or minor party candidate to~~
4 ~~appear on the ballot for that race]~~, an [additional] amount of
5 money shall be distributed to the certified candidate to make
6 that candidate's total distribution amount equal to the amount
7 distributed pursuant to Subsection D of this section.

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

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1 be based on the ratio of the two total amounts.

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

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

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

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

23 "1-19A-14. MATCHING FUNDS.--~~[When a certified or~~
24 ~~noncertified candidate has one or more opponents who are~~
25 ~~certified candidates and the candidate's campaign finance~~

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

13 A. After the initial distribution pursuant to
14 Section 1-19A-13 NMSA 1978, the secretary shall distribute
15 matching funds from the fund to a certified candidate in an
16 amount equal to four times the amount of contributions that the
17 candidate collected as an applicant candidate and as a
18 certified candidate, subject to the limitation in Subsection B
19 of this section. Matching funds shall be distributed within
20 three days after the certified candidate has filed a matching
21 fund contribution report with the secretary of state that
22 indicates that the candidate has collected contributions in
23 accordance with the provisions of Section 8 of this 2015 act;
24 provided that a certified candidate may only file such reports
25 on the first Monday of February, April, May, July, September

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1 and October and the third Monday of May and October of the
2 election year.

3 B. The amount of all public money distributed to a
4 certified candidate in an election is limited to three times
5 the amount of the initial distribution allowed for that
6 candidate pursuant to Section 1-19A-13 NMSA 1978.

7 C. No matching funds shall be distributed to a
8 candidate in an uncontested election."

9 SECTION 11. Section 1-19A-17 NMSA 1978 (being Laws 2003,
10 Chapter 14, Section 17) is amended to read:

11 "1-19A-17. PENALTIES.--

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

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B. A person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the secretary or knowingly makes a false statement in a report required by that act, including reports required by the Campaign Reporting 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 12. REPEAL.--Section 1-19A-5 NMSA 1978 (being Laws 2003, Chapter 14, Section 5, as amended) is repealed.