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HOUSE BILL 208

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO PUBLIC FINANCING OF ELECTIONS; INCLUDING CANDIDATES FOR THE LEGISLATURE IN THE VOTER ACTION ACT; 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,

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1 Chapter 14, Section 2, as amended) is amended to read:

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

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

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

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

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

24 E. "coordinated expenditure" means a campaign  
25 expenditure by a person other than a candidate's campaign that

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1 is made at the direction or request of, or in cooperation,  
2 consultation or concert with, that candidate's campaign or any  
3 agent or representative of that candidate's campaign;

4 [D.] F. "covered office" means any office of the  
5 judicial department subject to statewide elections, office of a  
6 state legislator and the office of public regulation  
7 commissioner;

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

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

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

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

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

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

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

12 ~~[I.]~~ J. "qualifying period" means:

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

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

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

24 ~~K. "seed money" means a contribution raised for the~~  
25 ~~primary purpose of enabling applicant candidates to collect~~

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1 ~~qualifying contributions and petition signatures]."~~

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

4 "1-19A-3. TERMS OF PARTICIPATION--DECLARATION OF  
5 INTENT.--

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

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

21 C. A ~~[candidate]~~ person shall not be eligible to  
22 become an applicant candidate if the ~~[candidate]~~ person has  
23 accepted contributions totaling ~~[five hundred dollars (\$500) or~~  
24 ~~more or made expenditures totaling five hundred dollars (\$500)~~  
25 ~~or more between the beginning of the qualifying period and~~

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1 ~~filing a declaration of intent~~ more than one hundred dollars  
2 (\$100), excluding any qualifying contributions, from any one  
3 contributor during the election cycle in which the person is  
4 running for office."

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

7 "1-19A-4. QUALIFYING CONTRIBUTIONS.--

8 A. Applicant candidates shall obtain qualifying  
9 contributions as follows:

10 (1) for all statewide judicial elective  
11 offices, the number of qualifying contributions equal to one-  
12 tenth of one percent of the number of voters in the state;  
13 [~~and~~]

14 (2) for the office of public regulation  
15 commissioner, the number of qualifying contributions equal to  
16 one-tenth of one percent of the number of voters in the  
17 district of the office for which the candidate is running; and

18 (3) for the office of state legislator, the  
19 number of qualifying contributions equal to one percent of the  
20 number of voters in the district of the office for which the  
21 candidate is running.

22 B. Applicant candidates may accept qualifying  
23 contributions from persons who become registered within the  
24 statutory time frame that would enable that person to vote in  
25 the primary election.

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1 C. Voters registered as independent are not  
2 excluded from making qualifying contributions but shall be  
3 registered within the statutory time frame as independent.

4 D. No payment, gift or anything of value shall be  
5 given in exchange for a qualifying contribution."

6 SECTION 5. Section 1-19A-6 NMSA 1978 (being Laws 2003,  
7 Chapter 14, Section 6) is amended to read:

8 "1-19A-6. CERTIFICATION.--

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

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

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

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

21 (4) complied with [~~seed money~~] contribution  
22 and expenditure restrictions; and

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

25 B. The secretary shall certify applicant candidates

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1 complying with the requirements of this section as certified  
2 candidates as soon as possible and no later than ten days after  
3 final submittal of qualifying contributions and certification  
4 as a candidate pursuant to other applicable state election law.

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

13 SECTION 6. Section 1-19A-7 NMSA 1978 (being Laws 2003,  
14 Chapter 14, Section 7, as amended) is amended to read:

15 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS  
16 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

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

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

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

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

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

7                   (4) an expenditure supporting the election of  
8 another candidate or the passage or defeat of a ballot  
9 proposition or the defeat of any candidate other than an  
10 opponent of the participating candidate;

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

13                   (6) any gift or transfer for which  
14 compensating value is not received.

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

19                   ~~[G-]~~ D. A certified candidate shall limit total  
20 campaign expenditures and debts to the amount of money  
21 distributed to that candidate from the fund, money received  
22 from a political party pursuant to Section 1-19A-8 NMSA 1978  
23 and contributions collected pursuant to Section 9 of this 2016  
24 act. A certified candidate shall not accept contributions or  
25 loans from any other source except the certified candidate's

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1 political party, as specified in Section 1-19A-8 NMSA 1978 and  
2 contributions collected pursuant to Section 9 of this 2016 act.

3 ~~[D.]~~ E. A certified candidate that does not remain  
4 a candidate in the general election shall ~~[return to the~~  
5 ~~secretary]~~, within thirty days after the primary election, ~~[any~~  
6 ~~amount that is]~~ transfer to the secretary for deposit in the  
7 fund any amount received from the fund, from a political party  
8 pursuant to Section 1-19A-8 NMSA 1978 or from private  
9 contributors pursuant to Section 9 of this 2016 act that  
10 remains unspent or unencumbered by the date of the primary  
11 election. ~~[for direct deposit into the fund.~~

12 ~~E.]~~ F. A certified candidate shall ~~[return to the~~  
13 ~~secretary]~~, within thirty days after the general election, ~~[any~~  
14 ~~amount that is]~~ transfer to the secretary for deposit in the  
15 fund any amount received from the fund, from a political party  
16 pursuant to Section 1-19A-8 NMSA 1978 or from private  
17 contributors pursuant to Section 9 of this 2016 act that  
18 remains unspent or unencumbered by the date of the general  
19 election ~~[for direct deposit into the fund].~~

20 G. If a certified candidate withdraws or otherwise  
21 ceases to be a certified candidate, the candidate shall, within  
22 thirty days thereafter, transfer to the secretary for deposit  
23 in the fund any amount received from the fund, from a political  
24 party pursuant to Section 1-19A-8 NMSA 1978 or from private  
25 contributors pursuant to Section 9 of this 2016 act that

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1 remains unspent or unencumbered by the date the candidate  
2 withdraws or otherwise ceases to be a certified candidate."

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

5 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

6 A. The secretary shall publish guidelines outlining  
7 permissible campaign-related expenditures and penalties for  
8 violations of the Voter Action Act by January 1, 2017.

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

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

17 D. Certified candidates shall report all  
18 contributions and expenditures according to the campaign  
19 reporting [~~requirements~~] schedule specified in the [~~Election~~  
20 ~~Code.~~

21 ~~E. In addition to the campaign contribution and~~  
22 ~~expenditure reports specified in the Election Code, all~~  
23 ~~noncertified candidates who have as an opponent a certified~~  
24 ~~candidate shall report to the secretary ten days before the~~  
25 ~~primary and general elections the amount of money spent by that~~

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1 ~~noncertified candidate. This report shall include all~~  
2 ~~previously unreported transactions through 5:00 p.m. two days~~  
3 ~~before the report is due.~~

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

11 ~~(1) for the primary election, by 5:00 p.m. on~~  
12 ~~the second Monday in May, 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; and~~

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

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

21 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

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

24 (1) financing the election campaigns of  
25 certified candidates for covered offices;

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

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

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

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

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

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

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

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

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

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

4 (7) money appropriated by the legislature.

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

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

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

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

18 SECTION 9. A new section of the Voter Action Act is  
19 enacted to read:

20 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON  
21 COORDINATED EXPENDITURES--EXCEPTION.--

22 A. An applicant candidate may collect contributions  
23 during the sixty days immediately preceding the qualifying  
24 period and throughout the qualifying period from qualified  
25 electors registered to vote in the candidate's district. An

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1 applicant candidate shall not accept contributions from any  
2 other source.

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

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

12 SECTION 10. Section 1-19A-13 NMSA 1978 (being Laws 2003,  
13 Chapter 14, Section 13, as amended) is amended to read:

14 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

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

24 (1) for the office of public regulation  
25 commissioner, twenty-five cents (\$.25) for each voter of the

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1 candidate's party in the district of the office for which the  
2 candidate is running; ~~and~~

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

6 (3) for the office of a state legislator, one  
7 dollar (\$1.00) for each voter of the candidate's party in the  
8 candidate's legislative district.

9 C. For uncontested primary elections, the amount of  
10 money to be distributed to a certified candidate is equal to  
11 [~~fifty~~] ten percent of the amount specified in Subsection B of  
12 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;  
19 ~~and~~

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

23 (3) for the office of a state legislator, one  
24 dollar (\$1.00) for each voter in the candidate's legislative  
25 district.

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

12           F. Once the certification for candidates for the  
13 primary election has been completed, the secretary shall  
14 calculate the total amount of money to be distributed in the  
15 primary election cycle, based on the number of certified  
16 candidates and the allocations specified in this section. [~~The~~  
17 ~~secretary shall increase the total amount by twenty percent to~~  
18 ~~provide funds for additional matching funds in the primary~~  
19 ~~election.~~] The secretary shall also prepare an estimate of the  
20 total amount of money that might be distributed in the general  
21 election cycle. [~~This estimate shall be increased by twenty~~  
22 ~~percent to provide funds for additional matching funds in the~~  
23 ~~general election.~~] If the total amount to be distributed in the  
24 primary election cycle [~~plus the added twenty percent~~] and the  
25 estimated total amount to be distributed in the general

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1 election cycle [~~plus the added twenty percent, all~~] taken  
2 together exceed the amount expected to be available in the  
3 fund, the secretary shall allocate the amount available between  
4 the primary and general election cycles. This allocation shall  
5 be based on the ratio of the two total amounts.

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

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

18 I. No money shall be distributed to candidates in  
19 judicial retention elections. No money shall be distributed to  
20 judicial candidates in uncontested general elections; provided  
21 that if a general election race that is initially uncontested  
22 later becomes contested, the certified judicial candidate shall  
23 receive a distribution in accordance with Subsection D of this  
24 section."

25 SECTION 11. Section 1-19A-17 NMSA 1978 (being Laws 2003,

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1 Chapter 14, Section 17) is amended to read:

2 "1-19A-17. PENALTIES.--

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

17 B. A person who willfully or knowingly violates the  
18 provisions of the Voter Action Act or rules of the secretary or  
19 knowingly makes a false statement in a report required by that  
20 act or a report required by the Campaign Reporting Act is  
21 guilty of a fourth degree felony and, if ~~[he]~~ the person is a  
22 certified candidate, shall return to the fund all money  
23 distributed to that candidate."

24 SECTION 12. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA  
25 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as

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1 amended) are repealed.

2 SECTION 13. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is November 9, 2016.

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