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SENATE BILL 4

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

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO PUBLIC FINANCING OF ELECTIONS; REMOVING SEED MONEY REQUIREMENTS; ALLOWING CERTAIN CONTRIBUTIONS; DEFINING TERMS; CHANGING DISTRIBUTION AND MATCHING FUND PROVISIONS; LIMITING DISTRIBUTION OF FUNDS TO CANDIDATES IN UNCONTESTED RACES; CLARIFYING PENALTY PROVISIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE VOTER ACTION ACT.

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

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

"1-19A-1. SHORT TITLE.--~~[Sections 1 through 17 of this act]~~ Chapter 1, Article 19A NMSA 1978 may be cited as the "Voter Action Act"."

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

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

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

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

9 C. [~~"contested election"~~] "contested" means [~~an~~
10 ~~election in which~~] there are more candidates for a position
11 than the number to be 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:

20 (1) a qualifying contribution;

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

25 (3) the value of the incidental use of the

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

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

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

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

13 (3) for the purpose of:

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

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

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

25 ~~[E. "election cycle" means the primary and general~~

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1 ~~elections for the same term of the same covered office,~~
2 ~~beginning on the day after the last general election for the~~
3 ~~office and ending with the general election. The primary~~
4 ~~election cycle begins on the first day of the election cycle~~
5 ~~and ends on the day of the primary election. The general~~
6 ~~election begins on the day after the primary election and ends~~
7 ~~on the day of the general election;]~~

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

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

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

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

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

25 (2) made during the designated qualifying

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1 period and obtained through efforts made with the knowledge and
2 approval of the applicant candidate; and

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

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

9 (1) for [~~major party applicant candidates for~~
10 ~~covered offices~~] candidates who are seeking public financing
11 for a primary election or for both a primary and a general
12 election, the period beginning October 1 immediately preceding
13 the election year and ending at 5:00 p.m. on the third Tuesday
14 of March of the election year; and

15 (2) for [~~independent and minor party~~]
16 candidates who are seeking public financing only for a general
17 election, the period beginning [~~February~~] January 1 of the
18 election year and ending that year at 5:00 p.m. on the [~~filing~~
19 ~~date for independent or minor party candidates~~] twenty-third
20 day following the primary election for the office for which the
21 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. Except as provided in Subsection D of this
22 section, a ~~[candidate]~~ person shall not be eligible to become
23 an applicant candidate if the ~~[candidate]~~ person has accepted
24 contributions totaling ~~[five hundred dollars (\$500) or more or~~
25 ~~made expenditures totaling five hundred dollars (\$500) or more~~

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

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

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

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

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

25 (4) the person agrees that, if elected to the

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1 covered office, the person will transfer all money in the
2 campaign account to the fund."

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~~] met the qualifications to
17 be a 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 only for that candidate's campaign-related
16 purposes in the election ~~[cycle]~~ in which the money was
17 distributed.

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

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

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

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

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

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

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

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

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

25 [~~D-~~] E. A certified candidate who does not remain a

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

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

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

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

3 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

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

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

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

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

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

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1 ~~before the report is due.~~

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

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

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

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

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

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

22 (1) financing the election campaigns of
23 certified candidates for covered offices;

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

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

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

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

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

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

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

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

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

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

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1 and

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

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

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

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

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

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

19 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS.--

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

25 B. A certified candidate may collect contributions

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

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

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

10 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

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

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

24 (2) for the office of justice of the supreme
25 court and judge of the court of appeals, fifteen cents (\$.15)

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1 for each voter of the candidate's party in the state.

2 C. For uncontested primary elections in which
3 another candidate has filed a declaration of candidacy for
4 nomination in another party's primary for the same office, the
5 amount of money to be distributed to a certified candidate is
6 equal to [~~fifty~~] twenty percent of the amount specified in
7 Subsection B of this section.

8 D. For contested general elections, the amount of
9 money to be distributed to a certified candidate is equal to
10 the following:

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

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

17 E. [~~For uncontested general elections, except as~~
18 ~~provided in Subsection I of this section, the amount of money~~
19 ~~to be distributed to a certified candidate is equal to fifty~~
20 ~~percent of the amount specified in Subsection D of this~~
21 ~~section.~~] If a general election race that is initially
22 uncontested later becomes contested because of the
23 qualification of an independent or minor party candidate to
24 appear on the ballot for that race, an [~~additional~~] amount of
25 money shall be distributed to the certified candidate to make

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1 that candidate's ~~[total]~~ distribution amount equal to the
2 amount distributed pursuant to Subsection D of this section.

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

22 G. If the allocation specified in Subsection F of
23 this section is greater than the total amount available for
24 distribution, then the amounts to be distributed to individual
25 candidates, specified in Subsections B through E of this

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1 section, shall each be reduced by the same percentage as the
2 reduction by which the total amount needed has been reduced
3 relative to the total amount available.

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

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

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

23 "1-19A-17. PENALTIES.--

24 A. In addition to other penalties that may be
25 applicable, a person who violates a provision of the Voter

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

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

19 SECTION 11. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA
20 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as
21 amended) are repealed.

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