

1 SENATE BILL 289

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO PUBLIC FINANCING OF ELECTIONS; INCLUDING CANDIDATES
12 FOR THE LEGISLATURE IN THE VOTER ACTION ACT; REMOVING SEED
13 MONEY REQUIREMENTS; ALLOWING CERTAIN CONTRIBUTIONS; DEFINING
14 TERMS; CHANGING DISTRIBUTION AND MATCHING FUND AMOUNTS;
15 PROHIBITING DISTRIBUTION OF FUNDS TO CANDIDATES IN UNCONTESTED
16 RACES; CLARIFYING PENALTY PROVISIONS; AMENDING, REPEALING AND
17 ENACTING SECTIONS OF THE VOTER ACTION ACT.

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

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

22 "1-19A-1. SHORT TITLE.--~~[Sections 1 through 17 of this~~
23 ~~act]~~ Chapter 1, Article 19A NMSA 1978 may be cited as the
24 "Voter Action Act"."

25 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-6 NMSA 1978 (being Laws 2003,
6 Chapter 14, Section 6) is amended to read:

7 "1-19A-6. CERTIFICATION.--

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

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

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

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

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

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

24 B. The secretary shall certify applicant candidates
25 complying with the requirements of this section as certified

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1 candidates as soon as possible and no later than ten days after
2 final submittal of qualifying contributions and certification
3 as a candidate pursuant to other applicable state election law.

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

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

14 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
15 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

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

21 (1) the candidate's personal living expenses
22 or compensation to the candidate or the candidate's family;

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 legal expenses or any fine
9 levied by a court or the secretary of state; or

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

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

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

25 D. A certified candidate that 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 2015 act that
7 remains unspent or unencumbered by the date of the primary
8 election [~~for direct deposit into the fund~~].

9 E. 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 2015 act that
15 remains unspent or unencumbered by the date of the general
16 election [~~for direct deposit into the fund~~].

17 F. If a certified candidate withdraws his or her
18 candidacy or otherwise ceases to be a certified candidate, the
19 candidate shall, within thirty days thereafter, transfer to the
20 secretary for deposit in the fund any amount received from the
21 fund, from a political party pursuant to Section 1-19A-8 NMSA
22 1978 or from private contributors pursuant to Section 8 of this
23 2015 act that remains unspent or unencumbered by the date
24 the candidate withdraws or otherwise ceases to be a certified
25 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 January 1, 2016.

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. In addition, to receive~~
17 ~~matching fund distributions, certified candidates may file~~
18 ~~matching fund contribution reports in accordance with Section~~
19 ~~1-19A-14 NMSA 1978. Each matching fund contribution report~~
20 ~~need only list the contributions received and not previously~~
21 ~~reported by a candidate since the candidate's last matching~~
22 ~~fund contribution report, along with each contributor's~~
23 ~~identification information."~~

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

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

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

4 (1) financing the election campaigns of
5 certified candidates for covered offices;

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

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

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

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

17 (1) qualifying contributions that have been
18 submitted to the secretary;

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

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

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

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

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

9 (7) money appropriated by the legislature.

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

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

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

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

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

25 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON

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1 COORDINATED EXPENDITURES--EXCEPTION.--

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

8 B. A certified candidate may collect contributions
9 from qualified electors registered to vote in the candidate's
10 district. A certified candidate shall not accept contributions
11 from any other source except as allowed pursuant to Section
12 1-19A-8 NMSA 1978.

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

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

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

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

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

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

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

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

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

18 D. For contested general elections, the amount of
19 money to be distributed to a certified candidate is equal to
20 the following:

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

25 (2) for the office of justice of the supreme

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

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

6 E. For uncontested general elections, [~~except as~~
7 ~~provided in Subsection I of this section, the amount of~~] no
8 money [~~to~~] shall be distributed to a certified candidate [~~is~~
9 ~~equal to fifty percent of the amount specified in Subsection D~~
10 ~~of this section~~]. If a general election race that is initially
11 uncontested later becomes contested [~~because of the~~
12 ~~qualification of an independent or minor party candidate to~~
13 ~~appear on the ballot for that race~~], an [~~additional~~] amount of
14 money shall be distributed to the certified candidate to make
15 that candidate's total distribution amount equal to the amount
16 distributed pursuant to Subsection D of this section.

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

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1 election cycle. This estimate shall be increased by twenty
2 percent to provide funds for additional matching funds in the
3 general election. If the total amount to be distributed in the
4 primary election cycle, plus the added twenty percent and the
5 estimated total amount to be distributed in the general
6 election cycle, plus the added twenty percent, all taken
7 together, exceed the amount expected to be available in the
8 fund, the secretary shall allocate the amount available between
9 the primary and general election cycles. This allocation shall
10 be based on the ratio of the two total amounts.

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

18 H. At least every two years after January 1, 2007,
19 the secretary shall evaluate and modify as necessary the dollar
20 values originally determined by Subsections B through E of this
21 section and shall consider and account for inflation in the
22 evaluations.

23 I. No money shall be distributed to candidates in
24 judicial retention elections. ~~[No money shall be distributed~~
25 ~~to judicial candidates in uncontested general elections,~~

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1 ~~provided that if a general election race that is initially~~
2 ~~uncontested later becomes contested, the certified judicial~~
3 ~~candidate shall receive a distribution in accordance with~~
4 ~~Subsection D of this section.]"~~

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

7 "1-19A-14. MATCHING FUNDS.--~~[When a certified or~~
8 ~~noncertified candidate has one or more opponents who are~~
9 ~~certified candidates and the candidate's campaign finance~~
10 ~~report or group of reports shows that the sum of the~~
11 ~~candidate's expenditures and obligations made, or funds raised~~
12 ~~or borrowed, whichever is greater, alone or in conjunction with~~
13 ~~expenditures made independently of the candidate to influence~~
14 ~~the election on behalf of the candidate, exceeds the amount~~
15 ~~distributed to an opposing certified candidate, the secretary~~
16 ~~shall issue immediately to any opposing certified candidate an~~
17 ~~additional amount equivalent to the excess amount reported by~~
18 ~~the opposing candidate. Total matching funds to a certified~~
19 ~~candidate in an election are limited to twice the amount~~
20 ~~originally distributed to that candidate pursuant to Section~~
21 ~~1-19A-13 NMSA 1978.]~~

22 A. After the initial distribution pursuant to
23 Section 1-19A-13 NMSA 1978, the secretary shall distribute
24 matching funds from the fund to a certified candidate in an
25 amount equal to four times the amount of contributions that the

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1 candidate collected as an applicant candidate and as a
2 certified candidate, subject to the limitation in Subsection B
3 of this section. Matching funds shall be distributed within
4 three days after the certified candidate has filed a matching
5 fund contribution report with the secretary of state that
6 indicates that the candidate has collected contributions in
7 accordance with the provisions of Section 8 of this 2015 act;
8 provided that a certified candidate may only file such reports
9 on the first Monday of February, April, May, July, September
10 and October and the third Monday of May and October of the
11 election year.

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

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

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

20 "1-19A-17. PENALTIES.--

21 A. In addition to other penalties that may be
22 applicable, a person who violates a provision of the Voter
23 Action Act is subject to a civil penalty of up to ten thousand
24 dollars (\$10,000) per violation. In addition to a fine, a
25 certified candidate found in violation of that act may be

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1 required to return to the fund all amounts distributed to the
2 candidate from the fund. If the secretary makes a
3 determination that a violation of that act has occurred, the
4 secretary shall impose a fine [~~or~~] and transmit the finding to
5 the attorney general for criminal prosecution pursuant to
6 Subsection B of this section. In determining whether a
7 certified candidate is in violation of the expenditure limits
8 of that act, the secretary may consider as a mitigating factor
9 any circumstances out of the candidate's control.

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

17 SECTION 12. REPEAL.--Section 1-19A-5 NMSA 1978 (being
18 Laws 2003, Chapter 14, Section 5, as amended) is repealed.