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HOUSE BILL 313

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

INTRODUCED BY

Patricio Ruiloba and Matthew McQueen

AN ACT

RELATING TO PUBLIC FINANCING OF ELECTIONS; INCLUDING CANDIDATES FOR THE SECRETARY OF STATE IN THE VOTER ACTION ACT; REMOVING SEED MONEY REQUIREMENTS; ALLOWING CERTAIN CONTRIBUTIONS; LIMITING POLITICAL PARTY CONTRIBUTIONS TO CERTIFIED CANDIDATES; 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"."

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

3           "1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

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

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

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

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

25           E. "coordinated expenditure" means a campaign

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1 expenditure by a person other than a candidate's campaign that  
2 is made at the direction or request of, or in cooperation,  
3 consultation or concert with, that candidate's campaign or any  
4 agent or representative of that candidate's campaign;

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

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

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

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

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

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1 that is:

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

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

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

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

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

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

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

25 ~~K. "seed money" means a contribution raised for the~~

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1 ~~primary purpose of enabling applicant candidates to collect~~  
2 ~~qualifying contributions and petition signatures]."~~

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

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

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

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

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

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

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

8 "1-19A-4. QUALIFYING CONTRIBUTIONS.--

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

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

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

19 (3) for the office of secretary of state, the  
20 number of qualifying contributions equal to one-tenth of one  
21 percent of the number of voters in the state.

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, the value of in-  
22 kind contributions received from a political party pursuant to  
23 Section 1-19A-8 NMSA 1978 and contributions collected pursuant  
24 to Section 10 of this 2016 act. A certified candidate shall  
25 not accept contributions or loans from any other source except

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1 the certified candidate's political party, as specified in  
2 Section 1-19A-8 NMSA 1978 and contributions collected pursuant  
3 to Section 10 of this 2016 act.

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

19 G. If a certified candidate withdraws or otherwise  
20 ceases to be a certified candidate, the candidate shall, within  
21 thirty days thereafter, transfer to the secretary for deposit  
22 in the fund any amount received from the fund or from private  
23 contributors pursuant to Section 10 of this 2016 act that  
24 remains unspent or unencumbered by the date the candidate  
25 withdraws or otherwise ceases to be a certified candidate."

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1           SECTION 7. Section 1-19A-8 NMSA 1978 (being Laws 2003,  
2 Chapter 14, Section 8) is amended to read:

3           "1-19A-8. POLITICAL PARTY EXPENDITURES--IN-KIND  
4 CONTRIBUTIONS TO CERTIFIED CANDIDATES.--

5           A. A certified candidate may accept [~~monetary or~~]  
6 in-kind contributions from a political party; provided that the  
7 aggregate amount of such contributions from all political party  
8 committees combined does not exceed the equivalent of ten  
9 percent of the value of that candidate's aggregate public  
10 financing per election cycle.

11           B. All in-kind contributions from a political party  
12 distributed to certified candidates shall be used for campaign-  
13 related purposes.

14           C. Nothing in this section shall prevent political  
15 party funds from being used for general operating expenses of  
16 the party; conventions; nominating and endorsing candidates;  
17 identifying, researching and developing the party's position on  
18 issues; party platform activities; noncandidate-specific voter  
19 registration; noncandidate-specific get-out-the-vote drives;  
20 travel expenses for noncandidate party leaders and staff; and  
21 other noncandidate-specific party building activities."

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

24           "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

25           A. The secretary shall publish guidelines outlining

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1 permissible campaign-related expenditures and penalties for  
2 violations of the Voter Action Act by January 1, 2017.

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

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

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

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

23 ~~F. A person or political committee that makes~~  
24 ~~expenditures to influence a race involving a certified~~  
25 ~~candidate shall report to the secretary the amount that person~~

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1 ~~or political committee has spent. These reports shall include~~  
2 ~~all previously unreported transactions through 5:00 p.m. two~~  
3 ~~days before the report is due, and shall be submitted as~~  
4 ~~follows:~~

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

9 ~~(2) for the general election, by 5:00 p.m. the~~  
10 ~~first Tuesday in October, 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] Campaign Reporting Act."~~

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

15 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

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

18 (1) financing the election campaigns of  
19 certified candidates for covered offices;

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

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

24 B. The state treasurer shall invest the funds as  
25 other state funds are invested, and all income derived from the

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1 fund shall be credited directly to the fund. Remaining  
2 balances at the end of a fiscal year shall remain in the public  
3 election fund and not revert to the general fund.

4 C. Money received from the following sources shall  
5 be deposited directly into the fund:

6 (1) qualifying contributions that have been  
7 submitted to the secretary;

8 (2) any recurring balance of unspent fund  
9 money distributed to a certified candidate who does not remain  
10 a candidate through the primary or general election period for  
11 which the money was distributed;

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

15 (4) money that remains unspent or unencumbered  
16 by a certified candidate following the date of the general  
17 election;

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

20 (6) money distributed to the fund from funds  
21 received pursuant to the Uniform Unclaimed Property Act (1995);  
22 and

23 (7) money appropriated by the legislature.

24 D. A subaccount shall be established in the fund,  
25 and money in the subaccount shall only be used to pay the costs

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1 of carrying out the provisions of the Voter Action Act related  
2 to public regulation commission elections.

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

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

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

12 SECTION 10. A new section of the Voter Action Act is  
13 enacted to read:

14 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON  
15 COORDINATED EXPENDITURES--EXCEPTION.--

16 A. An applicant candidate may collect contributions  
17 during the sixty days immediately preceding the qualifying  
18 period and throughout the qualifying period from voters in the  
19 candidate's district. An applicant candidate shall not accept  
20 contributions from any other source.

21 B. A certified candidate may collect contributions  
22 from any voter in the state. A certified candidate shall not  
23 accept contributions from any other source, except as allowed  
24 pursuant to Section 1-19A-8 NMSA 1978.

25 C. Total contributions from a voter to a candidate

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1 may not exceed one hundred dollars (\$100) per election cycle,  
2 excluding the amount of any qualifying contribution given by  
3 the voter to the candidate."

4 SECTION 11. Section 1-19A-13 NMSA 1978 (being Laws 2003,  
5 Chapter 14, Section 13, as amended) is amended to read:

6 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

13 B. For contested primary 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 of the  
18 candidate's party in the district of the office for which the  
19 candidate is running; and

20 (2) for the office of secretary of state,  
21 justice of the supreme court and judge of the court of appeals,  
22 fifteen cents (\$.15) for each voter of the candidate's party in  
23 the state.

24 C. For uncontested primary elections, the amount of  
25 money to be distributed to a certified candidate is equal to

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1     ~~[fifty]~~ ten percent of the amount specified in Subsection B of  
2     this section.

3             D. For contested general elections, the amount of  
4     money to be distributed to a certified candidate is equal to  
5     the following:

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

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

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

23             F. Once the certification for candidates for the  
24    primary election has been completed, the secretary shall  
25    calculate the total amount of money to be distributed in the

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

17 G. If the allocation specified in Subsection F of  
18 this section is greater than the total amount available for  
19 distribution, then the amounts to be distributed to individual  
20 candidates, specified in Subsections B through E of this  
21 section, shall each be reduced by the same percentage as the  
22 reduction by which the total amount needed has been reduced  
23 relative to the total amount available.

24 H. At least every two years after January 1, 2007,  
25 the secretary shall evaluate and modify as necessary the dollar

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1 values originally determined by Subsections B through E of this  
2 section and shall consider and account for inflation in the  
3 evaluations.

4 I. No money shall be distributed to candidates in  
5 judicial retention elections. No money shall be distributed to  
6 judicial candidates in uncontested general elections; provided  
7 that if a general election race that is initially uncontested  
8 later becomes contested, the certified judicial candidate shall  
9 receive a distribution in accordance with Subsection D of this  
10 section."

11 SECTION 12. Section 1-19A-17 NMSA 1978 (being Laws 2003,  
12 Chapter 14, Section 17) is amended to read:

13 "1-19A-17. PENALTIES.--

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

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1 of that act, the secretary may consider as a mitigating factor  
2 any circumstances out of the candidate's control.

3 B. A person who willfully or knowingly violates the  
4 provisions of the Voter Action Act or rules of the secretary or  
5 knowingly makes a false statement in a report required by that  
6 act or a report required by the Campaign Reporting Act is  
7 guilty of a fourth degree felony and, if ~~[he]~~ the person is a  
8 certified candidate, shall return to the fund all money  
9 distributed to that candidate."

10 SECTION 13. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA  
11 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as  
12 amended) are repealed.

13 SECTION 14. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is November 9, 2016