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HOUSE BILL 195

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
CREATING THE STATE ETHICS COMMISSION; PROVIDING FOR AN
EXECUTIVE DIRECTOR; PROVIDING FOR ANNUAL ETHICS TRAINING AND
THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE DEVELOPMENT OF
A PROPOSED ETHICS CODE; PROVIDING FOR THE ISSUANCE OF ADVISORY
OPINIONS; PROVIDING FOR THE FILING OF COMPLAINTS AGAINST STATE
OFFICIALS, STATE EMPLOYEES, GOVERNMENT CONTRACTORS AND
LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR INVESTIGATIONS
AND HEARINGS; GRANTING SUBPOENA POWERS; REQUIRING
CONFIDENTIALITY; PROHIBITING RETALIATION; MAKING AN
APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 15 of this act may be cited as the "State Ethics
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1 Commission Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 State Ethics Commission Act:

4 A. "adjunct agency" means an agency, board,
5 commission, office or other instrumentality, not assigned to an
6 elected constitutional officer, that is excluded from any
7 direct or administrative attachment to a department and that
8 retains policymaking and administrative autonomy separate from
9 any other agency of state government;

10 B. "commission" means the state ethics commission;

11 C. "commissioner" means a member of the commission;

12 D. "complainant" means a person who files an ethics
13 complaint with the commission;

14 E. "director" means the executive director of the
15 commission;

16 F. "ethics violation" means an action that is a
17 violation of the Gift Act; the Governmental Conduct Act; the
18 Procurement Code; the Lobbyist Regulation Act; the Financial
19 Disclosure Act; the Voter Action Act; Chapter 1, Article 19
20 NMSA 1978; or any code of ethics adopted pursuant to those laws
21 or Section 5 of the State Ethics Commission Act;

22 G. "government contractor" means a person who has a
23 contract with a state agency or who has submitted a competitive
24 sealed proposal or competitive sealed bid for a contract with a
25 state agency;

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1 H. "legislative body" means the house of
2 representatives or the senate;

3 I. "lobbying" means attempting to influence:

4 (1) a decision related to any matter to be
5 considered or being considered by the legislative branch of
6 state government or any legislative committee or to any
7 legislative matter requiring action by the governor or awaiting
8 action by the governor; or

9 (2) an official action;

10 J. "lobbyist" means a person who is compensated for
11 the specific purpose of lobbying; who is designated by an
12 interest group or organization to represent it on a substantial
13 or regular basis for the purpose of lobbying; or who, in the
14 course of the person's employment, is engaged in lobbying on a
15 substantial or regular basis. "Lobbyist" does not include:

16 (1) a person who appears on the person's own
17 behalf in connection with legislation or an official action;

18 (2) an elected or appointed officer of the
19 state, a political subdivision of the state or an Indian
20 nation, tribe or pueblo who is acting in the officer's official
21 capacity;

22 (3) a state employee or an employee of a
23 political subdivision of the state, specifically designated by
24 an elected or appointed officer, who appears before a
25 legislative committee or in a rulemaking proceeding only to

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1 explain the effect of legislation or a rule on that employee's
2 agency or political subdivision; provided that the elected or
3 appointed officer files the designation with the secretary of
4 state and makes it available for public inspection;

5 (4) a designated member of the staff of an
6 elected state official; provided that the elected state
7 official files the designation with the secretary of state and
8 makes it available for public inspection;

9 (5) a legislator or legislative staff member;

10 (6) a witness called by a legislative
11 committee or administrative agency to appear before it in
12 connection with legislation or an official action;

13 (7) a person who provides only oral or written
14 public testimony in connection with a legislative committee or
15 in a rulemaking proceeding and whose name and the interest on
16 behalf of which the person testifies have been clearly and
17 publicly identified; or

18 (8) a publisher, owner or employee of the news
19 media while gathering or disseminating news or editorial
20 comment to the general public in the ordinary course of
21 business;

22 K. "official action" means a decision, action or
23 nonaction of a state official or state agency in a rulemaking
24 or other matter, except an adjudicatory proceeding;

25 L. "political party" means a political party that

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1 has complied with the provisions of Section 1-7-2 NMSA 1978;

2 M. "respondent" means a state official, state
3 employee, government contractor or lobbyist who is the subject
4 of a complaint filed with or by the commission;

5 N. "state agency" means any department, commission,
6 council, board, committee, agency or institution of the
7 executive or legislative branch of government of the state or
8 any instrumentality of the state, including the New Mexico
9 mortgage finance authority, the New Mexico finance authority,
10 the New Mexico exposition center authority, the New Mexico
11 hospital equipment loan council and the New Mexico renewable
12 energy transmission authority;

13 O. "state employee" means an employee of a state
14 agency; and

15 P. "state official" means a person elected to an
16 office of the executive or legislative branch of the state or a
17 person appointed to a state agency.

18 SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION
19 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

20 A. The "state ethics commission" is created as an
21 adjunct agency of the executive branch under the direction of
22 eleven commissioners, appointed as follows:

23 (1) five commissioners appointed by the
24 governor, no more than three of whom shall be of the same
25 political party and at least one commissioner shall be

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1 appointed from each congressional district;

2 (2) one commissioner appointed by the
3 president pro tempore of the senate;

4 (3) one commissioner appointed by the minority
5 floor leader of the senate;

6 (4) one commissioner appointed by the speaker
7 of the house of representatives;

8 (5) one commissioner appointed by the minority
9 floor leader of the house of representatives; and

10 (6) two commissioners appointed by the chief
11 justice of the supreme court, who shall be district court
12 judges and who shall not be of the same political party and
13 shall not be appointed from the same congressional district.

14 B. The appointing authorities shall give due regard
15 to the cultural diversity of the state and to achieving
16 geographical representation from across the state. No more
17 than five commissioners shall be registered members of the same
18 political party.

19 C. Each appointing authority shall file letters of
20 appointment with the secretary of state.

21 D. Commissioners shall be appointed for staggered
22 terms of four years beginning July 1, 2011. The initial
23 commissioners shall draw lots to determine which three
24 commissioners serve an initial term of two years, which four
25 commissioners serve an initial term of three years and which

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1 four commissioners serve an initial term of four years;
2 thereafter, all commissioners shall serve four-year terms.
3 Members shall serve until their successors are appointed and
4 qualified.

5 E. A person shall not serve as a commissioner for
6 more than two consecutive terms. A vacancy on the commission
7 shall be filled by appointment by the original appointing
8 authority for the remainder of the unexpired term.

9 F. The commission shall meet as necessary to carry
10 out its duties pursuant to the State Ethics Commission Act.
11 Commissioners are entitled to receive per diem and mileage as
12 provided in the Per Diem and Mileage Act and shall receive no
13 other compensation, perquisite or allowance.

14 G. The commission shall elect a chair, who shall be
15 one of the governor's appointees, and a vice chair and other
16 officers it deems necessary.

17 H. Six commissioners constitute a quorum for the
18 transaction of business. No action shall be taken by the
19 commission unless at least six members concur.

20 I. A commissioner may be removed only for
21 incompetence, neglect of duty or malfeasance in office. A
22 proceeding for the removal of a commissioner may be commenced
23 by the commission or by the attorney general upon the request
24 of the commission. The New Mexico supreme court has exclusive
25 jurisdiction over proceedings to remove commissioners, and its

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1 decision shall be final. A commissioner shall be given notice
2 of hearing and an opportunity to be heard before the
3 commissioner is removed.

4 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
5 LIMITATIONS.--

6 A. To qualify for appointment to the commission, a
7 person shall:

- 8 (1) be a resident of New Mexico; and
9 (2) not have changed political party
10 affiliation for at least one year prior to appointment.

11 B. Before entering upon the duties of the office of
12 commissioner, each commissioner shall review the State Ethics
13 Commission Act and other laws and rules pertaining to the
14 commission's responsibilities and to ethics and governmental
15 conduct in New Mexico. Each commissioner shall take the oath
16 of office as provided in Article 20, Section 1 of the
17 constitution of New Mexico.

18 C. During a commissioner's tenure, a commissioner
19 shall not:

- 20 (1) seek or hold an office in a political
21 party;
22 (2) seek or hold an elective public office or
23 an appointed public position, except for a commissioner
24 appointed by the chief justice of the supreme court in
25 continuing to hold the office of district court judge; or

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1 (3) be a state employee, government contractor
2 or lobbyist.

3 D. A commissioner who violates Subsection C of this
4 section is deemed to have resigned from the commission.

5 E. For a period of one calendar year following a
6 commissioner's tenure or following the resignation or removal
7 of a commissioner, the commissioner shall not:

8 (1) seek or hold an elective public office, an
9 appointed public position or public employment, except for a
10 commissioner appointed by the chief justice of the supreme
11 court in continuing to hold the office of district court judge;

12 (2) represent a respondent, unless appearing
13 on the commissioner's own behalf; or

14 (3) accept employment or otherwise provide
15 services to a respondent unless the commissioner accepted
16 employment or provided services prior to the filing of a
17 complaint against the respondent.

18 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND
19 POWERS.--

20 A. The commission shall:

21 (1) receive and investigate complaints
22 alleging ethics violations against state officials, state
23 employees, government contractors and lobbyists;

24 (2) hold hearings in appropriate cases to
25 determine whether there has been an ethics violation;

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1 (3) develop, adopt and promulgate the rules
2 necessary to implement and administer the provisions of the
3 State Ethics Commission Act;

4 (4) compile, index, maintain and provide
5 public access to all advisory opinions and reports required to
6 be made public pursuant to the State Ethics Commission Act;

7 (5) draft a proposed code of ethics for state
8 officials and state employees and submit the proposed code to
9 each elected state official and state agency for adoption;

10 (6) compile, adopt, publish and make available
11 to all state officials, state employees, government contractors
12 and lobbyists an ethics guide that clearly and plainly explains
13 the ethics requirements set forth in state law, including those
14 that relate to conducting business with the state;

15 (7) offer annual ethics training to state
16 officials, state employees, government contractors, lobbyists
17 and other interested persons;

18 (8) employ an executive director, who shall be
19 an attorney; and

20 (9) submit an annual report of its activities,
21 including any recommendations regarding state ethics laws or
22 the scope of its powers and duties, in December of each year to
23 the legislature and the governor.

24 B. The commission may:

25 (1) initiate complaints alleging ethics

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1 violations against state officials, state employees, government
2 contractors and lobbyists;

3 (2) issue subpoenas requiring the attendance
4 of witnesses or the production of books, records, documents or
5 other evidence relevant to an investigation; and

6 (3) issue advisory opinions to state
7 officials, state employees, government contractors and
8 lobbyists in accordance with the provisions of the State Ethics
9 Commission Act.

10 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--
11 APPOINTMENT--DUTIES AND POWERS.--

12 A. The commission shall appoint an executive
13 director who shall be knowledgeable about state ethics laws and
14 who shall be appointed without reference to party affiliation
15 and solely on the grounds of fitness to perform the duties of
16 the office. The director shall hold office from the date of
17 appointment until such time as the director is removed by the
18 commission.

19 B. The director shall:

20 (1) take the oath of office required by
21 Article 20, Section 1 of the constitution of New Mexico;

22 (2) perform investigations on behalf of the
23 commission;

24 (3) bring complaints and investigation results
25 before the commission for consideration;

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1 (4) prepare an annual budget for the
2 commission and submit it to the commission for approval;

3 (5) make recommendations to the commission of
4 proposed rules or legislative changes needed to provide better
5 administration of the State Ethics Commission Act; and

6 (6) perform other duties as assigned by the
7 commission.

8 C. The director may:

9 (1) hire a general counsel for the commission
10 and additional personnel as may be necessary to carry out the
11 duties of the commission;

12 (2) enter into contracts and agreements on
13 behalf of the commission; and

14 (3) administer oaths and take depositions
15 subject to the Rules of Civil Procedure for the District
16 Courts.

17 D. For a period of one calendar year immediately
18 following the director's employment with the commission, the
19 director shall not:

20 (1) seek or hold an elective public office, an
21 appointed public position or public employment;

22 (2) represent a respondent, unless appearing
23 on the director's own behalf; or

24 (3) accept employment or otherwise provide
25 services to a respondent, unless the director accepted

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1 employment or provided services prior to the filing of a
2 complaint.

3 SECTION 7. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

4 A. A commissioner shall recuse from and not
5 participate in a commission proceeding in which the
6 commissioner has a conflict of interest. The commissioner
7 shall state the reason for the recusal.

8 B. If the propriety of a commissioner's
9 participation in a particular matter is questioned on the
10 grounds that the commissioner has a conflict of interest, the
11 commission may disqualify that commissioner from participation
12 in a commission proceeding.

13 C. A recused or disqualified commissioner shall not
14 participate in any proceeding related to the matter from which
15 the commissioner is recused or disqualified, and the
16 commissioner shall be excused from that portion of a meeting at
17 which the matter is discussed.

18 D. If four or more commissioners have recused
19 themselves or are disqualified from participating in a
20 proceeding, the remaining commissioners shall appoint temporary
21 commissioners to participate in that proceeding. Appointments
22 of temporary commissioners shall be made by a majority vote of
23 the remaining commissioners in accordance with the political
24 party affiliation and geographical representation requirements
25 and the qualifications of Sections 3 and 4 of the State Ethics

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1 Commission Act.

2 E. The commission shall promulgate rules for the
3 recusal and disqualification of members and for the appointment
4 of temporary commissioners.

5 SECTION 8. [NEW MATERIAL] ADVISORY OPINIONS.--

6 A. The commission may issue advisory opinions on
7 matters related to ethics. Advisory opinions shall:

8 (1) be requested in writing by a state
9 official, state employee, government contractor or lobbyist;

10 (2) identify a specific set of circumstances
11 involving an ethics issue;

12 (3) be issued within sixty days of receipt of
13 the request unless the commission notifies the requester of a
14 delay in issuance and continues to notify the requester every
15 thirty days until the advisory opinion is issued; and

16 (4) be published after omitting the
17 requester's name and identifying information.

18 B. A request for an advisory opinion is
19 confidential and not subject to the provisions of the
20 Inspection of Public Records Act.

21 C. Unless amended or revoked, an advisory opinion
22 shall be binding on the commission in any subsequent commission
23 proceedings concerning a person who acted in good faith and in
24 reasonable reliance on the advisory opinion.

25 SECTION 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--

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1 SUBPOENAS.--

2 A. A complaint of an alleged ethics violation
3 committed by a state official, state employee, government
4 contractor or lobbyist may be:

5 (1) filed with the commission by a person who
6 has actual knowledge of the alleged ethics violation; or

7 (2) initiated by the commission upon receipt
8 of evidence deemed sufficient by the commission.

9 B. The complainant shall set forth in detail the
10 specific charges against the state official, state employee,
11 government contractor or lobbyist and the factual allegations
12 that support the charges and shall sign the complaint under
13 penalty of false statement. The complainant shall submit any
14 evidence the complainant has that supports the complaint.
15 Evidence may include documents, records and names of witnesses.
16 The commission shall prescribe the forms on which complaints
17 are to be filed.

18 C. The chair of the commission shall sign a
19 complaint initiated by the commission, and the complaint shall
20 set forth in detail the specific charges against the state
21 official, state employee, government contractor or lobbyist and
22 the factual allegations that support the charges.

23 D. The director shall bring all complaints before
24 the commission and make recommendations to the commission as to
25 whether the conduct alleged in a complaint is within the

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1 jurisdiction of the commission and warrants investigation.

2 E. The commission shall dismiss complaints that are
3 frivolous, unfounded or outside the jurisdiction of the
4 commission. If the commission dismisses a complaint pursuant
5 to this subsection, the director shall promptly notify the
6 complainant.

7 F. If the commission determines that there is
8 sufficient cause to proceed with an investigation, the director
9 shall investigate the complaint. The director shall promptly
10 notify the respondent that a complaint has been filed and is
11 being investigated and shall notify the respondent of the
12 specific allegations in the complaint and the specific ethics
13 violations implicated by the complaint.

14 G. As part of an investigation, the director may
15 administer oaths, interview witnesses and examine books,
16 records, documents and other evidence reasonably related to the
17 complaint. All testimony in an investigation shall be under
18 oath, and the respondent shall have the right to be represented
19 by legal counsel. If the director determines that a subpoena
20 is necessary to obtain the testimony of any person or the
21 production of books, records, documents or other evidence, the
22 director shall request that the commission issue an appropriate
23 subpoena.

24 H. The commission may issue subpoenas for the
25 attendance and examination of witnesses or for the production

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1 of books, records, documents, things or other evidence
2 reasonably related to an investigation. A subpoena shall be
3 signed by the chair of the commission and shall command the
4 person to whom it is directed to attend and give testimony or
5 to produce and permit the inspection of books, documents,
6 records, things or other evidence. A subpoena shall state the
7 general nature of the investigation and shall describe with
8 reasonable specificity the nature of the information to be
9 produced, the time and place where the information shall be
10 produced and the consequences of failure to obey the subpoena.
11 After service of a subpoena, if a person neglects or refuses to
12 comply with the subpoena, the commission may apply to a
13 district court for an order enforcing the subpoena and
14 compelling compliance.

15 I. A state official or state employee who is a
16 respondent shall be entitled to representation by the risk
17 management division of the general services department;
18 provided, however, that if the respondent is found to have
19 committed an ethics violation, the respondent shall reimburse
20 the division for the respondent's equitable share of reasonable
21 attorney fees and costs. If the respondent was represented by
22 an attorney employee of the risk management division, the
23 division shall be reimbursed at the full cost incurred by the
24 division, including benefits and taxes, for employing the
25 attorney for the hours the attorney provided on the case.

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1 SECTION 10. ~~[NEW MATERIAL]~~ STATUS OF INVESTIGATION--TIME
2 LIMITATIONS.--

3 A. If the commission has not scheduled a hearing
4 concerning the disposition of a complaint within ninety days
5 after the complaint is received or initiated by the commission,
6 the director shall, as soon as practicable, report to the
7 commission on the progress and status of the investigation.
8 The commission may dismiss the complaint or instruct the
9 director to continue investigating the complaint. Unless the
10 commission dismisses the complaint, the director shall report
11 to the commission every ninety days thereafter on the progress
12 and status of the investigation.

13 B. Upon dismissal or a decision to continue an
14 investigation of a complaint, the commission shall notify the
15 respondent in writing of its action. The commission shall also
16 notify the complainant of the dismissal of a complaint. The
17 commission shall not publicly disclose its action or
18 notification except upon the request of the respondent.

19 SECTION 11. ~~[NEW MATERIAL]~~ REPORT--HEARING--FINDINGS AND
20 CONCLUSIONS--DISCLOSURE OF ETHICS VIOLATION.--

21 A. The director shall provide a written report of
22 the investigation to the commission and to the respondent. The
23 director shall provide the respondent with reasonable written
24 notice of the date, time and place of the commission hearing.

25 B. At the hearing, the commission has the power to

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1 administer oaths. One of the commissioners appointed by the
2 chief justice of the supreme court shall preside over the
3 hearing. The respondent has the right to be represented by
4 counsel and to present evidence and testimony and examine and
5 cross-examine witnesses.

6 C. After the hearing, if the commission finds by
7 clear and convincing evidence that the respondent's conduct
8 constituted an ethics violation, the commission shall issue a
9 written report that shall include findings of fact and
10 conclusions of law. If the respondent is a state official or
11 state employee, the written report may include a public
12 reprimand or censure regarding the respondent's behavior or
13 recommendations for disciplinary action against the respondent.

14 D. The commission shall publicly disclose a report
15 issued pursuant to Subsection C of this section and provide it,
16 along with all evidence collected during its investigation, to
17 the respondent, the attorney general and the:

- 18 (1) appropriate legislative body if the
19 respondent is a member of the legislature;
20 (2) house of representatives if the respondent
21 is a state official elected to an office of the executive
22 branch;
23 (3) respondent's appointing authority if the
24 respondent is an appointed state official;
25 (4) appropriate state agency if the respondent

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1 is a state employee;

2 (5) state agency with which the respondent has
3 a government contract if the respondent is a government
4 contractor; or

5 (6) respondent's employer and clients and the
6 secretary of state if the respondent is a lobbyist.

7 E. If, after the hearing, the commission does not
8 find by clear and convincing evidence that the respondent's
9 conduct constituted an ethics violation, the commission shall
10 dismiss the complaint and provide notice of the dismissal to
11 the respondent and complainant no later than five days after
12 the finding is made. A notice issued pursuant to this
13 subsection shall not be public except upon the request of the
14 respondent.

15 F. Notwithstanding the provisions of the Open
16 Meetings Act, commission hearings held pursuant to this section
17 are closed to the public. The commission shall promulgate
18 rules establishing procedures for hearings.

19 SECTION 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

20 All complaints, reports, files, records and communications
21 collected or generated by the commission or its director that
22 pertain to alleged ethics violations are confidential and not
23 subject to the provisions of the Inspection of Public Records
24 Act. Such complaints, reports, files, records or
25 communications shall not be disclosed unless:

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1 A. disclosure is required pursuant to the
2 provisions of the State Ethics Commission Act;

3 B. they are offered into evidence at a judicial,
4 legislative or administrative proceeding;

5 C. disclosure is required by law or ordered by a
6 court; or

7 D. the respondent files with the commission a
8 written waiver of confidentiality.

9 **SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--**
10 **REFERRAL.--**If the commission finds at any time that the
11 respondent's conduct may amount to a criminal violation, the
12 commission shall immediately refer the matter to the attorney
13 general or an appropriate district attorney. The commission
14 shall provide the attorney general or district attorney with
15 all evidence collected during its investigation that may be
16 used in a criminal proceeding. Nothing in this section
17 prevents the commission from taking any action otherwise
18 authorized by the State Ethics Commission Act or deciding to
19 hold a matter in abeyance pending resolution of any criminal
20 charges.

21 **SECTION 14. [NEW MATERIAL] STATUTE OF LIMITATIONS.--**The
22 commission shall not accept or consider a complaint unless the
23 complaint is filed or initiated within three years from the
24 date on which the alleged conduct occurred.

25 **SECTION 15. [NEW MATERIAL] PROHIBITED ACTIONS.--**

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1 A. A person shall not take or threaten to take any
2 retaliatory, disciplinary or other adverse action against
3 another person who in good faith:

4 (1) files a complaint with the commission
5 alleging an ethics violation against a state official, state
6 employee, government contractor or lobbyist; or

7 (2) provides testimony, records, documents or
8 other information to the commission during an investigation or
9 at a hearing conducted pursuant to the State Ethics Commission
10 Act.

11 B. Nothing in the State Ethics Commission Act
12 precludes civil actions or criminal sanctions for libel,
13 slander or other civil or criminal claims against a person who
14 files a false claim under that act.

15 **SECTION 16.** Section 10-15-1 NMSA 1978 (being Laws 1974,
16 Chapter 91, Section 1, as amended) is amended to read:

17 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
18 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

19 A. In recognition of the fact that a representative
20 government is dependent upon an informed electorate, it is
21 declared to be public policy of this state that all persons are
22 entitled to the greatest possible information regarding the
23 affairs of government and the official acts of those officers
24 and employees who represent them. The formation of public
25 policy or the conduct of business by vote shall not be

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1 conducted in closed meeting. All meetings of any public body
2 except the legislature and the courts shall be public meetings,
3 and all persons so desiring shall be permitted to attend and
4 listen to the deliberations and proceedings. Reasonable
5 efforts shall be made to accommodate the use of audio and video
6 recording devices.

7 B. All meetings of a quorum of members of any
8 board, commission, administrative adjudicatory body or other
9 policymaking body of any state agency, any agency or authority
10 of any county, municipality, district or ~~[any]~~ political
11 subdivision, held for the purpose of formulating public policy,
12 including the development of personnel policy, rules,
13 regulations or ordinances, discussing public business or ~~[for~~
14 ~~the purpose of]~~ taking any action within the authority of or
15 the delegated authority of any board, commission or other
16 policymaking body, are declared to be public meetings open to
17 the public at all times, except as otherwise provided in the
18 constitution of New Mexico or the Open Meetings Act. No public
19 meeting once convened that is otherwise required to be open
20 pursuant to the Open Meetings Act shall be closed or dissolved
21 into small groups or committees for the purpose of permitting
22 the closing of the meeting.

23 C. If otherwise allowed by law or rule of the
24 public body, a member of a public body may participate in a
25 meeting of the public body by means of a conference telephone

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1 or other similar communications equipment when it is otherwise
2 difficult or impossible for the member to attend the meeting in
3 person, provided that each member participating by conference
4 telephone can be identified when speaking, all participants are
5 able to hear each other at the same time and members of the
6 public attending the meeting are able to hear any member of the
7 public body who speaks during the meeting.

8 D. Any meetings at which the discussion or adoption
9 of any proposed resolution, rule, regulation or formal action
10 occurs and at which a majority or quorum of the body is in
11 attendance, and any closed meetings, shall be held only after
12 reasonable notice to the public. The affected body shall
13 determine at least annually in a public meeting what notice for
14 a public meeting is reasonable when applied to that body. That
15 notice shall include broadcast stations licensed by the federal
16 communications commission and newspapers of general circulation
17 that have provided a written request for such notice.

18 E. A public body may recess and reconvene a meeting
19 to a day subsequent to that stated in the meeting notice if,
20 prior to recessing, the public body specifies the date, time
21 and place for continuation of the meeting and, immediately
22 following the recessed meeting, posts notice of the date, time
23 and place for the reconvened meeting on or near the door of the
24 place where the original meeting was held and in at least one
25 other location appropriate to provide public notice of the

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1 continuation of the meeting. Only matters appearing on the
2 agenda of the original meeting may be discussed at the
3 reconvened meeting.

4 F. Meeting notices shall include an agenda
5 containing a list of specific items of business to be discussed
6 or transacted at the meeting or information on how the public
7 may obtain a copy of such an agenda. Except in the case of an
8 emergency, the agenda shall be available to the public at least
9 twenty-four hours prior to the meeting. Except for emergency
10 matters, a public body shall take action only on items
11 appearing on the agenda. For purposes of this subsection, ~~[an]~~
12 "emergency" refers to unforeseen circumstances that, if not
13 addressed immediately by the public body, will likely result in
14 injury or damage to persons or property or substantial
15 financial loss to the public body.

16 G. The board, commission or other policymaking body
17 shall keep written minutes of all its meetings. The minutes
18 shall include at a minimum the date, time and place of the
19 meeting, the names of members in attendance and those absent,
20 the substance of the proposals considered and a record of any
21 decisions and votes taken that show how each member voted. All
22 minutes are open to public inspection. Draft minutes shall be
23 prepared within ten working days after the meeting and shall be
24 approved, amended or disapproved at the next meeting where a
25 quorum is present. Minutes shall not become official until

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1 approved by the policymaking body.

2 H. The provisions of Subsections A, B and G of this
3 section do not apply to:

4 (1) meetings pertaining to issuance,
5 suspension, renewal or revocation of a license, except that a
6 hearing at which evidence is offered or rebutted shall be open.
7 All final actions on the issuance, suspension, renewal or
8 revocation of a license shall be taken at an open meeting;

9 (2) limited personnel matters; provided that
10 for purposes of the Open Meetings Act, "limited personnel
11 matters" means the discussion of hiring, promotion, demotion,
12 dismissal, assignment or resignation of or the investigation or
13 consideration of complaints or charges against any individual
14 public employee; provided further that this ~~[subsection]~~
15 paragraph is not to be construed as to exempt final actions on
16 personnel from being taken at open public meetings, nor does it
17 preclude an aggrieved public employee from demanding a public
18 hearing. Judicial candidates interviewed by any commission
19 shall have the right to demand an open interview;

20 (3) deliberations by a public body in
21 connection with an administrative adjudicatory proceeding. For
22 purposes of this paragraph, ~~[an]~~ "administrative adjudicatory
23 proceeding" means a proceeding brought by or against a person
24 before a public body in which individual legal rights, duties
25 or privileges are required by law to be determined by the

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1 public body after an opportunity for a trial-type hearing.
2 Except as otherwise provided in this section, the actual
3 administrative adjudicatory proceeding at which evidence is
4 offered or rebutted and any final action taken as a result of
5 the proceeding shall occur in an open meeting;

6 (4) the discussion of personally identifiable
7 information about any individual student, unless the student
8 [~~his~~] or the student's parent or guardian requests otherwise;

9 (5) meetings for the discussion of bargaining
10 strategy preliminary to collective bargaining negotiations
11 between the policymaking body and a bargaining unit
12 representing the employees of that policymaking body and
13 collective bargaining sessions at which the policymaking body
14 and the representatives of the collective bargaining unit are
15 present;

16 (6) that portion of meetings at which a
17 decision is made concerning purchases in an amount exceeding
18 two thousand five hundred dollars (\$2,500) that can be made
19 only from one source and that portion of meetings at which the
20 contents of competitive sealed proposals solicited pursuant to
21 the Procurement Code are discussed during the contract
22 negotiation process. The actual approval of purchase of the
23 item or final action regarding the selection of a contractor
24 shall be made in an open meeting;

25 (7) meetings subject to the attorney-client

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1 privilege pertaining to threatened or pending litigation in
2 which the public body is or may become a participant;

3 (8) meetings for the discussion of the
4 purchase, acquisition or disposal of real property or water
5 rights by the public body;

6 (9) those portions of meetings of committees
7 or boards of public hospitals where strategic and long-range
8 business plans or trade secrets are discussed; ~~and~~

9 (10) that portion of a meeting of the gaming
10 control board dealing with information made confidential
11 pursuant to the provisions of the Gaming Control Act; and

12 (11) meetings of the state ethics commission
13 relating to complaints or investigations of alleged ethics
14 violations.

15 I. If any meeting is closed pursuant to the
16 exclusions contained in Subsection H of this section [~~the~~
17 ~~closure~~]:

18 (1) the closure, if made in an open meeting,
19 shall be approved by a majority vote of a quorum of the
20 policymaking body; the authority for the closure and the
21 subject to be discussed shall be stated with reasonable
22 specificity in the motion calling for the vote on a closed
23 meeting; the vote shall be taken in an open meeting; and the
24 vote of each individual member shall be recorded in the
25 minutes. Only those subjects announced or voted upon prior to

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1 closure by the policymaking body may be discussed in a closed
2 meeting; ~~and~~ or

3 (2) if a closure is called for when the
4 policymaking body is not in an open meeting, the closed meeting
5 shall not be held until public notice, appropriate under the
6 circumstances, stating the specific provision of the law
7 authorizing the closed meeting and stating with reasonable
8 specificity the subject to be discussed is given to the members
9 and to the general public.

10 J. Following completion of any closed meeting, the
11 minutes of the open meeting that was closed or the minutes of
12 the next open meeting if the closed meeting was separately
13 scheduled shall state that the matters discussed in the closed
14 meeting were limited only to those specified in the motion for
15 closure or in the notice of the separate closed meeting. This
16 statement shall be approved by the public body under Subsection
17 G of this section as part of the minutes."

18 **SECTION 17. TEMPORARY PROVISION--REPORT ON EXTENSION OF**
19 **STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By**
20 **January 1, 2013, the state ethics commission shall submit a**
21 **report to the legislature and the governor regarding the**
22 **extension of commission jurisdiction to elected and appointed**
23 **officials and employees of political subdivisions of the state.**
24 **The report shall include and make recommendations on:**

25 A. a detailed plan formulated by the commission for

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1 implementation of an extension of its jurisdiction, including a
2 proposed time line;

3 B. the estimated number of additional employees and
4 the amount and type of resources needed by the commission to
5 carry out its powers and duties if its jurisdiction were
6 extended;

7 C. estimated budget increases and the estimated
8 annual budget for the commission if its jurisdiction were
9 extended; and

10 D. any changes needed to existing law.

11 SECTION 18. APPROPRIATION.--Two hundred thousand dollars
12 (\$200,000) is appropriated from the general fund to the state
13 ethics commission for expenditure in fiscal year 2012 to carry
14 out the provisions of the State Ethics Commission Act. Any
15 unexpended or unencumbered balance remaining at the end of
16 fiscal year 2012 shall revert to the general fund.

17 SECTION 19. SEVERABILITY.--If any part or application of
18 this act is held invalid, the remainder or its application to
19 other situations or persons shall not be affected.

20 SECTION 20. APPLICABILITY.--The provisions of the State
21 Ethics Commission Act apply to conduct that occurs on or after
22 January 1, 2012.

23 SECTION 21. EFFECTIVE DATE.--

24 A. The effective date of the provisions of Sections
25 1 through 7 and 12 through 20 of this act is July 1, 2011.

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B. The effective date of the provisions of Sections
8 through 11 of this act is January 1, 2012.

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