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SENATE BILL 139

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
CREATING THE STATE ETHICS COMMISSION; PROVIDING POWERS AND
DUTIES; PROVIDING FOR ANNUAL ETHICS TRAINING AND THE
PUBLICATION OF AN ETHICS GUIDE; GRANTING SUBPOENA POWER;
ALLOWING ISSUANCE OF ADVISORY OPINIONS RELATED TO CERTAIN
ETHICS VIOLATIONS; PROVIDING FOR THE FILING OF COMPLAINTS
AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT
CONTRACTORS AND LOBBYISTS FOR CERTAIN ETHICS VIOLATIONS;
ESTABLISHING INVESTIGATIONS OF COMPLAINTS FOR CERTAIN ETHICS
VIOLATIONS; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"State Ethics Commission Act".

Section 2. DEFINITIONS.--As used in the State Ethics

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1 Commission Act:

2 A. "campaign contribution" means a gift,
3 subscription, loan, advance or deposit of money or other thing
4 of value, including the estimated value of an in-kind
5 contribution, that is made or received for a political purpose,
6 including payment of a debt incurred in an election campaign.

7 "Campaign contribution" does not include the value of services
8 provided without compensation or unreimbursed travel or other
9 personal expenses of persons who volunteer a portion or all of
10 their time on behalf of a candidate or political committee, nor
11 does it include the administrative or solicitation expenses of
12 a political committee that are paid by an organization that
13 sponsors the committee;

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

15 C. "ethics violation" means any action that amounts
16 to a violation of the Governmental Conduct Act, the Procurement
17 Code, the Lobbyist Regulation Act, the Financial Disclosure Act
18 or Chapter 1, Article 19 NMSA 1978;

19 D. "government contractor" means a person who has a
20 contract with a state agency pursuant to the Procurement Code.
21 "Government contractor" also includes any person who has
22 submitted a competitive sealed proposal or competitive sealed
23 bid for a contract with a state agency;

24 E. "legislative body" means the house of
25 representatives or the senate;

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1 F. "lobbying" means attempting to influence:

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

7 (2) an official action;

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

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

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

20 (3) an employee of the state or a political
21 subdivision of the state, specifically designated in writing by
22 an elected or appointed officer, who appears before a
23 legislative committee or in a rulemaking proceeding only to
24 explain the effect of legislation or a rule on that employee's
25 agency or political subdivision; provided that the elected or

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1 appointed officer keeps the designation for public inspection
2 and files it with the secretary of state;

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

7 (5) a legislator or legislative staff member;

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

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

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

20 H. "official action" means an action or nonaction
21 of a state official or state agency, board or commission acting
22 in a rulemaking proceeding;

23 I. "political purpose" means influencing or
24 attempting to influence an election or pre-primary convention,
25 including a constitutional amendment or other question submitted

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1 to the voters;

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

5 K. "state agency" means a department, commission,
6 council, board, committee, institution, agency, government
7 corporation, educational institution or official of the
8 executive, legislative or judicial branch of government of the
9 state;

10 L. "state employee" means an employee of the
11 executive, legislative or judicial branches of the state.
12 "State employee" does not include a judge or justice, whether
13 elected or appointed, of any court; and

14 M. "state official" means a person elected or
15 appointed to an office of the executive, judicial or legislative
16 branch of the state.

17 Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--
18 TERMS--REMOVAL.--

19 A. The "state ethics commission" is created as an
20 adjunct agency. The commission consists of the following ten
21 members:

22 (1) four members appointed by the governor, no
23 more than two of whom shall be of the same political party;

24 (2) two members appointed by the president pro
25 tempore of the senate, who shall not be of the same political

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1 party and one of whom is appointed with the advice and consent
2 of the minority floor leader of the senate;

3 (3) two members appointed by the speaker of
4 the house of representatives, who shall not be of the same
5 political party and one of whom is appointed with the advice and
6 consent of the minority floor leader of the house of
7 representatives; and

8 (4) two members appointed by the chief justice
9 of the supreme court, who shall not be of the same political
10 party.

11 B. Members of the commission shall be appointed for
12 staggered terms of four years. Upon initial appointment of the
13 commission, the members shall draw lots to determine which three
14 members will serve an initial term of two years, which three
15 members will serve an initial term of three years and which four
16 members will serve an initial term of four years; thereafter,
17 all members shall serve four-year terms. A person shall not
18 serve as a commission member for more than two consecutive
19 terms.

20 C. Appointments shall be made in a manner that meets
21 the following requirements:

22 (1) at least five members shall be appointed
23 from the five public regulation commission districts; and

24 (2) no more than five members shall be
25 registered members of the same political party, and no person

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1 whose party registration changed in the year prior to
2 appointment shall be appointed to the commission.

3 D. The commission shall select a chair, vice chair
4 and other officers as it deems necessary.

5 E. Six members of the commission constitute a quorum
6 for the transaction of business. No action may be taken by the
7 commission unless at least six members concur.

8 F. A vacancy on the commission shall be filled by
9 appointment of the appointing authority for that member's
10 position for the remainder of the unexpired term. A commission
11 member may only be removed for incompetence, neglect of duty or
12 malfeasance in office. The supreme court of the state of New
13 Mexico has exclusive jurisdiction over proceedings to remove
14 commission members, and its decision shall be final. A member
15 shall be given notice of hearing and an opportunity to be heard
16 before the member is removed.

17 G. During a member's service, a member shall not:

18 (1) hold or seek an elective public office, an
19 appointed public position or an office in a political party; or

20 (2) be a state employee, a government
21 contractor or a lobbyist.

22 H. Members shall recuse themselves from any
23 commission proceeding that involves the appointing authority who
24 appointed the member to the commission and in order to avoid the
25 appearance of impropriety or a conflict of interest.

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1 I. For a period of one calendar year immediately
2 preceding a member's term and immediately following the
3 expiration of a member's term, the member of the commission
4 shall not:

5 (1) hold or seek an elective public office, an
6 appointed public position or public employment;

7 (2) represent a person or entity who appears
8 before the commission; provided that a member may appear on the
9 member's own behalf; or

10 (3) accept employment or otherwise provide
11 services to a person or entity who appears before the commission
12 during the year.

13 J. Members are entitled to receive per diem and
14 mileage as provided in the Per Diem and Mileage Act and shall
15 receive no other compensation, perquisite or allowance.

16 K. The commission shall meet as necessary to carry
17 out its duties pursuant to the State Ethics Commission Act.

18 Section 4. COMMISSION--POWERS--DUTIES.--

19 A. The commission shall:

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

23 (2) report findings of probable cause that a
24 respondent's conduct constituted an ethics violation to the
25 respondent's appointing authority, employer or appropriate state

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1 agency or legislative body;

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

6 (4) compile, adopt, publish and provide to all
7 state officials, state employees, government contractors and
8 lobbyists an ethics guide that clearly and plainly explains the
9 ethics requirements set forth in state law;

10 (5) compile, adopt, publish and provide to all
11 state officials, state employees, government contractors and
12 lobbyists a business ethics guide that clearly and plainly
13 explains the ethics requirements set forth in state law as they
14 relate to conducting business with the state;

15 (6) provide annual ethics training to all
16 state officials, state employees, government contractors and
17 lobbyists;

18 (7) develop, adopt and promulgate all rules
19 necessary to implement and administer the provisions of the
20 State Ethics Commission Act, including rules of procedure for
21 investigations conducted by the commission;

22 (8) employ an executive director;

23 (9) submit an annual report of its activities,
24 including any recommendations regarding state ethics laws or the
25 scope of its powers and duties, in December of each year to the

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1 governor, the legislature and the chief justice of the supreme
2 court; and

3 (10) promulgate rules for the recusal of
4 members to avoid the appearance of impropriety and conflicts of
5 interest.

6 B. The commission may:

7 (1) recommend disciplinary actions for ethics
8 violations in accordance with the provisions of the State Ethics
9 Commission Act;

10 (2) subpoena and require the attendance of
11 witnesses and the production of accounts, books, papers, records
12 and other documents relevant to an investigation conducted by
13 the commission;

14 (3) issue advisory opinions to state
15 officials, state employees, government contractors and lobbyists
16 in accordance with the provisions of the State Ethics Commission
17 Act; and

18 (4) contract for the provisions of goods and
19 services.

20 Section 5. EXECUTIVE DIRECTOR--DUTIES--EMPLOYMENT.--

21 A. The executive director of the commission shall:

22 (1) be employed by, report directly to and
23 serve at the pleasure of the commission;

24 (2) hire a general counsel for the commission
25 and all other personnel as may be necessary to carry out the

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1 responsibilities of the commission;

2 (3) perform all investigations on behalf of
3 the commission;

4 (4) bring complaints and investigation results
5 before the commission;

6 (5) prepare an annual budget for the
7 commission and submit it to the commission for approval; and

8 (6) make recommendations to the commission of
9 proposed rules or legislative changes needed to provide better
10 administration of the State Ethics Commission Act.

11 B. The executive director of the commission may
12 administer oaths and take depositions to the same extent and
13 subject to the same limitations as would apply if the
14 depositions were held pursuant to the discovery rules in a civil
15 action in the district court.

16 C. For a period of one calendar year immediately
17 preceding the term of an executive director and immediately
18 following the expiration of the term of an executive director,
19 the executive director shall not:

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

22 (2) represent a person or entity who appears
23 before the commission, unless appearing on the executive
24 director's own behalf;

25 (3) accept employment or otherwise provide

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1 services to a person or entity who appears before the commission
2 during the year;

3 (4) hold or seek an office in a political
4 party; or

5 (5) be a state employee, a government
6 contractor or a lobbyist.

7 Section 6. COMMISSION--ADVISORY OPINIONS.--

8 A. The commission may issue an advisory opinion to a
9 state official, state employee, government contractor or
10 lobbyist on matters relating to a specific set of circumstances
11 involving ethics violations. Unless amended or revoked, an
12 advisory opinion issued by the commission shall be binding on
13 the commission in any subsequent commission proceedings
14 concerning the person who requested the opinion; provided that
15 the person acted in good faith and in reliance upon the opinion.

16 B. The commission shall promulgate rules for issuing
17 advisory opinions; provided that:

18 (1) advisory opinions shall be requested in
19 writing and identify a specific set of circumstances involving
20 an ethics issue;

21 (2) all requests to the commission for
22 advisory opinions are confidential; and

23 (3) the commission may publish an advisory
24 opinion after omitting the name of the requesting state
25 official, state employee, government contractor or lobbyist.

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1 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--
2 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL
3 REFERRAL REQUIRED.--

4 A. A person who has actual knowledge of an alleged
5 ethics violation committed by a state official, state employee,
6 government contractor or lobbyist may file a complaint with the
7 commission. The complaint shall be signed under penalty of
8 false statement and shall set forth in detail the specific
9 charges against the state official, state employee, government
10 contractor or lobbyist and the factual allegations that support
11 the charges. Together with the complaint, a person shall submit
12 to the commission any evidence that the person has that supports
13 the complaint. Evidence may include documents, records and the
14 names of witnesses. The commission may prescribe the forms on
15 which complaints are to be filed.

16 B. Upon receipt of a complaint filed pursuant to
17 this section, the executive director of the commission shall
18 review the complaint and make an initial determination as to
19 whether the conduct alleged in the complaint is within the
20 jurisdiction of the commission. If the executive director
21 determines that the alleged conduct is not within the
22 commission's jurisdiction, the executive director shall
23 recommend to the commission that it dismiss the complaint. The
24 commission may dismiss the complaint upon the recommendation of
25 the executive director or instruct the executive director to

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1 initiate an investigation of the complaint.

2 C. If the commission decides to investigate the
3 complaint or the executive director determines that the alleged
4 conduct is within the commission's jurisdiction, the executive
5 director shall initiate an investigation to determine whether
6 probable cause may exist to believe the respondent's alleged
7 conduct constituted an ethics violation. As soon as
8 practicable, the executive director shall notify the person who
9 filed the complaint and the respondent of the disposition of the
10 complaint. The executive director shall also notify the
11 respondent of the general nature of the complaint and the
12 investigation.

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

23 E. The commission may issue subpoenas for the
24 attendance and testimony of witnesses or the production of
25 books, documents, records and papers reasonably related to the

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1 complaint. Subpoenas may be signed by the chair of the
2 commission, upon approval of a majority of the members of the
3 commission, and shall state with reasonable certainty the nature
4 of the investigation, the nature of the information to be
5 produced, the time and place where the information shall be
6 produced and the consequences of failure to obey the subpoena.
7 After service of the subpoena upon the person, if the person
8 neglects or refuses to comply with the subpoena, the commission
9 may apply to a district court for an order compelling
10 compliance.

11 F. The executive director shall present a written
12 report of the investigation to the commission. The respondent
13 and the respondent's legal counsel may attend the meeting, and
14 the executive director shall provide reasonable notice to the
15 respondent in writing of the date, time and place of the
16 meeting. Notwithstanding the provisions of the Open Meetings
17 Act, meetings of the commission held for the purpose of an
18 investigation conducted pursuant to this section are closed to
19 the public. Except as otherwise provided in Subsections G and I
20 of this section, all complaints, communications, records or
21 other information related to an investigation shall be
22 confidential.

23 G. If the commission finds that, based on the facts
24 in the investigation report and the facts alleged in the
25 complaint, probable cause exists to believe that the

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1 respondent's alleged conduct constituted an ethics violation,
2 the commission shall report its finding in writing to the
3 respondent's appointing authority, employer or appropriate state
4 agency or legislative body. The written finding may include
5 recommendations for disciplinary action or further proceedings
6 against the respondent. The commission shall also provide the
7 respondent's appointing authority, employer or appropriate state
8 agency or legislative body with all evidence collected during
9 its investigation; provided that the receiving authority,
10 employer or state agency or legislative body agrees that the
11 evidence remain confidential until such time as it is offered
12 into evidence at any subsequent proceeding instituted to take
13 action against the respondent by the authority, employer or
14 state agency or legislative body. A commission finding reported
15 pursuant to this subsection shall not be public.

16 H. If the commission finds that, based on the facts
17 in the investigation report and the facts alleged in the
18 complaint, probable cause does not exist to believe that the
19 respondent's alleged conduct constituted an ethics violation,
20 the commission shall dismiss the complaint and notify the
21 respondent in writing of the dismissal no later than five days
22 after the finding is made. Following a dismissal and upon the
23 request of the respondent, the commission shall provide a report
24 of its finding in writing to the respondent. A commission
25 finding issued pursuant to this subsection shall not be public

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1 except upon the request of the respondent; provided that the
2 finding shall not disclose any confidential communications,
3 records or other information collected during the investigation.

4 I. If the commission finds at any time that the
5 respondent's conduct may amount to a criminal violation of state
6 law, the commission shall immediately refer the matter to the
7 attorney general or an appropriate district attorney. The
8 commission shall provide the attorney general or district
9 attorney with all evidence collected during its investigation
10 that may be used in a criminal proceeding. Nothing in this
11 subsection shall prevent the commission from taking any action
12 otherwise provided in this section.

13 J. No complaint shall be filed pursuant to this
14 section later than three years after an alleged ethics violation
15 was committed.

16 Section 8. COMPLAINTS AND INVESTIGATIONS--TIME
17 LIMITATIONS.--If the commission has not scheduled a meeting
18 concerning the disposition of a complaint within ninety days
19 after the complaint is received by the commission or has not
20 disposed of the complaint within six months after the complaint
21 was received, the commission shall dismiss the complaint and
22 notify the respondent in writing of the dismissal. A dismissal
23 of a complaint pursuant to this section shall not be public
24 except upon the request of the respondent; provided that the
25 finding shall not disclose any confidential communications,

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1 records or other information collected during the investigation
2 of the complaint.

3 Section 9. PROHIBITED ACTIONS.--

4 A. A person shall not take or threaten to take any
5 retaliatory, disciplinary or other adverse action against
6 another person who in good faith:

7 (1) files a complaint with the commission
8 alleging an ethics violation against a state official, state
9 employee or lobbyist; or

10 (2) provides testimony, records, reports or
11 other information to the commission during an investigation
12 conducted pursuant to the State Ethics Commission Act.

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

17 Section 10. APPROPRIATION.--Five hundred thousand dollars
18 (\$500,000) is appropriated from the general fund to the state
19 ethics commission for expenditure in fiscal year 2010 to carry
20 out the provisions of the State Ethics Commission Act. Any
21 unexpended or unencumbered balance remaining at the end of
22 fiscal year 2010 shall revert to the general fund.

23 Section 11. APPLICABILITY.--The provisions of the State
24 Ethics Commission Act apply to a state official, state employee,
25 government contractor or lobbyist who commits an ethics

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1 violation on or after July 1, 2009.

2 Section 12. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2009.

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