

1 SENATE BILL 154

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Dede Feldman

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10 AN ACT

11 RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
12 CREATING THE STATE ETHICS COMMISSION; PROVIDING FOR AN
13 EXECUTIVE DIRECTOR; PROVIDING FOR ANNUAL ETHICS TRAINING AND
14 THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE DEVELOPMENT OF
15 A PROPOSED ETHICS CODE; PROVIDING FOR THE ISSUANCE OF ADVISORY
16 OPINIONS; TRANSFERRING THE ADMINISTRATION OF CERTAIN ACTS TO
17 THE STATE ETHICS COMMISSION; PROVIDING FOR THE FILING OF
18 COMPLAINTS AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT
19 CONTRACTORS AND LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR
20 INVESTIGATIONS AND HEARINGS; GRANTING SUBPOENA POWERS;
21 REQUIRING CONFIDENTIALITY; PROHIBITING RETALIATION; MAKING AN
22 APPROPRIATION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
23 SECTION OF LAW BY REPEALING LAWS 2009, CHAPTER 68, SECTION 2.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

4 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 State Ethics Commission Act:

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

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

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

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

16 E. "director" means the executive director of the
17 commission;

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

24 G. "government contractor" means a person who has a
25 contract with a state agency or who has submitted a competitive

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1 sealed proposal or competitive sealed bid for a contract with a
2 state agency;

3 H. "legislative body" means the house of
4 representatives or the senate;

5 I. "lobbying" means attempting to influence:

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

11 (2) an official action;

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

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

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

24 (3) a state employee or an employee of a
25 political subdivision of the state, specifically designated by

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1 an elected or appointed officer, who appears before a
2 legislative committee or in a rulemaking proceeding only to
3 explain the effect of legislation or a rule on that employee's
4 agency or political subdivision; provided that the elected or
5 appointed officer files the designation with the secretary of
6 state and makes it available for public inspection;

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

11 (5) a legislator or legislative staff member;

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

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

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

24 K. "official action" means a decision, action or
25 nonaction of a state official or state agency in a rulemaking

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1 or other matter, except an adjudicatory proceeding;

2 L. "political party" means a political party that
3 has complied with the provisions of Section 1-7-2 NMSA 1978;

4 M. "respondent" means a person subject to an act
5 administered by the commission or a state official, state
6 employee, government contractor or lobbyist who is the subject
7 of a complaint filed with or by the commission;

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

16 O. "state employee" means an employee of a state
17 agency; and

18 P. "state official" means a person elected to an
19 office of the executive or legislative branch of the state or a
20 person appointed to a state agency.

21 Section 3. [NEW MATERIAL] STATE ETHICS COMMISSION
22 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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

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1 (1) five commissioners appointed by the
2 governor, no more than three of whom shall be of the same
3 political party and at least one commissioner shall be
4 appointed from each congressional district;

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

7 (3) one commissioner appointed by the minority
8 floor leader of the senate;

9 (4) one commissioner appointed by the speaker
10 of the house of representatives;

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

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

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

22 C. Each appointing authority shall file letters of
23 appointment with the secretary of state.

24 D. Commissioners shall be appointed for staggered
25 terms of four years beginning July 1, 2010. The initial

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1 commissioners shall draw lots to determine which three
2 commissioners serve an initial term of two years, which four
3 commissioners serve an initial term of three years and which
4 four commissioners serve an initial term of four years;
5 thereafter, all commissioners shall serve four-year terms.
6 Members shall serve until their successors are appointed and
7 qualified.

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

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

17 G. The commission shall elect a chairperson, who
18 shall be one of the governor's appointees, and a vice
19 chairperson and other officers it deems necessary.

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

23 I. A commissioner may be removed only for
24 incompetence, neglect of duty or malfeasance in office. A
25 proceeding for the removal of a commissioner may be commenced

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1 by the commission or by the attorney general upon the request
2 of the commission. The New Mexico supreme court has exclusive
3 jurisdiction over proceedings to remove commissioners, and its
4 decision shall be final. A commissioner shall be given notice
5 of hearing and an opportunity to be heard before the
6 commissioner is removed.

7 Section 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
8 LIMITATIONS.--

9 A. To qualify for appointment to the commission, a
10 person shall:

11 (1) be a resident of New Mexico; and

12 (2) not have changed political party

13 affiliation for at least one year prior to appointment.

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

21 C. During a commissioner's tenure, a commissioner
22 shall:

23 (1) not seek or hold an office in a political
24 party;

25 (2) not seek or hold an elective public office

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1 or an appointed public position, except for a commissioner
2 appointed by the chief justice of the supreme court in
3 continuing to hold the office of district court judge;

4 (3) not be a state employee, government
5 contractor or lobbyist;

6 (4) remain a resident of New Mexico; and

7 (5) not change political party affiliation.

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

10 E. For a period of one calendar year following a
11 commissioner's tenure or following the resignation or removal
12 of a commissioner, the commissioner shall not:

13 (1) seek or hold an elective public office, an
14 appointed public position or public employment, except for a
15 commissioner appointed by the chief justice of the supreme
16 court in continuing to hold the office of district court judge;

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

19 (3) accept employment or otherwise provide
20 services to a respondent unless the commissioner accepted
21 employment or provided services prior to the filing of a
22 complaint against the respondent.

23 Section 5. [NEW MATERIAL] COMMISSION--DUTIES AND
24 POWERS.--

25 A. The commission shall:

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1 (1) receive and investigate complaints
2 alleging violations of an act administered by the commission or
3 alleging ethics violations against state officials, state
4 employees, government contractors and lobbyists;

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

7 (3) beginning on January 1, 2011, administer
8 the provisions of the following acts:

9 (a) the Campaign Reporting Act;

10 (b) the Voter Action Act;

11 (c) the Lobbyist Regulation Act;

12 (d) the Governmental Conduct Act;

13 (e) the Financial Disclosure Act; and

14 (f) the Gift Act;

15 (4) develop, adopt and promulgate the rules
16 necessary to implement and administer the provisions of the
17 State Ethics Commission Act;

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

21 (6) draft a proposed code of ethics for state
22 officials and state employees and submit the proposed code to
23 each elected state official and state agency for adoption;

24 (7) compile, adopt, publish and make available
25 to all state officials, state employees, government contractors

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1 and lobbyists an ethics guide that clearly and plainly explains
2 the ethics requirements set forth in state law, including those
3 that relate to conducting business with the state;

4 (8) offer annual ethics training to state
5 officials, state employees, government contractors, lobbyists
6 and other interested persons;

7 (9) employ an executive director, who shall be
8 an attorney; and

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

13 B. The commission may:

14 (1) initiate complaints alleging violations of
15 an act administered by the commission or alleging ethics
16 violations against state officials, state employees, government
17 contractors and lobbyists;

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

21 (3) issue advisory opinions to state
22 officials, state employees, government contractors and
23 lobbyists in accordance with the provisions of the State Ethics
24 Commission Act.

25 Section 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--

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1 APPOINTMENT--DUTIES AND POWERS.--

2 A. The commission shall appoint an executive
3 director who shall be knowledgeable about state ethics laws and
4 who shall be appointed without reference to party affiliation
5 and solely on the grounds of fitness to perform the duties of
6 the office. The director shall hold office from the date of
7 appointment until such time as the director is removed by the
8 commission.

9 B. The director shall:

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

12 (2) perform investigations on behalf of the
13 commission;

14 (3) bring complaints and investigation results
15 before the commission for consideration;

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

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

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

23 C. The director may:

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

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1 duties of the commission;

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

4 (3) administer oaths and take depositions
5 subject to the Rules of Civil Procedure for the District
6 Courts.

7 D. For a period of one calendar year immediately
8 following the director's employment with the commission, the
9 director shall not:

10 (1) seek or hold an elective public office, an
11 appointed public position or public employment;

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

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

18 Section 7. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

19 A. A commissioner shall recuse from and not
20 participate in a commission proceeding in which the
21 commissioner has a conflict of interest. The commissioner
22 shall state the reason for the recusal.

23 B. If the propriety of a commissioner's
24 participation in a particular matter is questioned on the
25 grounds that the commissioner has a conflict of interest, the

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1 commission may disqualify that commissioner from participation
2 in a commission proceeding.

3 C. A recused or disqualified commissioner shall not
4 participate in any proceeding related to the matter from which
5 the commissioner is recused or disqualified, and the
6 commissioner shall be excused from that portion of a meeting at
7 which the matter is discussed.

8 D. If four or more commissioners have recused
9 themselves or are disqualified from participating in a
10 proceeding, the remaining commissioners shall appoint temporary
11 commissioners to participate in that proceeding. Appointments
12 of temporary commissioners shall be made by a majority vote of
13 the remaining commissioners in accordance with the political
14 party affiliation and geographical representation requirements
15 and the qualifications of Sections 3 and 4 of the State Ethics
16 Commission Act.

17 E. The commission shall promulgate rules for the
18 recusal and disqualification of members and for the appointment
19 of temporary commissioners.

20 Section 8. [NEW MATERIAL] ADVISORY OPINIONS.--

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

- 23 (1) be requested in writing by a state
24 official, state employee, government contractor or lobbyist;
25 (2) identify a specific set of circumstances

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1 involving an ethics issue;

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

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

8 B. A request for an advisory opinion is
9 confidential and not subject to the provisions of the
10 Inspection of Public Records Act.

11 C. Unless amended or revoked, an advisory opinion
12 shall be binding on the commission in any subsequent commission
13 proceedings concerning a person who acted in good faith and in
14 reasonable reliance on the advisory opinion.

15 Section 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--
16 SUBPOENAS.--

17 A. A complaint of an alleged violation of an act
18 administered by the commission or an alleged ethics violation
19 committed by a respondent may be:

20 (1) filed with the commission by a person who
21 has actual knowledge of the alleged violation; or

22 (2) initiated by the commission upon receipt
23 of evidence deemed sufficient by the commission.

24 B. The complainant shall set forth in detail the
25 specific charges against the respondent and the factual

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1 allegations that support the charges and shall sign the
2 complaint under penalty of false statement. The complainant
3 shall submit any evidence the complainant has that supports the
4 complaint. Evidence may include documents, records and names
5 of witnesses. The commission shall prescribe the forms on
6 which complaints are to be filed.

7 C. The chairperson of the commission shall sign a
8 complaint initiated by the commission, and the complaint shall
9 set forth in detail the specific charges against the respondent
10 and the factual allegations that support the charges.

11 D. The director shall bring all complaints before
12 the commission and make recommendations to the commission as to
13 whether the conduct alleged in a complaint is within the
14 jurisdiction of the commission and warrants investigation.

15 E. The commission shall dismiss complaints that are
16 frivolous, unfounded or outside the jurisdiction of the
17 commission. If the commission dismisses a complaint pursuant
18 to this subsection, the director shall promptly notify the
19 complainant.

20 F. If the commission determines that there is
21 sufficient cause to proceed with an investigation, the director
22 shall investigate the complaint. The director shall promptly
23 notify the respondent that a complaint has been filed and is
24 being investigated and shall notify the respondent of the
25 specific allegations in the complaint and the specific ethics

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1 violations implicated by the complaint.

2 G. As part of an investigation, the director may
3 administer oaths, interview witnesses and examine books,
4 records, documents and other evidence reasonably related to the
5 complaint. All testimony in an investigation shall be under
6 oath, and the respondent shall have the right to be represented
7 by legal counsel. If the director determines that a subpoena
8 is necessary to obtain the testimony of any person or the
9 production of books, records, documents or other evidence, the
10 director shall request that the commission issue an appropriate
11 subpoena.

12 H. The commission may issue subpoenas for the
13 attendance and examination of witnesses or for the production
14 of books, records, documents, things or other evidence
15 reasonably related to an investigation. A subpoena shall be
16 signed by the chairperson of the commission and shall command
17 the person to whom it is directed to attend and give testimony
18 or to produce and permit the inspection of books, documents,
19 records, things or other evidence. A subpoena shall state the
20 general nature of the investigation and shall describe with
21 reasonable specificity the nature of the information to be
22 produced, the time and place where the information shall be
23 produced and the consequences of failure to obey the subpoena.
24 After service of a subpoena, if a person neglects or refuses to
25 comply with the subpoena, the commission may apply to a

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1 district court for an order enforcing the subpoena and
2 compelling compliance.

3 I. A state official or state employee who is a
4 respondent shall be entitled to representation by the risk
5 management division of the general services department;
6 provided, however, that if the respondent is found to have
7 committed an ethics violation, the respondent shall reimburse
8 the division for the respondent's equitable share of reasonable
9 attorney fees and costs. If the respondent was represented by
10 an attorney employee of the risk management division, the
11 division shall be reimbursed at the full cost incurred by the
12 division, including benefits and taxes, for employing the
13 attorney for the hours the attorney provided on the case.

14 Section 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
15 LIMITATIONS.--

16 A. If the commission has not scheduled a hearing
17 concerning the disposition of a complaint within ninety days
18 after the complaint is received or initiated by the commission,
19 the director shall, as soon as practicable, report to the
20 commission on the progress and status of the investigation.
21 The commission may dismiss the complaint or instruct the
22 director to continue investigating the complaint. Unless the
23 commission dismisses the complaint, the director shall report
24 to the commission every ninety days thereafter on the progress
25 and status of the investigation.

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1 B. Upon dismissal or a decision to continue an
2 investigation of a complaint, the commission shall notify the
3 respondent in writing of its action. The commission shall also
4 notify the complainant of the dismissal of a complaint. The
5 commission shall not publicly disclose its action or
6 notification except upon the request of the respondent.

7 Section 11. [NEW MATERIAL] REPORT--HEARING--FINDINGS AND
8 CONCLUSIONS--DISCLOSURE OF ETHICS VIOLATION.--

9 A. The director shall provide a written report of
10 the investigation to the commission and to the respondent. The
11 director shall provide the respondent with reasonable written
12 notice of the date, time and place of the commission hearing.

13 B. At the hearing, the commission has the power to
14 administer oaths. One of the commissioners appointed by the
15 chief justice of the supreme court shall preside over the
16 hearing. The respondent has the right to be represented by
17 counsel and to present evidence and testimony and examine and
18 cross-examine witnesses.

19 C. After the hearing, if the commission finds by
20 clear and convincing evidence that the respondent's conduct
21 constituted an ethics violation, the commission shall issue a
22 written report that shall include findings of fact and
23 conclusions of law. If the respondent is a state official or
24 state employee, the written report may include a public
25 reprimand or censure regarding the respondent's behavior or

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1 recommendations for disciplinary action against the respondent.

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

6 (1) appropriate legislative body if the
7 respondent is a member of the legislature;

8 (2) house of representatives if the respondent
9 is a state official elected to an office of the executive
10 branch;

11 (3) respondent's appointing authority if the
12 respondent is an appointed state official;

13 (4) appropriate state agency if the respondent
14 is a state employee;

15 (5) state agency with which the respondent has
16 a government contract if the respondent is a government
17 contractor; or

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

20 E. If, after the hearing, the commission does not
21 find by clear and convincing evidence that the respondent's
22 conduct constituted an ethics violation, the commission shall
23 dismiss the complaint and provide notice of the dismissal to
24 the respondent and complainant no later than five days after
25 the finding is made. A notice issued pursuant to this

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1 subsection shall not be public except upon the request of the
2 respondent.

3 F. Notwithstanding the provisions of the Open
4 Meetings Act, commission hearings held pursuant to this section
5 are closed to the public. The commission shall promulgate
6 rules establishing procedures for hearings.

7 Section 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

8 All complaints, reports, files, records and communications
9 collected or generated by the commission or its director that
10 pertain to alleged ethics violations are confidential and not
11 subject to the provisions of the Inspection of Public Records
12 Act. Such complaints, reports, files, records or
13 communications shall not be disclosed unless:

14 A. disclosure is required pursuant to the
15 provisions of the State Ethics Commission Act;

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

18 C. disclosure is required by law or ordered by a
19 court; or

20 D. the respondent files with the commission a
21 written waiver of confidentiality.

22 Section 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--

23 REFERRAL.--If the commission finds at any time that the
24 respondent's conduct may amount to a criminal violation, the
25 commission shall immediately refer the matter to the attorney

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1 general or an appropriate district attorney. The commission
2 shall provide the attorney general or district attorney with
3 all evidence collected during its investigation that may be
4 used in a criminal proceeding. Nothing in this section
5 prevents the commission from taking any action otherwise
6 authorized by the State Ethics Commission Act or deciding to
7 hold a matter in abeyance pending resolution of any criminal
8 charges.

9 Section 14. [NEW MATERIAL] STATUTE OF LIMITATIONS.--The
10 commission shall not accept or consider a complaint unless the
11 complaint is filed or initiated within three years from the
12 date on which the alleged conduct occurred.

13 Section 15. [NEW MATERIAL] PROHIBITED ACTIONS.--

14 A. A person shall not take or threaten to take any
15 retaliatory, disciplinary or other adverse action against
16 another person who in good faith:

17 (1) files a complaint with the commission
18 alleging an ethics violation or violation of an act
19 administered by the commission against a state official, state
20 employee, government contractor, lobbyist or other respondent;
21 or

22 (2) provides testimony, records, documents or
23 other information to the commission during an investigation or
24 at a hearing conducted pursuant to the State Ethics Commission
25 Act.

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1 B. Nothing in the State Ethics Commission Act
2 precludes civil actions or criminal sanctions for libel,
3 slander or other civil or criminal claims against a person who
4 files a false claim under that act.

5 Section 16. Section 1-19-26 NMSA 1978 (being Laws 1979,
6 Chapter 360, Section 2, as amended) is amended to read:

7 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
8 Act:

9 A. "advertising campaign" means an advertisement or
10 series of advertisements used for a political purpose and
11 disseminated to the public either in print, by radio or
12 television broadcast or by any other electronic means,
13 including telephonic communications, and may include direct or
14 bulk mailings of printed materials;

15 B. "anonymous contribution" means a contribution
16 the contributor of which is unknown to the candidate or the
17 candidate's agent or the political committee or its agent who
18 accepts the contribution;

19 C. "bank account" means an account in a financial
20 institution located in New Mexico;

21 D. "campaign committee" means two or more persons
22 authorized by a candidate to raise, collect or expend
23 contributions on the candidate's behalf for the purpose of
24 electing the candidate to office;

25 E. "candidate" means an individual who seeks or

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1 considers an office in an election covered by the Campaign
2 Reporting Act, including a public official, who either has
3 filed a declaration of candidacy or nominating petition or:

4 (1) for a non-statewide office, has received
5 contributions or made expenditures of one thousand dollars
6 (\$1,000) or more or authorized another person or campaign
7 committee to receive contributions or make expenditures of one
8 thousand dollars (\$1,000) or more for the purpose of seeking
9 election to the office; or

10 (2) for a statewide office, has received
11 contributions or made expenditures of two thousand five hundred
12 dollars (\$2,500) or more or authorized another person or
13 campaign committee to receive contributions or make
14 expenditures of two thousand five hundred dollars (\$2,500) or
15 more for the purpose of seeking election to the office or for
16 candidacy exploration purposes in the years prior to the year
17 of the election;

18 F. "contribution" means a gift, subscription, loan,
19 advance or deposit of money or other thing of value, including
20 the estimated value of an in-kind contribution, that is made or
21 received for a political purpose, including payment of a debt
22 incurred in an election campaign, but "contribution" does not
23 include the value of services provided without compensation or
24 unreimbursed travel or other personal expenses of individuals
25 who volunteer a portion or all of their time on behalf of a

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1 candidate or political committee, nor does it include the
2 administrative or solicitation expenses of a political
3 committee that are paid by an organization that sponsors the
4 committee;

5 G. "deliver" or "delivery" means to deliver by
6 certified or registered mail, telecopier, electronic
7 transmission or facsimile or by personal service;

8 H. "election" means any primary, general or
9 statewide special election in New Mexico and includes county
10 and judicial retention elections but excludes municipal, school
11 board and special district elections;

12 I. "election year" means an even-numbered year in
13 which an election covered by the Campaign Reporting Act is
14 held;

15 J. "expenditure" means a payment, transfer or
16 distribution or obligation or promise to pay, transfer or
17 distribute any money or other thing of value for a political
18 purpose, including payment of a debt incurred in an election
19 campaign or pre-primary convention, but does not include the
20 administrative or solicitation expenses of a political
21 committee that are paid by an organization that sponsors the
22 committee;

23 K. "person" means an individual or entity;

24 L. "political committee" means two or more persons,
25 other than members of a candidate's immediate family or

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1 campaign committee or a husband and wife who make a
2 contribution out of a joint account, who are selected,
3 appointed, chosen, associated, organized or operated primarily
4 for a political purpose; and "political committee" includes:

5 (1) political parties, political action
6 committees or similar organizations composed of employees or
7 members of any corporation, labor organization, trade or
8 professional association or any other similar group that
9 raises, collects, expends or contributes money or any other
10 thing of value for a political purpose;

11 (2) a single individual whose actions
12 represent that the individual is a political committee; and

13 (3) a person or an organization of two or more
14 persons that within one calendar year expends funds in excess
15 of five hundred dollars (\$500) to conduct an advertising
16 campaign for a political purpose;

17 M. "political purpose" means influencing or
18 attempting to influence an election or pre-primary convention,
19 including a constitutional amendment or other question
20 submitted to the voters;

21 N. "prescribed form" means a form or electronic
22 format prepared and prescribed by the [~~secretary of~~] state
23 ethics commission;

24 O. "proper filing officer" means [~~either the~~
25 ~~secretary of state or the county clerk~~] state ethics commission

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1 as provided in Section 1-19-27 NMSA 1978;

2 P. "public official" means a person elected to an
3 office in an election covered by the Campaign Reporting Act or
4 a person appointed to an office that is subject to an election
5 covered by that act; and

6 Q. "reporting individual" means every public
7 official, candidate or treasurer of a campaign committee and
8 every treasurer of a political committee."

9 Section 17. Section 1-19-26.1 NMSA 1978 (being Laws 1993,
10 Chapter 46, Section 2, as amended) is amended to read:

11 "1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--
12 DISCLOSURES.--

13 A. It is unlawful for [~~any~~] a political committee
14 that receives, contributes or expends in excess of five hundred
15 dollars (\$500) in any calendar year to continue to receive or
16 make [~~any~~] a contribution or expenditure for a political
17 purpose unless that political committee appoints and maintains
18 a treasurer and registers with the [~~secretary of~~] state ethics
19 commission.

20 B. A political committee shall register with the
21 [~~secretary of~~] state ethics commission within ten days of
22 receiving, contributing or expending in excess of five hundred
23 dollars (\$500) by paying a filing fee of fifty dollars (\$50.00)
24 and filing a statement of organization under oath on a
25 prescribed form showing:

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1 (1) the full name of the political committee,
2 which shall fairly and accurately reflect the identity of the
3 committee, including any sponsoring organization, and its
4 address;

5 (2) a statement of the purpose for which the
6 political committee was organized;

7 (3) the name, address and relationship of any
8 connected or associated organization or entity;

9 (4) the names and addresses of the officers of
10 the committee; and

11 (5) an identification of the bank used by the
12 committee for all expenditures or contributions made or
13 received.

14 C. The provisions of this section do not apply to a
15 political committee that is located in another state and is
16 registered with the federal election commission if the
17 political committee reports on federal reporting forms filed
18 with the federal election commission all expenditures for and
19 contributions made to reporting individuals in New Mexico and
20 files with the [~~secretary of~~] state ethics commission,
21 according to the schedule required for the filing of forms with
22 the federal election commission, a copy of either the full
23 report or the cover sheet and the portions of the federal
24 reporting forms that contain the information on expenditures
25 for and contributions made to reporting individuals in New

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1 Mexico."

2 Section 18. Section 1-19-26.2 NMSA 1978 (being Laws 1997,
3 Chapter 112, Section 1) is amended to read:

4 "1-19-26.2. RULES AND REGULATIONS.--The [~~secretary of~~]
5 state ethics commission may adopt and promulgate rules and
6 regulations to implement the provisions of the Campaign
7 Reporting Act. In adopting and promulgating these rules and
8 regulations, the [~~secretary of state~~] commission shall comply
9 with the provisions of the Administrative Procedures Act. In
10 addition to any other notification required pursuant to the
11 provisions of Paragraph (2) of Subsection A of Section 12-8-4
12 NMSA 1978, the [~~secretary of state~~] commission shall notify all
13 qualified political parties in the state and the New Mexico
14 legislative council prior to adopting, amending or repealing
15 any rule or regulation."

16 Section 19. Section 1-19-27 NMSA 1978 (being Laws 1979,
17 Chapter 360, Section 3, as amended) is amended to read:

18 "1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

19 A. Except for those candidates and public
20 [~~officials~~] officials who file a statement of no activity, all
21 reporting individuals shall file with the proper filing officer
22 a report of expenditures and contributions on a prescribed
23 form.

24 B. The proper filing officer for filing reports of
25 expenditures and contributions by a political committee is the

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1 ~~[secretary of]~~ state ethics commission.

2 C. The proper filing officer for filing reports of
3 expenditures and contributions or statements of no activity is
4 the ~~[secretary of]~~ state ethics commission for all candidates
5 and public officials.

6 D. The ~~[secretary of]~~ state ethics commission shall
7 develop or contract for services to develop an electronic
8 reporting system for receiving and for public inspection of
9 reports of expenditures and contributions and statements of no
10 activity to the Campaign Reporting Act. The electronic
11 reporting system shall:

12 (1) enable a person to file reports online by
13 filling out forms on the ~~[secretary of state's]~~ commission's
14 web site; and

15 (2) provide for encrypted transmissions."

16 Section 20. Section 1-19-28 NMSA 1978 (being Laws 1979,
17 Chapter 360, Section 4, as amended) is amended to read:

18 "1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--
19 CANDIDATES.--

20 A. The ~~[secretary of]~~ state ethics commission
21 annually shall furnish to all reporting individuals the
22 prescribed forms for the reporting of expenditures and
23 contributions, supplemental reports and a statement of no
24 activity and the specific dates the reports and statement are
25 due.

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1 B. In addition to the provisions of Subsection A of
2 this section, at the time of filing a declaration of candidacy
3 or a nominating petition, the ~~[proper filing officer]~~ secretary
4 of state or county clerk shall give the candidate the
5 prescribed reporting forms and the schedule of specific dates
6 for filing the required reports or a statement of no activity.
7 The prescribed forms shall also be made available to all
8 reporting individuals at the office of the secretary of state,
9 the state ethics commission and in each county at the office of
10 the county clerk."

11 Section 21. Section 1-19-29 NMSA 1978 (being Laws 1993,
12 Chapter 46, Section 5, as amended) is amended to read:

13 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

14 A. Except as otherwise provided in this section,
15 all reporting individuals shall file with the proper filing
16 officer by 5:00 p.m. on the second Monday in April and October
17 a report of all expenditures made and contributions received on
18 or before the first Monday in those months and not previously
19 reported. The report shall be filed biannually until the
20 reporting individual's bank account has been closed and the
21 other provisions specified in Subsection F of this section have
22 been satisfied.

23 B. In an election year, instead of the biannual
24 reports provided for in Subsection A of this section, all
25 reporting individuals, except for public officials who are not

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1 candidates in an election that year, shall file reports of all
2 expenditures made and contributions received or, if applicable,
3 statements of no activity, according to the following schedule:

4 (1) by 5:00 p.m. on the second Monday in
5 April, a report of all expenditures made and contributions
6 received on or before the first Monday in April and not
7 previously reported;

8 (2) by 5:00 p.m. on the second Monday in May,
9 a report of all expenditures made and contributions received on
10 or before the first Monday in May and not previously reported;

11 (3) by 5:00 p.m. on the second Monday in
12 September, a report of all expenditures made and contributions
13 received on or before the first Monday in September and not
14 previously reported;

15 (4) by 5:00 p.m. on the second Monday in
16 October, a report of all expenditures made and contributions
17 received on or before the first Monday in October and not
18 previously reported;

19 (5) by 5:00 p.m. on the Thursday before a
20 primary, general or statewide special election, a report of all
21 expenditures made and contributions received by 5:00 p.m. on
22 the Tuesday before the election. Any contribution or pledge to
23 contribute that is received after 5:00 p.m. on the Tuesday
24 before the election and that is for five hundred dollars (\$500)
25 or more in a legislative or non-statewide judicial election, or

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1 two thousand five hundred dollars (\$2,500) or more in a
2 statewide election, shall be reported to the proper filing
3 officer either in a supplemental report on a prescribed form
4 within twenty-four hours of receipt or in the report to be
5 filed by 5:00 p.m. on the Thursday before a primary, general or
6 statewide special election, except that any such contribution
7 or pledge to contribute that is received after 5:00 p.m. on the
8 Friday before the election may be reported by 12:00 noon on the
9 Monday before the election; and

10 (6) by 5:00 p.m. on the thirtieth day after a
11 primary, general or statewide special election, a report of all
12 expenditures made and contributions received on or before the
13 twenty-fifth day after the election and not previously
14 reported.

15 C. If a candidate or public official has not
16 received any contributions and has not made any expenditures
17 since the candidate's or official's last report was filed with
18 the proper filing officer, the candidate or official shall only
19 be required to file a statement of no activity, which shall not
20 be required to be notarized, in lieu of a full report when that
21 report would otherwise be due and shall not be required to file
22 a full report until the next required filing date occurring
23 after an expenditure is made or a contribution is received.

24 D. In an election year, a public official who is
25 not a candidate shall file biannual reports of expenditures

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1 made and contributions received or statements of no activity in
2 accordance with the schedule provided for in Subsection A of
3 this section.

4 E. A report of expenditures and contributions filed
5 after a deadline set forth in this section shall not be deemed
6 to have been timely filed.

7 F. Except for candidates and public officials who
8 file a statement of no activity, each reporting individual
9 shall file a report of expenditures and contributions pursuant
10 to the filing schedules set forth in this section, regardless
11 of whether any expenditures were made or contributions were
12 received during the reporting period. Reports shall be
13 required until the reporting individual delivers a report to
14 the proper filing officer stating that:

15 (1) there are no outstanding campaign debts;

16 (2) all money has been expended in accordance
17 with the provisions of Section 1-19-29.1 NMSA 1978; and

18 (3) the bank account has been closed.

19 G. Each treasurer of a political committee shall
20 file a report of expenditures and contributions pursuant to the
21 filing schedules set forth in this section until the treasurer
22 files a report that affirms that the committee has dissolved or
23 no longer exists and that its bank account has been closed.

24 H. A reporting individual who is a candidate within
25 the meaning of the Campaign Reporting Act because of the amount

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1 of contributions the candidate receives or expenditures the
2 candidate makes and who does not ultimately file a declaration
3 of candidacy or a nominating petition with the proper filing
4 officer and does not file a statement of no activity shall file
5 biannual reports in accordance with Subsection A of this
6 section.

7 I. Reports required by this section shall be
8 subscribed and sworn to by the candidate or the treasurer of
9 the political committee. A report filed electronically shall
10 be electronically authenticated by the candidate or the
11 treasurer of the political committee using an electronic
12 signature in conformance with the Electronic Authentication of
13 Documents Act and the Uniform Electronic Transactions Act. For
14 the purposes of the Campaign Reporting Act, a report that is
15 electronically authenticated in accordance with the provisions
16 of this subsection shall be deemed to have been subscribed and
17 sworn to by the candidate or the treasurer
18 of the political committee who was required to file the report.

19 J. Reports required by this section shall be filed
20 electronically by all reporting individuals.

21 K. Reporting individuals may apply to the
22 [~~secretary of~~] state ethics commission for exemption from
23 electronic filing in case of hardship, which shall be defined
24 by the [~~secretary of state~~] commission."

25 Section 22. Section 1-19-31 NMSA 1978 (being Laws 1979,
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1 Chapter 360, Section 7, as amended) is amended to read:

2 "1-19-31. CONTENTS OF REPORT.--

3 A. Each required report of expenditures and
4 contributions shall be typed or printed legibly, or on a
5 computer disc or format approved by the [~~secretary of~~] state
6 ethics commission, and shall include:

7 (1) the name and address of the person or
8 entity to whom an expenditure was made or from whom a
9 contribution was received, except as provided for anonymous
10 contributions or contributions received from special events as
11 provided in Section 1-19-34 NMSA 1978; provided that for
12 contributors, the name of the entity or the first and last
13 names of any individual shall be the full name of the entity or
14 individual, and initials only shall not constitute a full name
15 unless that is the complete legal name;

16 (2) the occupation or type of business of any
17 person or entity making contributions of two hundred fifty
18 dollars (\$250) or more in the aggregate per election;

19 (3) the amount of the expenditure or
20 contribution or value thereof;

21 (4) the purpose of the expenditure; and

22 (5) the date the expenditure was made or the
23 contribution was received.

24 B. Each report shall contain an opening and
25 closing cash balance for the bank account maintained by the

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1 reporting individual during the reporting period and the name
2 of the financial institution.

3 C. Each report shall specify the amount of each
4 unpaid debt and the identity of the person to whom the debt
5 is owed."

6 Section 23. Section 1-19-32 NMSA 1978 (being Laws 1979,
7 Chapter 360, Section 8, as amended) is amended to read:

8 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

9 A. Each of the following documents is a public
10 record open to public inspection during regular office hours
11 in the office in which the document was filed or from which
12 the document was issued:

13 (1) a statement of [~~exception~~] no activity;

14 (2) a report of expenditures and
15 contributions;

16 (3) an advisory opinion issued by the
17 [~~secretary of~~] state ethics commission;

18 (4) a document specified as a public record
19 in the Campaign Reporting Act; and

20 (5) an arbitration decision issued by an
21 arbitration panel and filed with the [~~secretary of~~] state
22 ethics commission.

23 B. Each public record described in Subsection A
24 of this section shall be retained by the state for five years
25 and may be destroyed five years after the date of filing

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1 unless a legal action or prosecution is pending that requires
2 the preservation of the public record.

3 C. The [~~secretary of~~] state ethics commission
4 shall provide for electronic access to reports of
5 expenditures and contributions and statements of [~~exception~~]
6 no activity submitted electronically by reporting
7 individuals. Electronic access shall include access via the
8 internet and shall be in an easily searchable format."

9 Section 24. Section 1-19-32.1 NMSA 1978 (being Laws
10 1981, Chapter 331, Section 9, as amended) is amended to read:

11 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
12 REPORTS.--

13 A. The [~~secretary of~~] state ethics commission
14 shall conduct a thorough examination of at least ten percent
15 of all reports filed during a year by reporting individuals,
16 selected at random at least forty days after the general
17 election and ten days after the April reports are filed in a
18 nonelection year, to determine compliance with the provisions
19 of the Campaign Reporting Act. The examination may include
20 an investigation of any discrepancies, including a cross-
21 reference to reports filed by any other reporting individual.
22 A reporting individual shall be notified in writing if a
23 discrepancy is found in the report filed and shall be
24 permitted to file a written explanation for the discrepancy
25 within ten working days of the date of the notice. The

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1 notice, penalty and arbitration provisions set forth in
2 Section 1-19-34.4 NMSA 1978 shall apply to examinations
3 conducted under this section.

4 B. After the date stated in the notice of final
5 action for submission of a written explanation, the
6 [~~secretary of~~] state ethics commission shall prepare an
7 annual report of any unresolved discrepancies found after
8 examination of the random sample provided for in Subsection A
9 of this section. A copy of this report shall be transmitted
10 to the attorney general for enforcement pursuant to the
11 provisions of Section 1-19-36 NMSA 1978. This report is a
12 public record open to public inspection and subject to the
13 retention and destruction provisions set forth in Section
14 1-19-32 NMSA 1978."

15 Section 25. Section 1-19-34.4 NMSA 1978 (being Laws
16 1993, Chapter 46, Section 15, as amended) is amended to read:

17 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
18 INVESTIGATIONS--BINDING ARBITRATION--REFERRALS FOR
19 ENFORCEMENT.--

20 A. The [~~secretary of~~] state ethics commission
21 shall advise and seek to educate all persons required to
22 perform duties under the Campaign Reporting Act of those
23 duties. This includes advising all known reporting
24 individuals at least annually of that act's deadlines for
25 submitting required reports and statements of exception. The

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1 ~~[secretary of state]~~ commission, in consultation with the
2 attorney general, shall issue advisory opinions, when
3 requested in writing to do so, on matters concerning that
4 act. All prescribed forms prepared shall be clear and easy
5 to complete.

6 B. The ~~[secretary of]~~ state ethics commission may
7 initiate investigations to determine whether any provision of
8 the Campaign Reporting Act has been violated. Additionally,
9 any person who believes that a provision of that act has been
10 violated may file a written complaint with the ~~[secretary of~~
11 ~~state]~~ commission any time prior to ninety days after an
12 election, except that no complaints from the public may be
13 filed within eight days prior to an election. The ~~[secretary~~
14 ~~of state]~~ commission shall adopt procedures for issuing
15 advisory opinions and processing complaints and notifications
16 of violations.

17 C. The ~~[secretary of]~~ state ethics commission
18 shall at all times seek to ensure voluntary compliance with
19 the provisions of the Campaign Reporting Act. If the
20 ~~[secretary of state]~~ commission determines that a provision
21 of that act for which a penalty may be imposed has been
22 violated, the ~~[secretary of state]~~ commission shall by
23 written notice set forth the violation and the fine imposed
24 and inform the reporting individual that ~~[he]~~ the individual
25 has ten working days from the date of the letter to correct

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1 the matter and to provide a written explanation, under
2 penalty of perjury, stating any reason why the violation
3 occurred. If a timely explanation is filed and the
4 [~~secretary of state~~] commission determines that good cause
5 exists to waive the fine imposed, the [~~secretary of state~~]
6 commission may by a written notice of final action partially
7 or fully waive any fine imposed for any late, incomplete or
8 false report or statement of [~~exception~~] no activity. A
9 written notice of final action shall be sent by certified
10 mail.

11 D. Upon receipt of the notice of final action,
12 the person against whom the penalty has been imposed may
13 protest the [~~secretary of state's~~] state ethics commission's
14 determination, including an advisory opinion, by submitting
15 on a prescribed form a written request for binding
16 arbitration to the [~~secretary of state~~] commission within ten
17 working days of the date of the notice of final action. Any
18 fine imposed shall be due and payable within ten working days
19 of the date of notice of final action. No additional fine
20 shall accrue pending the issuance of the arbitration
21 decision. Fines paid pursuant to a notice of final action
22 that are subsequently reduced or dismissed shall be
23 reimbursed with interest within ten working days after the
24 filing of the arbitration decision with the [~~secretary of~~
25 ~~state~~] commission. Interest on the reduced or dismissed

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1 portion of the fine shall be the same as the rate of interest
2 earned by the [~~secretary of state's~~] commission's escrow
3 account to be established by the department of finance and
4 administration.

5 E. An arbitration hearing shall be conducted by a
6 single arbitrator selected within ten days by the person
7 against whom the penalty has been imposed from a list of five
8 arbitrators provided by the [~~secretary of~~] state [~~Neither the~~
9 ~~secretary of state nor~~] ethics commission. A person subject
10 to the Campaign Reporting Act, Lobbyist Regulation Act or
11 Financial Disclosure Act [~~may~~] shall not serve as an
12 arbitrator. Arbitrators shall be considered to be
13 independent contractors, not public officers or employees,
14 and shall not be paid per diem and mileage.

15 F. The arbitrator shall conduct the hearing
16 within thirty days of the request for arbitration. The
17 arbitrator may impose any penalty the [~~secretary of~~] state
18 ethics commission is authorized to impose. The arbitrator
19 shall state the reasons for [~~his~~] the arbitrator's decision
20 in a written document that shall be a public record. The
21 decision shall be final and binding. The decision shall be
22 issued and filed with the [~~secretary of state~~] commission
23 within thirty days of the conclusion of the hearing. Unless
24 otherwise provided for in this section or by rule or
25 regulation adopted by the [~~secretary of state~~] commission,

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1 the procedures for the arbitration shall be governed by the
2 Uniform Arbitration Act. No arbitrator shall be subject to
3 liability for actions taken pursuant to this section.

4 G. The [~~secretary of~~] state ethics commission may
5 refer a matter to the attorney general or a district attorney
6 for a civil injunctive or other appropriate order or for
7 criminal enforcement."

8 Section 26. Section 1-19-34.6 NMSA 1978 (being Laws
9 1995, Chapter 153, Section 19) is amended to read:

10 "1-19-34.6. CIVIL PENALTIES.--

11 A. If the [~~secretary of~~] state ethics commission
12 reasonably believes that a person committed, or is about to
13 commit, a violation of the Campaign Reporting Act, the
14 [~~secretary of state~~] commission shall refer the matter to the
15 attorney general or a district attorney for enforcement.

16 B. The attorney general or district attorney may
17 institute a civil action in district court for any violation
18 of the Campaign Reporting Act or to prevent a violation of
19 that act that involves an unlawful solicitation or the making
20 or acceptance of an unlawful contribution. An action for
21 relief may include a permanent or temporary injunction, a
22 restraining order or any other appropriate order, including a
23 civil penalty of two hundred fifty dollars (\$250) for each
24 violation not to exceed five thousand dollars (\$5,000), and
25 forfeiture of any contribution received as a result of an

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1 unlawful solicitation or unlawful contribution. Each
2 unlawful solicitation and each unlawful contribution made or
3 accepted shall be deemed a separate violation of the Campaign
4 Reporting Act.

5 C. The attorney general or district attorney may
6 institute a civil action in district court if a violation has
7 occurred or to prevent a violation of any provision of the
8 Campaign Reporting Act other than that specified in
9 Subsection B of this section. Relief may include a permanent
10 or temporary injunction, a restraining order or any other
11 appropriate order, including an order for a civil penalty of
12 fifty dollars (\$50.00) for each violation not to exceed five
13 thousand dollars (\$5,000)."

14 Section 27. Section 1-19-34.7 NMSA 1978 (being Laws
15 2009, Chapter 68, Section 1) is amended to read:

16 "1-19-34.7. CONTRIBUTION LIMITATIONS--CANDIDATES--
17 POLITICAL COMMITTEES.--

18 A. The following contributions by the following
19 persons are prohibited:

20 (1) from a person, not including a political
21 committee, to a:

22 (a) candidate for nonstatewide office,
23 including the candidate's campaign committee, in an amount
24 that will cause that person's total contributions to the
25 candidate to exceed two thousand three hundred dollars

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1 (\$2,300) during the primary election or two thousand three
2 hundred dollars (\$2,300) during the general election;

3 (b) candidate for statewide office,
4 including the candidate's campaign committee, in an amount
5 that will cause that person's total contributions to the
6 candidate to exceed five thousand dollars (\$5,000) during the
7 primary election or five thousand dollars (\$5,000) during the
8 general election; or

9 (c) political committee in an amount
10 that will cause that person's total contributions to the
11 political committee to exceed five thousand dollars (\$5,000)
12 during a primary election or five thousand dollars (\$5,000)
13 during a general election; and

14 (2) from a political committee to:

15 (a) a candidate for office, including
16 the candidate's campaign committee, in an amount that will
17 cause the political committee's total contributions to the
18 candidate to exceed five thousand dollars (\$5,000) during the
19 primary election or five thousand dollars (\$5,000) during the
20 general election; or

21 (b) another political committee in an
22 amount that will cause that political committee's total
23 contributions to the political committee to exceed five
24 thousand dollars (\$5,000) during a primary election or five
25 thousand dollars (\$5,000) during a general election.

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1 B. All contributions made by a person to a
2 candidate, either directly or indirectly, including
3 contributions that are in any way earmarked or otherwise
4 directed through another person to a candidate, shall be
5 treated as contributions from the person to that candidate.

6 C. A person, including a political committee,
7 shall not knowingly accept or solicit a contribution,
8 directly or indirectly, including a contribution earmarked or
9 otherwise directed or coordinated through another person,
10 including a political committee, that violates the
11 contribution limits provided for in this section.

12 D. On the day after each general election, the
13 contribution amounts provided in Subsection A of this section
14 shall be increased by the percentage of the preceding two
15 calendar year's increase of the consumer price index for all
16 urban consumers, United States city average for all items,
17 published by the United States department of labor. The
18 amount of the increase shall be rounded to the nearest
19 multiple of one hundred dollars (\$100). The [~~secretary of~~]
20 state ethics commission shall publish by October 1 before
21 each general election the adjusted contribution limits that
22 shall take effect the day after the following general
23 election.

24 E. All contributions in excess of the limits
25 imposed by the provisions of this section shall be deposited

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1 in the public election fund upon a finding by the [~~secretary~~
2 of] state ethics commission that the contribution limits have
3 been exceeded.

4 F. The limitation on contributions to a candidate
5 provided for in Subsection A of this section shall not apply
6 to a candidate's own contribution from the candidate's
7 personal funds to the candidate's own campaign.

8 G. For the purposes of this section:

9 (1) "primary election" means the period
10 beginning on the day after the general election for the
11 applicable office and ending on the day of the primary for
12 that office; and

13 (2) "general election" means the period
14 beginning on the day after the primary for the applicable
15 office and ending on the day of the general election for that
16 office."

17 Section 28. Section 1-19-35 NMSA 1978 (being Laws 1979,
18 Chapter 360, Section 11, as amended) is amended to read:

19 "1-19-35. REPORTS AND STATEMENTS--LATE FILING
20 PENALTY--FAILURE TO FILE.--

21 A. Except for the report required to be filed and
22 delivered the Thursday prior to the election and any
23 supplemental report, as required in Paragraph (5) of
24 Subsection B of Section 1-19-29 NMSA 1978, that is due prior
25 to the election, and subject to the provisions of Section

.181049.2

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1 1-19-34.4 NMSA 1978, if a statement of no activity or a
2 report of expenditures and contributions contains false or
3 incomplete information or is filed after any deadline imposed
4 by the Campaign Reporting Act, the responsible reporting
5 individual or political committee, in addition to any other
6 penalties or remedies prescribed by the Election Code, shall
7 be liable for and shall pay to the [~~secretary of~~] state
8 ethics commission fifty dollars (\$50.00) per day for each
9 regular working day after the time required by the Campaign
10 Reporting Act for the filing of statements of no activity or
11 reports of expenditures and contributions until the complete
12 or true statement or report is filed, up to a maximum of five
13 thousand dollars (\$5,000).

14 B. If any reporting individual files a false,
15 intentionally incomplete or late report of expenditures and
16 contributions due on the Thursday prior to the election, the
17 reporting individual or political committee shall be liable
18 and pay to the [~~secretary of~~] state ethics commission five
19 hundred dollars (\$500) for the first working day and fifty
20 dollars (\$50.00) for each subsequent working day after the
21 time required for the filing of the report until the true and
22 complete report is filed, up to a maximum of five thousand
23 dollars (\$5,000).

24 C. If a reporting individual fails to file or
25 files a late supplemental report of expenditures and

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1 contributions as required in Paragraph (5) of Subsection B of
2 Section 1-19-29 NMSA 1978, the reporting individual or
3 political committee shall be liable for and pay to the
4 [~~secretary of~~] state ethics commission a penalty equal to the
5 amount of each contribution received or pledged after the
6 Tuesday before the election that was not timely filed.

7 D. All sums collected for the penalty shall be
8 deposited in the state general fund. A report or statement
9 of [~~exception~~] no activity shall be deemed timely filed only
10 if it is received by the proper filing officer by the date
11 and time prescribed by law.

12 E. Any candidate who fails or refuses to file a
13 report of expenditures and contributions or statement of no
14 activity or to pay a penalty imposed by the [~~secretary of~~]
15 state ethics commission as required by the Campaign Reporting
16 Act shall not, in addition to any other penalties provided by
17 law:

18 (1) have the candidate's name printed upon
19 the ballot if the violation occurs before and through the
20 final date for the withdrawal of candidates; or

21 (2) be issued a certificate of nomination or
22 election, if the violation occurs after the final date for
23 withdrawal of candidates or after the election, until the
24 candidate satisfies all reporting requirements of the
25 Campaign Reporting Act and pays all penalties owed.

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1 F. Any candidate who loses an election and who
2 failed or refused to file a report of expenditures and
3 contributions or a statement of no activity or to pay a
4 penalty imposed by the [~~secretary of~~] state ethics commission
5 as required by the Campaign Reporting Act shall not be, in
6 addition to any other penalties provided by law, permitted to
7 file a declaration of candidacy or nominating petition for
8 any future election until the candidate satisfies all
9 reporting requirements of that act and pays all penalties
10 owed."

11 Section 29. Section 1-19A-2 NMSA 1978 (being Laws 2003,
12 Chapter 14, Section 2, as amended) is amended to read:

13 "1-19A-2. DEFINITIONS.--As used in the Voter Action
14 Act:

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

18 B. "certified candidate" means a candidate
19 running for a covered office who chooses to obtain financing
20 pursuant to the Voter Action Act and is certified as a Voter
21 Action Act candidate;

22 C. "commission" means the state ethics
23 commission;

24 [~~G.~~] D. "contested election" means an election in
25 which there are more candidates for a position than the

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1 number to be elected to that position;

2 ~~[D-]~~ E. "covered office" means any office of the
3 judicial department subject to statewide elections and the
4 office of public regulation commissioner;

5 ~~[E-]~~ F. "election cycle" means the primary and
6 general elections for the same term of the same covered
7 office, beginning on the day after the last general election
8 for the office and ending with the general election; the
9 primary election cycle begins on the first day of the
10 election cycle and ends on the day of the primary election;
11 the general election begins on the day after the primary
12 election and ends on the day of the general election;

13 ~~[F-]~~ G. "fund" means the public election fund;

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

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

24 (1) made by a registered voter who is
25 eligible to vote for the covered office that the applicant

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1 candidate is seeking;

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

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

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

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

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

21 [~~J. "secretary" means the secretary of state or~~
22 ~~the office of the secretary of state]~~ and

23 K. "seed money" means a contribution raised for
24 the primary purpose of enabling applicant candidates to
25 collect qualifying contributions and petition signatures."

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1 Section 30. Section 1-19A-3 NMSA 1978 (being Laws 2003,
2 Chapter 14, Section 3) is amended to read:

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

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

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

20 C. A candidate shall not be eligible to become an
21 applicant candidate if the candidate has accepted
22 contributions totaling five hundred dollars (\$500) or more or
23 made expenditures totaling five hundred dollars (\$500) or
24 more between the beginning of the qualifying period and
25 filing a declaration of intent."

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1 Section 31. Section 1-19A-6 NMSA 1978 (being Laws 2003,
2 Chapter 14, Section 6) is amended to read:

3 "1-19A-6. CERTIFICATION.--

4 A. Upon receipt of a final submittal of
5 qualifying contributions by an applicant candidate, the
6 [~~secretary~~] commission shall determine whether the applicant
7 candidate has:

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

11 (2) submitted the appropriate number of
12 qualifying contributions;

13 (3) qualified as a candidate pursuant to
14 other applicable state election law;

15 (4) complied with seed money contribution
16 and expenditure restrictions; and

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

19 B. The [~~secretary~~] commission shall certify
20 applicant candidates complying with the requirements of this
21 section as certified candidates as soon as possible and no
22 later than ten days after final submittal of qualifying
23 contributions and certification as a candidate pursuant to
24 other applicable state election law.

25 C. A certified candidate shall comply with all

.181049.2

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

9 Section 32. Section 1-19A-7 NMSA 1978 (being Laws 2003,
10 Chapter 14, Section 7, as amended) is amended to read:

11 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
12 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

13 A. All money distributed to a certified candidate
14 shall be used for that candidate's campaign-related purposes
15 in the election cycle in which the money was distributed.

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

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

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1 D. A certified candidate shall return to the
2 [~~secretary~~] commission, within thirty days after the primary
3 election, any amount that is unspent or unencumbered by the
4 date of the primary election for direct deposit into the
5 fund.

6 E. A certified candidate shall return to the
7 [~~secretary~~] commission, within thirty days after the general
8 election, any amount that is unspent or unencumbered by the
9 date of the general election for direct deposit into the
10 fund."

11 Section 33. Section 1-19A-9 NMSA 1978 (being Laws 2003,
12 Chapter 14, Section 9) is amended to read:

13 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

14 A. The [~~secretary~~] commission shall publish
15 guidelines outlining permissible campaign-related
16 expenditures.

17 B. Applicant candidates shall file a report
18 listing seed money contributions and expenditures with their
19 application for certification.

20 C. Applicant candidates shall file qualifying
21 contributions with the [~~secretary~~] commission during the
22 qualifying period according to procedures developed by the
23 [~~secretary~~] commission. In developing these procedures, the
24 [~~secretary~~] commission shall use existing campaign reporting
25 procedures and deadlines whenever practical.

.181049.2

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1 D. Certified candidates shall report expenditures
2 according to the campaign reporting requirements specified in
3 the Election Code.

4 E. In addition to the campaign contribution and
5 expenditure reports specified in the Election Code, all
6 noncertified candidates who have as an opponent a certified
7 candidate shall report to the [~~secretary~~] commission ten days
8 before the primary and general elections the amount of money
9 spent by that noncertified candidate. This report shall
10 include all previously unreported transactions through 5:00
11 p.m. two days before the report is due.

12 F. A person or political committee that makes
13 expenditures to influence a race involving a certified
14 candidate shall report to the [~~secretary~~] commission the
15 amount that person or political committee has spent. These
16 reports shall include all previously unreported transactions
17 through 5:00 p.m. two days before the report is due, and
18 shall be submitted as follows:

19 (1) for the primary election, by 5:00 p.m.
20 on the second Monday in May, by 5:00 p.m. on the eleventh day
21 before the election and by 5:00 p.m. on the Thursday before
22 the election; and

23 (2) for the general election, by 5:00 p.m.
24 the first Tuesday in October, by 5:00 p.m. on the eleventh
25 day before the election and by 5:00 p.m. on the Thursday

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1 before the election."

2 Section 34. Section 1-19A-10 NMSA 1978 (being Laws
3 2003, Chapter 14, Section 10, as amended) is amended to read:

4 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

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

7 (1) financing the election campaigns of
8 certified candidates for covered offices;

9 (2) paying administrative and enforcement
10 costs of the Voter Action Act; and

11 (3) carrying out all other specified
12 provisions of the Voter Action Act.

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

18 C. Money received from the following sources
19 shall be deposited directly into the fund:

20 (1) qualifying contributions that have been
21 submitted to the [~~secretary~~] commission;

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

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

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

7 (5) unspent seed money that cannot be used
8 for any other purpose;

9 (6) money distributed to the fund from funds
10 received pursuant to the Uniform Unclaimed Property Act
11 (1995); and

12 (7) money appropriated by the legislature.

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

17 E. Three hundred thousand dollars (\$300,000) per
18 year shall be collected and deposited in the subaccount for
19 public regulation commission elections as follows:

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

23 (2) one hundred thousand dollars (\$100,000)
24 from utility and carrier inspection fees collected pursuant
25 to Section 63-7-20 NMSA 1978; and

.181049.2

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1 (3) one hundred thousand dollars (\$100,000)
2 from the insurance premium tax collected pursuant to Section
3 59A-6-2 NMSA 1978."

4 Section 35. Section 1-19A-11 NMSA 1978 (being Laws
5 2003, Chapter 14, Section 11) is amended to read:

6 "1-19A-11. DETERMINATION OF FUND AMOUNT.--

7 A. By January 1, 2007, and every two years
8 thereafter, the [secretary] commission shall prepare and
9 provide to the legislature a report documenting, evaluating
10 and making recommendations relating to the administration,
11 implementation and enforcement of the Voter Action Act.

12 B. In the report, the [secretary] commission
13 shall set out the revenues received to date, the expected
14 costs to the fund for the next election cycle and the amount
15 of the annual appropriation from the legislature that will be
16 required to meet this need."

17 Section 36. Section 1-19A-12 NMSA 1978 (being Laws
18 2003, Chapter 14, Section 12) is amended to read:

19 "1-19A-12. TIMING OF FUND DISTRIBUTION.--

20 A. [~~Beginning with the election cycle that ends~~
21 ~~with the general election in 2006]~~ The [secretary] commission
22 shall distribute money from the fund to certified candidates
23 in accordance with the provisions of Subsections B and C of
24 this section.

25 B. For a primary election certified candidate,

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1 the ~~[secretary]~~ commission shall distribute the amount due to
2 that certified candidate for that covered office within one
3 week of certification.

4 C. For a candidate certified for the general
5 election, the ~~[secretary]~~ commission shall distribute the
6 amount due to that certified candidate for that covered
7 office within one week after the primary election or, for a
8 minor party or independent candidate, within one week after
9 certification of the candidate."

10 Section 37. Section 1-19A-13 NMSA 1978 (being Laws
11 2003, Chapter 14, Section 13, as amended) is amended to read:

12 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

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

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

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

.181049.2

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

4 C. For uncontested primary elections, the amount
5 of money to be distributed to a certified candidate is equal
6 to fifty percent of the amount specified in Subsection B of
7 this section.

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

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

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

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

.181049.2

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1 money shall be distributed to the certified candidate to make
2 that candidate's total distribution amount equal to the
3 amount distributed pursuant to Subsection D of this section.

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

25 G. If the allocation specified in Subsection F of

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1 this section is greater than the total amount available for
2 distribution, then the amounts to be distributed to
3 individual candidates, specified in Subsections B through E
4 of this section, shall each be reduced by the same percentage
5 as the reduction by which the total amount needed has been
6 reduced relative to the total amount available.

7 H. At least every two years after January 1,
8 2007, the [~~secretary~~] commission shall evaluate and modify as
9 necessary the dollar values originally determined by
10 Subsections B through E of this section and shall consider
11 and account for inflation in the evaluations.

12 I. No money shall be distributed to candidates in
13 judicial retention elections. No money shall be distributed
14 to judicial candidates in uncontested general elections,
15 provided that if a general election race that is initially
16 uncontested later becomes contested, the certified judicial
17 candidate shall receive a distribution in accordance with
18 Subsection D of this section."

19 Section 38. Section 1-19A-14 NMSA 1978 (being Laws
20 2003, Chapter 14, Section 14, as amended) is amended to read:

21 "1-19A-14. MATCHING FUNDS.--When a certified or
22 noncertified candidate has one or more opponents who are
23 certified candidates and the candidate's campaign finance
24 report or group of reports shows that the sum of the
25 candidate's expenditures and obligations made, or funds

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1 raised or borrowed, whichever is greater, alone or in
2 conjunction with expenditures made independently of the
3 candidate to influence the election on behalf of the
4 candidate, exceeds the amount distributed to an opposing
5 certified candidate, the [~~secretary~~] commission shall issue
6 immediately to any opposing certified candidate an additional
7 amount equivalent to the excess amount reported by the
8 opposing candidate. Total matching funds to a certified
9 candidate in an election are limited to twice the amount
10 originally distributed to that candidate pursuant to Section
11 1-19A-13 NMSA 1978."

12 Section 39. Section 1-19A-15 NMSA 1978 (being Laws
13 2003, Chapter 14, Section 15) is amended to read:

14 "1-19A-15. ADMINISTRATION--~~[SECRETARY OF STATE]~~
15 COMMISSION--DUTIES.--

16 A. The [~~secretary~~] commission shall adopt rules
17 to ensure effective administration of the Voter Action Act.

18 B. The rules shall include procedures for:

- 19 (1) qualifications, certification and
20 disbursement of revenues and return of unspent fund revenues;
21 (2) obtaining qualifying contributions;
22 (3) certification of candidates;
23 (4) collection of revenues; and
24 (5) return of fund disbursements and other
25 money to the fund."

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1 Section 40. Section 1-19A-16 NMSA 1978 (being Laws
2 2003, Chapter 14, Section 16) is amended to read:

3 "1-19A-16. APPEALS.--The procedure for challenging a
4 certification decision by the [~~secretary~~] commission is as
5 follows:

6 A. a person aggrieved by a certification decision
7 or a decision regarding the distribution of matching funds
8 may appeal to the [~~secretary~~] commission within three days of
9 the decision. The appeal shall be in writing and shall set
10 forth the reasons for appeal;

11 B. within five days after an appeal is properly
12 made, and after due notice is given to the parties in
13 dispute, the [~~secretary~~] commission shall hold a hearing
14 [~~whereby~~] in which:

15 (1) the appellant has the burden of
16 providing evidence to demonstrate that the [~~secretary's~~]
17 commission's decision was improper; and

18 (2) the [~~secretary~~] commission shall rule on
19 the appeal within three days after the completion of the
20 hearing;

21 C. the parties in dispute may appeal the decision
22 of the [~~secretary~~] commission by commencing an action in
23 district court; and

24 D. certified candidates whose certification is
25 revoked on appeal shall return to the [~~secretary~~] commission

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1 any unspent money distributed from the fund. If the
2 [~~secretary~~] commission or court finds that an appeal was made
3 frivolously or to result in delay or hardship, the
4 [~~secretary~~] commission or court may sanction the moving party
5 by requiring the party to pay costs of the administrative
6 hearing, the court hearing and the opposing parties."

7 Section 41. Section 1-19A-17 NMSA 1978 (being Laws
8 2003, Chapter 14, Section 17) is amended to read:

9 "1-19A-17. PENALTIES.--

10 A. In addition to other penalties that may be
11 applicable, a person who violates a provision of the Voter
12 Action Act is subject to a civil penalty of up to ten
13 thousand dollars (\$10,000) per violation. In addition to a
14 fine, a certified candidate found in violation of that act
15 may be required to return to the fund all amounts distributed
16 to the candidate from the fund. If the [~~secretary~~]
17 commission makes a determination that a violation of that act
18 has occurred, the [~~secretary~~] commission shall impose a fine
19 or transmit the finding to the attorney general for
20 prosecution. In determining whether a certified candidate is
21 in violation of the expenditure limits of that act, the
22 [~~secretary~~] commission may consider as a mitigating factor
23 any circumstances out of the candidate's control.

24 B. A person who willfully or knowingly violates
25 the provisions of the Voter Action Act or rules of the

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1 [~~secretary~~] commission or knowingly makes a false statement
2 in a report required by that act is guilty of a fourth degree
3 felony and, if [~~he~~] the person is a certified candidate,
4 shall return to the fund all money distributed to that
5 candidate."

6 Section 42. Section 2-11-2 NMSA 1978 (being Laws 1977,
7 Chapter 261, Section 2, as amended) is amended to read:

8 "2-11-2. DEFINITIONS.--As used in the Lobbyist
9 Regulation Act:

10 A. "compensation" means any money, per diem,
11 salary, fee or portion thereof or the equivalent in services
12 rendered or in-kind contributions received or to be received
13 in return for lobbying services performed or to be performed;

14 B. "expenditure" means a payment, transfer or
15 distribution or obligation or promise to pay, transfer or
16 distribute any money or other thing of value, but does not
17 include a lobbyist's own personal living expenses and the
18 expenses incidental to establishing and maintaining an office
19 in connection with lobbying activities or compensation paid
20 to a lobbyist by a lobbyist's employer;

21 C. "legislative committee" means a committee
22 created by the legislature, including interim and standing
23 committees of the legislature;

24 D. "lobbying" means attempting to influence:

25 (1) a decision related to any matter to be

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1 considered or being considered by the legislative branch of
2 state government or any legislative committee or any
3 legislative matter requiring action by the governor or
4 awaiting action by the governor; or

5 (2) an official action;

6 E. "lobbyist" means any individual who is
7 compensated for the specific purpose of lobbying; is
8 designated by an interest group or organization to represent
9 it on a substantial or regular basis for the purpose of
10 lobbying; or in the course of [~~his~~] employment, is engaged in
11 lobbying on a substantial or regular basis. "Lobbyist" does
12 not include:

13 (1) an individual who appears on [~~his~~] the
14 individual's own behalf in connection with legislation or an
15 official action;

16 (2) [~~any~~] an elected or appointed officer of
17 the state or its political subdivisions or an Indian nation,
18 tribe or pueblo acting in [~~his~~] the officer's official
19 capacity;

20 (3) an employee of the state or its
21 political subdivisions, specifically designated by an elected
22 or appointed officer of the state or its political
23 subdivision, who appears before a legislative committee or in
24 a rulemaking proceeding only to explain the effect of
25 legislation or a rule on [~~his~~] the designated employee's

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1 agency or political subdivision, provided the elected or
2 appointed officer of the state or its political subdivision
3 keeps for public inspection and files with the [~~secretary of~~]
4 state ethics commission such designation;

5 (4) [~~any~~] a designated member of the staff
6 of an elected state official, provided the elected state
7 official keeps for public inspection and files with the
8 [~~secretary of~~] state ethics commission such designation;

9 (5) a member of the legislature, the staff
10 of [~~any~~] a member of the legislature or the staff of [~~any~~] a
11 legislative committee when addressing legislation;

12 (6) [~~any~~] a witness called by a legislative
13 committee or administrative agency to appear before that
14 legislative committee or agency in connection with
15 legislation or an official action;

16 (7) an individual who provides only oral or
17 written public testimony in connection with a legislative
18 committee or in a rulemaking proceeding and whose name and
19 the interest on behalf of which [~~he~~] the individual testifies
20 have been clearly and publicly identified; or

21 (8) a publisher, owner or employee of the
22 print media, radio or television, while gathering or
23 disseminating news or editorial comment to the general public
24 in the ordinary course of business;

25 F. "lobbyist's employer" means the person whose

.181049.2

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1 interests are being represented and by whom a lobbyist is
2 directly or indirectly retained, compensated or employed;

3 G. "official action" means the action or
4 nonaction of a state official or state agency, board or
5 commission acting in a rulemaking proceeding;

6 H. "person" means an individual, partnership,
7 association, committee, federal, state or local governmental
8 entity or agency, however constituted, public or private
9 corporation or any other organization or group of persons who
10 are voluntarily acting in concert;

11 I. "political contribution" means a gift,
12 subscription, loan, advance or deposit of [~~any~~] money or
13 other thing of value, including the estimated value of an in-
14 kind contribution, that is made or received for the purpose
15 of influencing a primary, general or statewide election,
16 including a constitutional or other question submitted to the
17 voters, or for the purpose of paying a debt incurred in any
18 such election;

19 J. "prescribed form" means a form prepared and
20 prescribed by the [~~secretary of~~] state ethics commission;

21 K. "rulemaking proceeding" means a formal process
22 conducted by a state agency, board or commission for the
23 purpose of adopting a rule, regulation, standard, policy or
24 other requirement of general applicability and does not
25 include adjudicatory proceedings; and

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1 L. "state public officer" means a person holding
2 a statewide office provided for in the constitution of New
3 Mexico."

4 Section 43. Section 2-11-3 NMSA 1978 (being Laws 1977,
5 Chapter 261, Section 3, as amended) is amended to read:

6 "2-11-3. REGISTRATION STATEMENT TO BE FILED--CONTENTS--
7 MODIFICATION TO STATEMENT.--

8 A. In the month of January prior to each regular
9 session or before any service covered by the Lobbyist
10 Regulation Act commences, any individual who is initially
11 employed or retained as a lobbyist shall register with the
12 [~~secretary of~~] state ethics commission by paying an annual
13 filing fee of twenty-five dollars (\$25.00) for each of the
14 lobbyist's employers and by filing a single registration
15 statement under oath on a prescribed form showing:

16 (1) the lobbyist's full name, permanent
17 business address and business address while lobbying; and

18 (2) the name and address of each of the
19 lobbyist's employers.

20 B. No registration fee shall be required of
21 individuals receiving only reimbursement of personal expenses
22 and no other compensation or salary for lobbying. No
23 expenditure statement required by Section 2-11-6 NMSA 1978
24 shall be required if the lobbyist anticipates making or
25 incurring and makes or incurs no expenditures or political

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1 contributions under Section 2-11-6 NMSA 1978. The lobbyist
2 shall indicate in [~~his~~] the lobbyist's registration statement
3 whether those circumstances apply to [~~him~~] the lobbyist.

4 C. For each employer listed in Paragraph (2) of
5 Subsection A of this section, the lobbyist shall file the
6 following information:

7 (1) a full disclosure of the sources of
8 funds used for lobbying;

9 (2) a written statement from each of the
10 lobbyist's employers authorizing [~~him~~] the lobbyist to lobby
11 on the employer's behalf;

12 (3) a brief description of the matters in
13 reference to which the service is to be rendered; and

14 (4) the name and address of the person, if
15 other than the lobbyist or [~~his~~] the lobbyist's employer, who
16 will have custody of the accounts, bills, receipts, books,
17 papers and documents required to be kept under the provisions
18 of the Lobbyist Regulation Act.

19 D. For each succeeding year that an individual is
20 employed or retained as a lobbyist by the same employer, and
21 for whom all the information disclosed in the initial
22 registration statement remains substantially the same, the
23 lobbyist shall file a simple annual registration renewal in
24 January and pay the twenty-five-dollar (\$25.00) filing fee
25 for each of the lobbyist's employers together with a short,

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1 abbreviated prescribed form for renewal.

2 E. Whenever there is a modification of the facts
3 required to be set forth by this section or there is a
4 termination of the lobbyist's employment as a lobbyist before
5 the end of the calendar year, the lobbyist shall notify the
6 [~~secretary of~~] state ethics commission within one month of
7 such occurrence and shall furnish full information concerning
8 the modification or termination. If the lobbyist's
9 employment terminates at the end of a calendar year, no
10 separate termination report need be filed."

11 Section 44. Section 2-11-6 NMSA 1978 (being Laws 1977,
12 Chapter 261, Section 6, as amended) is amended to read:

13 "2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--
14 REPORTING PERIODS.--

15 A. Each lobbyist or lobbyist's employer who makes
16 or incurs expenditures or political contributions for the
17 benefit of or in opposition to a state legislator or
18 candidate for the state legislature, a state public officer
19 or candidate for state public office, a board or commission
20 member or state employee who is involved in an official
21 action affecting the lobbyist's employer or in support of or
22 in opposition to a ballot issue or pending legislation or
23 official action shall file an expenditure report with the
24 [~~secretary of~~] state ethics commission on a prescribed form
25 or in an electronic format approved by the [~~secretary of~~

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1 ~~state]~~ commission. The expenditure report shall include a
2 sworn statement that sets forth:

3 (1) the cumulative total of the expenditures
4 made or incurred, separated into categories that identify the
5 total separate amounts spent on:

6 (a) meals and beverages;

7 (b) other entertainment expenditures;

8 (c) gifts; and

9 (d) other expenditures;

10 (2) each political contribution made,
11 identified by amount, date and name of the candidate or
12 ballot issue supported or opposed; and

13 (3) the names, addresses and occupations of
14 other contributors and the amounts of their separate
15 political contributions if the lobbyist or lobbyist's
16 employer delivers directly or indirectly separate
17 contributions from those contributors in excess of five
18 hundred dollars (\$500) in the aggregate for each election to
19 a candidate, a campaign committee or anyone authorized by a
20 candidate to receive funds on the candidate's behalf.

21 B. If the expenditure report is filed
22 electronically, the report shall be electronically
23 authenticated by the lobbyist or the lobbyist's employer
24 using an electronic signature as prescribed by the [~~secretary~~
25 ~~of]~~ state ethics commission in conformance with the

.181049.2

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1 Electronic Authentication of Documents Act and the Uniform
2 Electronic Transactions Act. For the purposes of the
3 Lobbyist Regulation Act, a report that is electronically
4 authenticated in accordance with the provisions of this
5 subsection shall be deemed to have been subscribed and sworn
6 to by the lobbyist or the lobbyist's employer that is
7 required to file the report.

8 C. In identifying expenditures pursuant to the
9 provisions of Paragraph (1) of Subsection A of this section,
10 any individual expenditure that is more than the threshold
11 level established in the Internal Revenue Code of 1986, as
12 amended, that must be reported separately to claim a business
13 expense deduction, as published by the [~~secretary of~~] state
14 ethics commission, shall be identified by amount, date,
15 purpose, type of expenditure and name of the person who
16 received or was benefited by the expenditure; provided, in
17 the case of special events, including parties, dinners,
18 athletic events, entertainment and other functions, to which
19 all members of the legislature, to which all members of
20 either house or any legislative committee or to which all
21 members of a board or commission are invited, expenses need
22 not be allocated to each individual who attended, but the
23 date, location, name of the body invited and total expenses
24 incurred shall be reported.

25 D. The reports required pursuant to the

.181049.2

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1 provisions of the Lobbyist Regulation Act shall be filed:

2 (1) by January 15 for all expenditures and
3 political contributions made or incurred during the preceding
4 year and not previously reported;

5 (2) within forty-eight hours for each
6 separate expenditure made or incurred during a legislative
7 session that was for five hundred dollars (\$500) or more; and

8 (3) by May 1 for all expenditures and
9 political contributions made or incurred through April 25 of
10 the current year and not previously reported.

11 E. A lobbyist's personal living expenses and the
12 expenses incidental to establishing and maintaining an office
13 in connection with lobbying activities or compensation paid
14 to a lobbyist by a lobbyist's employer need not be reported.

15 F. A lobbyist or lobbyist's employer shall obtain
16 and preserve all records, accounts, bills, receipts, books,
17 papers and documents necessary to substantiate the financial
18 statements required to be made under the Lobbyist Regulation
19 Act for a period of two years from the date of filing of the
20 report containing such items. When the lobbyist is required
21 under the terms of the lobbyist's employment to turn over any
22 such records to the lobbyist's employer, responsibility for
23 the preservation of them as required by this section and the
24 filing of reports required by this section shall rest with
25 the employer. Such records shall be made available to the

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1 ~~[secretary of]~~ state ethics commission or attorney general
2 upon written request.

3 G. ~~[Any]~~ A lobbyist's employer who also engages
4 in lobbying shall comply with the provisions of the Lobbyist
5 Regulation Act.

6 H. An organization of two or more persons,
7 including an individual who ~~[holds himself out]~~ makes any
8 representation as being an organization, that within one
9 calendar year expends funds in excess of two thousand five
10 hundred dollars (\$2,500) not otherwise reported under the
11 Lobbyist Regulation Act to conduct an advertising campaign
12 for the purpose of lobbying shall register with the
13 ~~[secretary of]~~ state ethics commission within forty-eight
14 hours after expending two thousand five hundred dollars
15 (\$2,500). Such registration shall indicate the name of the
16 organization and the names, addresses and occupations of any
17 of its principals, organizers or officers and shall include
18 the name of any lobbyist or lobbyist's employer who is a
19 member of the organization. Within fifteen days after a
20 legislative session, the organization shall report the
21 contributions, pledges to contribute, expenditures and
22 commitments to expend for the advertising campaign for the
23 purpose of lobbying, including the names, addresses and
24 occupations of the contributors, to the ~~[secretary of]~~ state
25 ethics commission on a prescribed form."

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1 Section 45. Section 2-11-7 NMSA 1978 (being Laws 1977,
2 Chapter 261, Section 7, as amended) is amended to read:

3 "2-11-7. REGISTRATION AND EXPENDITURE STATEMENT--
4 PRESERVATION AS PUBLIC RECORD.--Each registration and
5 expenditure statement as required by the Lobbyist Regulation
6 Act shall be preserved by the [~~secretary of~~] state ethics
7 commission for a period of two years from the date of filing
8 as a public record, open to public inspection at any
9 reasonable time. Unless an action or prosecution is pending
10 that requires preserving the report, it may be destroyed two
11 years after the date of filing."

12 Section 46. Section 2-11-8.2 NMSA 1978 (being Laws
13 1977, Chapter 261, Section 4, as amended) is amended to read:

14 "2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
15 BINDING ARBITRATION--CIVIL PENALTIES.--

16 A. The [~~secretary of~~] state ethics commission
17 shall advise and seek to educate all persons required to
18 perform duties pursuant to the Lobbyist Regulation Act of
19 those duties. This includes advising all registered
20 lobbyists at least annually of the Lobbyist Regulation Act's
21 deadlines for submitting required reports. The [~~secretary of~~
22 ~~state~~] commission, in consultation with the attorney general,
23 shall issue advisory opinions, when requested to do so in
24 writing, on matters concerning the Lobbyist Regulation Act.
25 All prescribed forms prepared shall be clear and easy to

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1 complete.

2 B. The [~~secretary of~~] state ethics commission may
3 conduct thorough examinations of reports and initiate
4 investigations to determine whether the Lobbyist Regulation
5 Act has been violated. Additionally, any person who believes
6 that a provision of that act has been violated may file a
7 written complaint with the [~~secretary of state~~] commission.
8 The [~~secretary of state~~] commission shall adopt procedures
9 for issuing advisory opinions, processing complaints and
10 notifications of violations.

11 C. The [~~secretary of~~] state ethics commission
12 shall at all times seek to ensure voluntary compliance with
13 the provisions of the Lobbyist Regulation Act. If the
14 [~~secretary of state~~] commission determines that a provision
15 of that act for which a penalty may be imposed has been
16 violated, the [~~secretary of state~~] commission shall by
17 written notice set forth the violation and the fine imposed
18 and inform the person that [~~he~~] the person has ten working
19 days to provide a written explanation, under penalty of
20 perjury, stating any reason the violation occurred. If a
21 timely explanation is filed and the [~~secretary of state~~]
22 commission determines that good cause exists, the [~~secretary~~
23 ~~of state~~] commission may by a written notice of final action
24 partially or fully waive any fine imposed. A written notice
25 of final action shall be sent by certified mail.

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1 D. If the person charged disputes the [~~secretary~~
2 ~~of state's~~] state ethics commission's determination,
3 including an advisory opinion, the person charged may request
4 binding arbitration within ten working days of the date of
5 the final action. Any penalty imposed shall be due and
6 payable within ten working days of the notice of final
7 action. No additional penalty shall accrue pending issuance
8 of the arbitration decision. Fines paid pursuant to a notice
9 of final action that are subsequently reduced or dismissed
10 shall be reimbursed with interest within ten working days
11 after the filing of the arbitration decision with the
12 [~~secretary of state~~] commission. Interest on the reduced or
13 dismissed portion of the fine shall be the same as the rate
14 of interest earned by the [~~secretary of state's~~] commission's
15 escrow account to be established by the department of finance
16 and administration.

17 E. An arbitration hearing shall be conducted by a
18 single arbitrator selected within ten days by the person
19 against whom the penalty has been imposed from a list of five
20 arbitrators provided by the [~~secretary of~~] state [~~Neither the~~
21 ~~secretary of state nor~~] ethics commission. A person subject
22 to the Lobbyist Regulation Act, Campaign Reporting Act or
23 Financial Disclosure Act [~~may~~] shall not serve as an
24 arbitrator. Arbitrators shall be considered to be
25 independent contractors, not public officers or employees,

.181049.2

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1 and shall not be paid per diem and mileage.

2 F. The arbitrator may impose any penalty and take
3 any action the [~~secretary of~~] state ethics commission is
4 authorized to take. The arbitrator shall state the reasons
5 for [~~his~~] the arbitrator's decision in a written document
6 that shall be a public record. The decision shall be final
7 and binding. The decision shall be issued and filed with the
8 [~~secretary of state~~] commission within thirty days of the
9 conclusion of the hearing. Unless otherwise provided for in
10 this section, or by rule or regulation adopted by the
11 [~~secretary of state~~] commission, the procedures for the
12 arbitration shall be governed by the Uniform Arbitration Act.
13 No arbitrator shall be subject to liability for actions taken
14 pursuant to this section.

15 G. Any person who files a report after the
16 deadline imposed by the Lobbyist Regulation Act, or any
17 person who files a false or incomplete report, shall be
18 liable for and shall pay to the [~~secretary of~~] state ethics
19 commission fifty dollars (\$50.00) per day for each regular
20 working day after the time required for the filing of the
21 report until the complete report is filed, up to a maximum of
22 five thousand dollars (\$5,000).

23 H. The [~~secretary of~~] state ethics commission may
24 refer a matter to the attorney general or a district attorney
25 for a civil injunctive or other appropriate order or

.181049.2

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1 enforcement."

2 Section 47. Section 10-15-1 NMSA 1978 (being Laws 1974,
3 Chapter 91, Section 1, as amended) is amended to read:

4 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR
5 OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED
6 MEETINGS.--

7 A. In recognition of the fact that a
8 representative government is dependent upon an informed
9 electorate, it is declared to be public policy of this state
10 that all persons are entitled to the greatest possible
11 information regarding the affairs of government and the
12 official acts of those officers and employees who represent
13 them. The formation of public policy or the conduct of
14 business by vote shall not be conducted in closed meeting.
15 All meetings of any public body except the legislature and
16 the courts shall be public meetings, and all persons so
17 desiring shall be permitted to attend and listen to the
18 deliberations and proceedings. Reasonable efforts shall be
19 made to accommodate the use of audio and video recording
20 devices.

21 B. All meetings of a quorum of members of any
22 board, commission, administrative adjudicatory body or other
23 policymaking body of any state agency, any agency or
24 authority of any county, municipality, district or [any]
25 political subdivision, held for the purpose of formulating

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1 public policy, including the development of personnel policy,
2 rules, regulations or ordinances, discussing public business
3 or ~~[for the purpose of]~~ taking any action within the
4 authority of or the delegated authority of any board,
5 commission or other policymaking body are declared to be
6 public meetings open to the public at all times, except as
7 otherwise provided in the constitution of New Mexico or the
8 Open Meetings Act. No public meeting once convened that is
9 otherwise required to be open pursuant to the Open Meetings
10 Act shall be closed or dissolved into small groups or
11 committees for the purpose of permitting the closing of the
12 meeting.

13 C. If otherwise allowed by law or rule of the
14 public body, a member of a public body may participate in a
15 meeting of the public body by means of a conference telephone
16 or other similar communications equipment when it is
17 otherwise difficult or impossible for the member to attend
18 the meeting in person, provided that each member
19 participating by conference telephone can be identified when
20 speaking, all participants are able to hear each other at the
21 same time and members of the public attending the meeting are
22 able to hear any member of the public body who speaks during
23 the meeting.

24 D. Any meetings at which the discussion or
25 adoption of any proposed resolution, rule, regulation or

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1 formal action occurs and at which a majority or quorum of the
2 body is in attendance, and any closed meetings, shall be held
3 only after reasonable notice to the public. The affected
4 body shall determine at least annually in a public meeting
5 what notice for a public meeting is reasonable when applied
6 to that body. That notice shall include broadcast stations
7 licensed by the federal communications commission and
8 newspapers of general circulation that have provided a
9 written request for such notice.

10 E. A public body may recess and reconvene a
11 meeting to a day subsequent to that stated in the meeting
12 notice if, prior to recessing, the public body specifies the
13 date, time and place for continuation of the meeting and,
14 immediately following the recessed meeting, posts notice of
15 the date, time and place for the reconvened meeting on or
16 near the door of the place where the original meeting was
17 held and in at least one other location appropriate to
18 provide public notice of the continuation of the meeting.
19 Only matters appearing on the agenda of the original meeting
20 may be discussed at the reconvened meeting.

21 F. Meeting notices shall include an agenda
22 containing a list of specific items of business to be
23 discussed or transacted at the meeting or information on how
24 the public may obtain a copy of such an agenda. Except in
25 the case of an emergency, the agenda shall be available to

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1 the public at least twenty-four hours prior to the meeting.
2 Except for emergency matters, a public body shall take action
3 only on items appearing on the agenda. For purposes of this
4 subsection, [~~an~~] "emergency" refers to unforeseen
5 circumstances that, if not addressed immediately by the
6 public body, will likely result in injury or damage to
7 persons or property or substantial financial loss to the
8 public body.

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

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

22 (1) meetings pertaining to issuance,
23 suspension, renewal or revocation of a license, except that a
24 hearing at which evidence is offered or rebutted shall be
25 open. All final actions on the issuance, suspension, renewal

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1 or revocation of a license shall be taken at an open meeting;

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

14 (3) deliberations by a public body in
15 connection with an administrative adjudicatory proceeding.
16 For purposes of this paragraph, ~~[an]~~ "administrative
17 adjudicatory proceeding" means a proceeding brought by or
18 against a person before a public body in which individual
19 legal rights, duties or privileges are required by law to be
20 determined by the public body after an opportunity for a
21 trial-type hearing. Except as otherwise provided in this
22 section, the actual administrative adjudicatory proceeding at
23 which evidence is offered or rebutted and any final action
24 taken as a result of the proceeding shall occur in an open
25 meeting;

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

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

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

21 (7) meetings subject to the attorney-client
22 privilege pertaining to threatened or pending litigation in
23 which the public body is or may become a participant;

24 (8) meetings for the discussion of the
25 purchase, acquisition or disposal of real property or water

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1 rights by the public body;

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

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

8 (11) meetings of the state ethics commission
9 relating to complaints or investigations of alleged ethics
10 violations.

11 I. If any meeting is closed pursuant to the
12 exclusions contained in Subsection H of this section [~~the~~
13 ~~closure~~]:

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

24 (2) if a closure is called for when the
25 policymaking body is not in an open meeting, the closed

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1 meeting shall not be held until public notice, appropriate
2 under the circumstances, stating the specific provision of
3 the law authorizing the closed meeting and stating with
4 reasonable specificity the subject to be discussed is given
5 to the members and to the general public.

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

15 Section 48. Section 10-16-4.2 NMSA 1978 (being Laws
16 2007, Chapter 362, Section 10) is amended to read:

17 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A
18 public officer or employee shall disclose in writing to the
19 supervisor of the officer or employee, or in the event there
20 is no supervisor, to the [~~secretary of~~] state ethics
21 commission, all employment engaged in by the officer or
22 employee other than the employment with the state."

23 Section 49. Section 10-16-11 NMSA 1978 (being Laws
24 1967, Chapter 306, Section 11, as amended) is amended to
25 read:

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1 "10-16-11. CODES OF CONDUCT.--

2 A. By January 1, 1994, each elected statewide
3 executive branch public officer shall adopt a general code of
4 conduct for employees subject to [~~his~~] the officer's control.
5 The New Mexico legislative council shall adopt a general code
6 of conduct for all legislative branch employees. The general
7 codes of conduct shall be based on the principles set forth
8 in the Governmental Conduct Act.

9 B. Within thirty days after the general codes of
10 conduct are adopted, they shall be given to and reviewed with
11 all executive and legislative branch officers and employees.
12 All new public officers and employees of the executive and
13 legislative branches shall review the employees' general code
14 of conduct prior to or at the time of being hired.

15 C. The head of every executive and legislative
16 agency and institution of the state may draft a separate code
17 of conduct for all public officers and employees in that
18 agency or institution. The separate agency code of conduct
19 shall prescribe standards, in addition to those set forth in
20 the Governmental Conduct Act and the general codes of conduct
21 for all executive and legislative branch public officers and
22 employees, that are peculiar and appropriate to the function
23 and purpose for which the agency or institution was created
24 or exists. The separate codes, upon approval of the
25 responsible executive branch public officer for executive

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1 branch public officers and employees or the New Mexico
2 legislative council for legislative branch employees, govern
3 the conduct of the public officers and employees of that
4 agency or institution and, except for those public officers
5 and employees removable only by impeachment, shall, if
6 violated, constitute cause for dismissal, demotion or
7 suspension. The head of each executive and legislative
8 branch agency shall adopt ongoing education programs to
9 advise public officers and employees about the codes of
10 conduct. All codes shall be filed with the [~~secretary of~~]
11 state ethics commission and are open to public inspection.

12 D. Codes of conduct shall be reviewed at least
13 once every four years. An amended code shall be filed as
14 provided in Subsection C of this section.

15 E. All legislators shall attend a minimum of two
16 hours of ethics continuing education and training
17 biennially."

18 Section 50. Section 10-16-13.1 NMSA 1978 (being Laws
19 1993, Chapter 46, Section 35) is amended to read:

20 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

21 A. The [~~secretary of~~] state ethics commission
22 shall advise and seek to educate all persons required to
23 perform duties under the Governmental Conduct Act of those
24 duties. This includes advising all those persons at least
25 annually of that act's ethical principles.

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1 B. The [~~secretary of~~] state ethics commission
2 shall seek first to ensure voluntary compliance with the
3 provisions of the Governmental Conduct Act. A person who
4 violates that act unintentionally or for good cause shall be
5 given ten days' notice to correct the matter. Referrals for
6 civil enforcement of that act shall be pursued only after
7 efforts to secure voluntary compliance with that act have
8 failed."

9 Section 51. Section 10-16-14 NMSA 1978 (being Laws
10 1967, Chapter 306, Section 14, as amended) is amended to
11 read:

12 "10-16-14. ENFORCEMENT PROCEDURES.--

13 A. The [~~secretary of~~] state ethics commission may
14 refer suspected violations of the Governmental Conduct Act to
15 the attorney general, district attorney or appropriate state
16 agency or legislative body for enforcement. If a suspected
17 violation involves the office of the [~~secretary of~~] state
18 ethics commission, the attorney general may enforce that act.
19 If a suspected violation involves the office of the attorney
20 general, a district attorney may enforce that act.

21 B. Violation of the provisions of the
22 Governmental Conduct Act by any legislator is grounds for
23 discipline by the appropriate legislative body.

24 C. If the attorney general determines that there
25 is sufficient cause to file a complaint against a public

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1 officer removable only by impeachment, [~~he~~] the attorney
2 general shall refer the matter to the house of
3 representatives of the legislature. If within thirty days
4 after the referral the house of representatives has neither
5 formally declared that the charges contained in the complaint
6 are not substantial nor instituted hearings on the complaint,
7 the attorney general shall make public the nature of the
8 charges, but [~~he~~] the attorney general shall make clear that
9 the merits of the charges have never been determined. Days
10 during which the legislature is not in session shall not be
11 included in determining the thirty-day period.

12 D. Violation of the provisions of the
13 Governmental Conduct Act by any public officer or employee,
14 other than those covered by Subsection C of this section, is
15 grounds for discipline, including dismissal, demotion or
16 suspension. Complaints against executive branch employees
17 may be filed with the agency head and reviewed pursuant to
18 the procedures provided in the Personnel Act. Complaints
19 against legislative branch employees may be filed with and
20 reviewed pursuant to procedures adopted by the New Mexico
21 legislative council. Complaints against judicial branch
22 employees may be filed and reviewed pursuant to the
23 procedures provided in the judicial personnel rules.

24 E. Subject to the provisions of this section, the
25 provisions of the Governmental Conduct Act may be enforced by

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1 the attorney general. Except as regards legislators or
2 statewide elected officials, a district attorney in the
3 county where a person who allegedly violated the provisions
4 resides or where [~~a~~] an alleged violation occurred may also
5 enforce that act. Enforcement actions may include seeking
6 civil injunctive or other appropriate orders."

7 Section 52. Section 10-16-18 NMSA 1978 (being Laws
8 1995, Chapter 153, Section 23) is amended to read:

9 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

10 A. If the [~~secretary of~~] state ethics commission
11 reasonably believes that a person committed, or is about to
12 commit, a violation of the Governmental Conduct Act, the
13 [~~secretary of state~~] commission shall refer the matter to the
14 attorney general or a district attorney for enforcement.

15 B. The attorney general or a district attorney
16 may institute a civil action in district court if a violation
17 has occurred or to prevent a violation of any provision of
18 the Governmental Conduct Act. Relief may include a permanent
19 or temporary injunction, a restraining order or any other
20 appropriate order, including an order for a civil penalty of
21 two hundred fifty dollars (\$250) for each violation not to
22 exceed five thousand dollars (\$5,000)."

23 Section 53. Section 10-16A-3 NMSA 1978 (being Laws
24 1993, Chapter 46, Section 41, as amended) is amended to read:

25 "10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES

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1 AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON
2 BALLOT OR APPOINTMENT.--

3 A. At the time of filing a declaration of
4 candidacy or nominating petition, a candidate for legislative
5 or statewide office shall file with the proper filing
6 officer, as defined in Section 1-8-25 NMSA 1978, a financial
7 disclosure statement on a prescribed form. In addition, each
8 year thereafter during the month of January, a legislator and
9 a person holding a statewide office shall file with the
10 proper filing officer a financial disclosure statement. [~~If~~
11 ~~the proper filing officer is not the secretary of state~~] The
12 proper filing officer shall forward a copy of [~~the~~] each
13 financial disclosure statement to the [~~secretary of~~] state
14 ethics commission within seventy-two hours of its filing.

15 B. A state agency head or official whose
16 appointment to a board or commission is subject to
17 confirmation by the senate shall file with the [~~secretary of~~]
18 state ethics commission a financial disclosure statement
19 within thirty days of appointment and during the month of
20 January every year thereafter that [~~he~~] the state agency head
21 or official holds public office.

22 C. The financial disclosure statement shall
23 include for any person identified in Subsection A or B of
24 this section and the person's spouse the following
25 information for the prior calendar year:

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1 (1) the full name, mailing address and
2 residence address of each person covered in the disclosure
3 statement, except the address of the spouse need not be
4 disclosed; the name and address of the person's and spouse's
5 employer and the title or position held; and a brief
6 description of the nature of the business or occupation;

7 (2) all sources of gross income of more than
8 five thousand dollars (\$5,000) to each person covered in the
9 disclosure statement, identified by general category
10 descriptions that disclose the nature of the income source,
11 in the following broad categories: law practice or
12 consulting operation or similar business, finance and
13 banking, farming and ranching, medicine and health care,
14 insurance (as a business and not as payment on an insurance
15 claim), oil and gas, transportation, utilities, general stock
16 market holdings, bonds, government, education, manufacturing,
17 real estate, consumer goods sales with a general description
18 of the consumer goods and the category "other", with
19 direction that the income source be similarly described. In
20 describing a law practice, consulting operation or similar
21 business of the person or spouse, the major areas of
22 specialization or income sources shall be described, and if
23 the spouse or a person in the reporting person's or spouse's
24 law firm, consulting operation or similar business is or was
25 during the reporting calendar year or the prior calendar year

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1 a registered lobbyist under the Lobbyist Regulation Act, the
2 names and addresses of all clients represented for lobbying
3 purposes during those two years shall be disclosed;

4 (3) a general description of the type of
5 real estate owned in New Mexico, other than a personal
6 residence, and the county where it is located;

7 (4) all other New Mexico business interests
8 not otherwise listed of ten thousand dollars (\$10,000) or
9 more in a New Mexico business or entity, including any
10 position held and a general statement of purpose of the
11 business or entity;

12 (5) all memberships held by the reporting
13 individual and [~~his~~] the reporting individual's spouse on
14 boards of for-profit businesses in New Mexico;

15 (6) all New Mexico professional licenses
16 held;

17 (7) each state agency that was sold goods or
18 services in excess of five thousand dollars (\$5,000) during
19 the prior calendar year by a person covered in the disclosure
20 statement;

21 (8) each state agency, other than a court,
22 before which a person covered in the disclosure statement
23 represented or assisted clients in the course of [~~his~~] the
24 person's employment during the prior calendar year; and

25 (9) a general category that allows the

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1 person filing the disclosure statement to provide whatever
2 other financial interest or additional information the person
3 believes should be noted to describe potential areas of
4 interest that should be disclosed.

5 D. A complete financial disclosure statement
6 shall be filed every year. The [~~secretary of~~] state ethics
7 commission shall mail each elected official required to file
8 a financial disclosure statement a copy of any statement the
9 person filed the previous year.

10 E. The financial disclosure statements filed
11 pursuant to this section are public records open to public
12 inspection during regular office hours and shall be retained
13 by the state for five years from the date of filing.

14 F. A person who files a financial disclosure
15 statement may file an amended statement at any time to
16 reflect significant changed circumstances that occurred since
17 the last statement was filed.

18 G. [~~Any~~] A candidate for a legislative or
19 statewide office who fails or refuses to file a financial
20 disclosure statement required by this section before the
21 final date for the withdrawal of candidates provided for in
22 the Election Code shall not have [~~his~~] the candidate's name
23 printed on the election ballot.

24 H. For a state agency head or an official whose
25 appointment to a board or commission is subject to

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1 confirmation by the senate, the filing of the financial
2 disclosure statement required by this section is a condition
3 of entering upon and continuing in state employment or
4 holding an appointed position."

5 Section 54. Section 10-16A-4 NMSA 1978 (being Laws
6 1993, Chapter 46, Section 42) is amended to read:

7 "10-16A-4. DISCLOSURES BY CERTAIN PUBLIC OFFICERS OR
8 EMPLOYEES OF STATE AGENCIES--CONDITION OF EMPLOYMENT.--

9 A. Every employee who is not otherwise required
10 to file a financial disclosure statement under the Financial
11 Disclosure Act and who has a financial interest that [~~he~~] the
12 employee believes or has reason to believe may be affected by
13 [~~his~~] the employee's official act or actions of the state
14 agency by which [~~he~~] the employee is employed shall disclose
15 the nature and extent of that interest. The disclosures
16 shall be made in writing to the [~~secretary of~~] state ethics
17 commission before entering state employment and during the
18 month of January every year thereafter.

19 B. Every public officer who is not otherwise
20 required to file a financial disclosure statement under the
21 Financial Disclosure Act and who has a financial interest
22 that [~~he~~] the public officer believes or has reason to
23 believe may be affected by [~~his~~] the public officer's
24 official act or actions of the board or commission to which
25 [~~he~~] the public officer is appointed shall disclose the

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1 nature and extent of that interest. The disclosures shall be
2 made in writing to the [~~secretary of~~] state ethics commission
3 before taking office and during the month of January every
4 year thereafter.

5 C. The information on the disclosures shall be
6 made available by the [~~secretary of~~] state ethics
7 commission for inspection to any [~~citizen of this~~] resident
8 of the state.

9 D. The filing of disclosures pursuant to this
10 section is a condition of entering upon and continuing in
11 state employment or, for persons subject to Subsection B of
12 this section, of holding public office."

13 Section 55. Section 10-16A-5 NMSA 1978 (being Laws
14 1993, Chapter 46, Section 43) is amended to read:

15 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

16 A. The [~~secretary of~~] state ethics commission
17 shall advise and seek to educate all persons required to
18 perform duties under the Financial Disclosure Act of those
19 duties. This includes providing timely advance notice of the
20 required financial disclosure statement and preparing forms
21 that are clear and easy to complete.

22 B. The [~~secretary of~~] state ethics commission
23 shall seek first to ensure voluntary compliance with the
24 provisions of the Financial Disclosure Act. A person who
25 violates that act unintentionally or for good cause shall be

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1 given ten days' notice to correct the matter before fines are
2 imposed. Referrals for civil enforcement of the Financial
3 Disclosure Act shall be pursued only after efforts to secure
4 voluntary compliance with that act have failed."

5 Section 56. Section 10-16A-6 NMSA 1978 (being Laws
6 1993, Chapter 46, Section 44, as amended) is amended to read:

7 "10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--
8 FINES--ENFORCEMENT.--

9 A. The [~~secretary of~~] state ethics commission may
10 conduct thorough examinations of statements and initiate
11 investigations to determine whether the Financial Disclosure
12 Act has been violated. Any person who believes that act has
13 been violated may file a written complaint with the
14 [~~secretary of state~~] commission. The [~~secretary of state~~]
15 commission shall adopt procedures for processing complaints
16 and notifications of violations.

17 B. If the [~~secretary of~~] state ethics commission
18 determines that a violation has occurred for which a penalty
19 should be imposed, the [~~secretary of state~~] commission shall
20 so notify the person charged and impose the penalty. If the
21 person charged disputes the [~~secretary of state's~~]
22 commission's determination, the person charged may request
23 binding arbitration.

24 C. The arbitration decision shall be decided by a
25 single arbitrator selected within ten days by the person

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1 against whom the penalty has been imposed from a list of five
2 arbitrators provided by the [~~secretary of~~] state ethics
3 commission. No arbitrator may be a person subject to the
4 Financial Disclosure Act, Campaign Reporting Act or Lobbyist
5 Regulation Act. Arbitrators shall be considered to be
6 independent contractors, not public officers or employees,
7 and shall not be paid per diem and mileage.

8 D. The arbitrator may take any action the
9 [~~secretary of~~] state ethics commission is authorized to take.
10 The arbitrator shall state the reasons for [~~his~~] the decision
11 in a written document that shall be a public record. The
12 decision shall be final and binding. The decision shall be
13 issued within thirty days of the conclusion of the hearing.
14 Unless otherwise provided for in this section, or by rule or
15 regulation adopted by the [~~secretary of state~~] commission,
16 the procedures for the arbitration shall be governed by the
17 Uniform Arbitration Act. No arbitrator shall be subject to
18 liability for actions taken pursuant to this section.

19 E. Any person who files a statement or report
20 after the deadline imposed by the Financial Disclosure Act or
21 any person who files a false or incomplete statement or
22 report is liable for and shall pay to the [~~secretary of~~]
23 state ethics commission, at or from the time initially
24 required for the filing, fifty dollars (\$50.00) per day for
25 each regular working day after the time required for the

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1 filing of the statement or report until the complete report
2 is filed, up to a maximum of five thousand dollars (\$5,000).

3 F. The [~~secretary of~~] state ethics commission may
4 refer a matter to the attorney general or a district attorney
5 for a civil injunctive or other appropriate order or
6 enforcement."

7 Section 57. Section 10-16A-8 NMSA 1978 (being Laws
8 1995, Chapter 153, Section 25) is amended to read:

9 "10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--

10 A. If the [~~secretary of~~] state ethics commission
11 reasonably believes that a person committed, or is about to
12 commit, a violation of the Financial Disclosure Act, the
13 [~~secretary of state~~] commission shall refer the matter to the
14 attorney general or a district attorney for enforcement.

15 B. The attorney general or a district attorney
16 may institute a civil action in district court if a violation
17 has occurred or to prevent a violation of any provision of
18 the Financial Disclosure Act. Relief may include a permanent
19 or temporary injunction, a restraining order or any other
20 appropriate order, including an order for a civil penalty of
21 two hundred fifty dollars (\$250) for each violation not to
22 exceed five thousand dollars (\$5,000)."

23 Section 58. Section 10-16B-3 NMSA 1978 (being Laws
24 2007, Chapter 226, Section 3) is amended to read:

25 "10-16B-3. LIMITATION ON GIFTS.--

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1 A. A state officer or employee or a candidate for
2 state office, or that person's family, shall not knowingly
3 accept from a restricted donor, and a restricted donor shall
4 not knowingly donate to a state officer or employee or a
5 candidate for state office, or that person's family, a gift
6 of a market value greater than two hundred fifty dollars
7 (\$250).

8 B. A lobbyist registered with the [~~secretary of~~]
9 state ethics commission, the lobbyist's employer or a
10 government contractor shall not donate gifts of an aggregate
11 market value greater than one thousand dollars (\$1,000) in a
12 calendar year to any one state officer or employee or to any
13 one candidate for state office.

14 C. A state officer or employee shall not solicit
15 gifts for a charity from a business or corporation regulated
16 by the state agency for which the state officer or employee
17 works and shall not otherwise solicit donations for a charity
18 in such a manner that it appears that the purpose of the
19 donor in making the gift is to influence the state officer or
20 employee in the performance of an official duty."

21 Section 59. TEMPORARY PROVISION--REPORT ON EXTENSION
22 OF STATE ETHICS COMMISSION JURISDICTION TO LOCAL
23 GOVERNMENTS.--By January 1, 2012, the state ethics commission
24 shall submit a report to the legislature and the governor
25 regarding the extension of commission jurisdiction to elected

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1 and appointed officials and employees of political
2 subdivisions of the state. The report shall include and make
3 recommendations on:

4 A. a detailed plan formulated by the commission
5 for implementation of an extension of its jurisdiction,
6 including a proposed time line;

7 B. the estimated number of additional employees
8 and the amount and type of resources needed by the commission
9 to carry out its powers and duties if its jurisdiction were
10 extended;

11 C. estimated budget increases and the estimated
12 annual budget for the commission if its jurisdiction were
13 extended; and

14 D. any changes needed to existing law.

15 Section 60. TEMPORARY PROVISION--TRANSFER OF PROPERTY,
16 CONTRACTS AND REFERENCES IN LAW AND RULES.--On January 1,
17 2011:

18 A. all functions, appropriations, money, records,
19 property, equipment and supplies of the office of the
20 secretary of state used in the administration of the
21 following acts are transferred to the state ethics
22 commission:

- 23 (1) the Campaign Reporting Act;
24 (2) the Voter Action Act;
25 (3) the Lobbyist Regulation Act;

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1 (4) the Governmental Conduct Act;

2 (5) the Financial Disclosure Act; and

3 (6) the Gift Act;

4 B. all contracts, grants, agreements and other
5 obligations of the secretary of state relating to
6 administration of the acts listed in Subsection A of this
7 section are transferred to and binding on the state ethics
8 commission;

9 C. all references in law to the secretary of
10 state relating to administration of the acts listed in
11 Subsection A of this section shall be deemed to be references
12 to the state ethics commission; and

13 D. all rules of the secretary of state pertaining
14 to administration of the acts listed in Subsection A of this
15 section shall be considered rules of the state ethics
16 commission.

17 Section 61. REPEAL.--Laws 2009, Chapter 68, Section 2
18 is repealed.

19 Section 62. APPROPRIATION.--Two hundred thousand
20 dollars (\$200,000) is appropriated from the general fund to
21 the state ethics commission for expenditure in fiscal year
22 2011 to carry out the provisions of the State Ethics
23 Commission Act. Any unexpended or unencumbered balance
24 remaining at the end of fiscal year 2011 shall revert to the
25 general fund.

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