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SENATE BILL 172

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

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

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

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

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

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

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1 Commission Act:

2 A. "campaign contribution" means a gift,  
3 subscription, loan, advance or deposit of money or other thing  
4 of value, including the estimated value of an in-kind  
5 contribution, that is made or received for a political purpose,  
6 including payment of a debt incurred in an election campaign.  
7 "Campaign contribution" does not include the value of services  
8 provided without compensation or unreimbursed travel or other  
9 personal expenses of persons who volunteer a portion or all of  
10 their time on behalf of a candidate or political committee;

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

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

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

21 E. "lobbying" means attempting to influence:

22 (1) a decision related to any matter to be  
23 considered or being considered by the legislative branch of  
24 state government or any legislative committee or to any  
25 legislative matter requiring action by the governor or awaiting

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1 action by the governor; or

2 (2) an official action;

3 F. "lobbyist" means a person who is compensated for  
4 the specific purpose of lobbying; is designated by an interest  
5 group or organization to represent it on a substantial or  
6 regular basis for the purpose of lobbying; or who, in the  
7 course of the person's employment, is engaged in lobbying on a  
8 substantial or regular basis. "Lobbyist" does not include:

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

11 (2) an elected or appointed officer of the  
12 state or a political subdivision of the state or an Indian  
13 nation, tribe or pueblo who is acting in the officer's official  
14 capacity;

15 (3) an employee of the state or a political  
16 subdivision of the state, specifically designated by an elected  
17 or appointed officer, who appears before a legislative  
18 committee or in a rulemaking proceeding only to explain the  
19 effect of legislation or a rule on that employee's agency or  
20 political subdivision; provided that the elected or appointed  
21 officer keeps the designation for public inspection and files  
22 it with the secretary of state;

23 (4) a designated member of the staff of an  
24 elected state official; provided that the elected state  
25 official keeps the designation for public inspection and files

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1 it with the secretary of state;

2 (5) a legislator or legislative staff member;

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

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

11 (8) a publisher, owner or employee of the  
12 print media, radio or television, while gathering or  
13 disseminating news or editorial comment to the general public  
14 in the ordinary course of business;

15 G. "official action" means an action or nonaction  
16 of a state official or state agency, board or commission acting  
17 in a rulemaking proceeding;

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

22 I. "respondent" means a state official, state  
23 employee, government contractor or lobbyist who is the subject  
24 of a complaint filed with the commission;

25 J. "state agency" means any department, commission,

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1 council, board, committee, institution, legislative body,  
2 agency, government corporation, educational institution or  
3 official of the executive, legislative or judicial branch of  
4 government of the state;

5 K. "state employee" means an employee of the  
6 executive, legislative or judicial branches of the state.  
7 "State employee" does not include a judge or justice, whether  
8 elected or appointed, of any court; and

9 L. "state official" means a person elected or  
10 appointed to an office of the executive or legislative branch  
11 of the state.

12 SECTION 3. STATE ETHICS COMMISSION--CREATED--MEMBERSHIP--  
13 TERMS--REMOVAL.--

14 A. The "state ethics commission" is created as an  
15 adjunct agency. The commission consists of the following ten  
16 members:

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

19 (2) two members, who shall not be of the same  
20 political party, appointed by the president pro tempore of the  
21 senate;

22 (3) two members, who shall not be of the same  
23 political party, appointed by the speaker of the house of  
24 representatives; and

25 (4) two members appointed by the chief justice

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1 of the supreme court, who shall not be of the same political  
2 party.

3 B. Members of the commission shall be appointed for  
4 staggered terms of four years. Upon initial appointment of the  
5 commission, the members shall draw lots to determine which  
6 three members will serve an initial term of two years, which  
7 three members will serve an initial term of three years and  
8 which four members will serve an initial term of four years;  
9 thereafter, all members will serve four-year terms. A person  
10 shall not serve as a commission member for more than two  
11 consecutive terms.

12 C. Appointments shall be made in a manner that  
13 meets the following requirements:

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

16 (2) no more than five members shall be members  
17 of the same political party.

18 D. The commission shall select a chair, vice chair  
19 and other officers it deems necessary.

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

23 F. A vacancy on the commission shall be filled by  
24 appointment of the appointing authority for that member's  
25 position for the remainder of the unexpired term. A commission

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1 member may only be removed for incompetence, neglect of duty or  
2 malfeasance in office. The supreme court of the state of New  
3 Mexico has exclusive jurisdiction over proceedings to remove  
4 commission members, and its decision shall be final. A member  
5 shall be given notice of hearing and an opportunity to be heard  
6 before the member is removed.

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

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

10 (2) be a state employee, government contractor  
11 or a lobbyist; or

12 (3) make a campaign contribution to a state  
13 official, a state employee, a government contractor, a lobbyist  
14 or a candidate for state office.

15 H. Members shall recuse themselves from a  
16 commission proceeding that involves the appointing authority  
17 who appointed the member to the commission.

18 I. For a period of one calendar year following the  
19 expiration of a member's term, the former member of the  
20 commission shall not:

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

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

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

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

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

9                   **SECTION 4. COMMISSION--POWERS--DUTIES.--**

10                   A. The commission shall:

11                               (1) receive and investigate complaints  
12 alleging ethics violations against state officials, state  
13 employees, government contractors and lobbyists;

14                               (2) report findings of probable cause that a  
15 respondent's conduct constituted an ethics violation to the  
16 respondent's appointing authority, employer or appropriate  
17 state agency;

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

22                               (4) compile, adopt, publish and provide to all  
23 state officials, state employees, government contractors and  
24 lobbyists an ethics guide that clearly and plainly explains the  
25 ethics requirements set forth in state law;

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

6 (6) provide annual ethics training to all  
7 state officials, state employees, government contractors and  
8 lobbyists;

9 (7) develop, adopt and promulgate all rules  
10 necessary to implement and administer the provisions of the  
11 State Ethics Commission Act, including rules of procedure for  
12 investigations conducted by the commission;

13 (8) employ an executive director; and

14 (9) submit an annual report of its activities,  
15 including any recommendations regarding state ethics laws or  
16 the scope of its powers and duties, in December of each year to  
17 the governor, the legislature and the chief justice of the  
18 supreme court.

19 B. The commission may:

20 (1) recommend disciplinary actions for ethics  
21 violations in accordance with the provisions of the State  
22 Ethics Commission Act;

23 (2) subpoena and require the attendance of  
24 witnesses and the production of accounts, books, papers,  
25 records and other documents relevant to an investigation

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1 conducted by the commission;

2 (3) issue advisory opinions to state  
3 officials, state employees, government contractors and  
4 lobbyists in accordance with the provisions of the State Ethics  
5 Commission Act; and

6 (4) contract for the provisions of goods and  
7 services.

8 SECTION 5. EXECUTIVE DIRECTOR--DUTIES--EMPLOYMENT.--

9 A. The executive director of the commission shall:

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

12 (2) hire a general counsel for the commission  
13 and all other personnel as may be necessary to carry out the  
14 responsibilities of the commission;

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

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

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

21 (6) make recommendations to the commission of  
22 proposed rules or legislative changes needed to provide better  
23 administration of the State Ethics Commission Act.

24 B. The executive director of the commission may  
25 administer oaths and take depositions to the same extent and

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1 subject to the same limitations as would apply if the  
2 deposition were held pursuant to the discovery rules in a civil  
3 action in the district court.

4 SECTION 6. COMMISSION--ADVISORY OPINIONS.--

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

14 B. The commission shall promulgate rules for  
15 issuing advisory opinions; provided that:

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

19 (2) all requests to the commission for  
20 advisory opinions are confidential; and

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

24 SECTION 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--  
25 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL

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1 REFERRAL REQUIRED.--

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

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

25 C. If the commission decides to investigate the

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

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

21 E. The commission may issue subpoenas for the  
22 attendance and testimony of witnesses or the production of  
23 books, documents, records and papers reasonably related to the  
24 complaint. Subpoenas may be signed by any member of the  
25 commission and shall state with reasonable certainty the nature

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1 of the investigation, the nature of the information to be  
2 produced, the time and place where the information shall be  
3 produced and the consequences of failure to obey the subpoena.  
4 After service of the subpoena upon the person, if the person  
5 neglects or refuses to comply with the subpoena, the commission  
6 may apply to a district court for an order compelling  
7 compliance.

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

20 G. If the commission finds that, based on the facts  
21 in the investigation report and the facts alleged in the  
22 complaint, probable cause exists to believe that the  
23 respondent's alleged conduct constituted an ethics violation,  
24 the commission shall report its finding in writing to the  
25 respondent's appointing authority, employer or appropriate

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

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

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

10 J. No complaint shall be filed pursuant to this  
11 section later than three years after an alleged ethics  
12 violation was committed.

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

25 SECTION 9. PROHIBITED ACTIONS.--A person shall not take

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1 or threaten to take any retaliatory, disciplinary or other  
2 adverse action against another person who in good faith:

3 A. files a complaint with the commission alleging  
4 an ethics violation against a state official, state employee,  
5 government contractor or lobbyist; or

6 B. provides testimony, records, reports or other  
7 information to the commission during an investigation conducted  
8 pursuant to the State Ethics Commission Act.

9 SECTION 10. APPROPRIATION.--Five hundred thousand dollars  
10 (\$500,000) is appropriated from the general fund to the state  
11 ethics commission for expenditure in fiscal year 2012 to carry  
12 out the provisions of the State Ethics Commission Act. Any  
13 unexpended or unencumbered balance remaining at the end of  
14 fiscal year 2012 shall revert to the general fund.

15 SECTION 11. APPLICABILITY.--The provisions of the State  
16 Ethics Commission Act apply to a state official, state  
17 employee, government contractor or lobbyist who commits an  
18 ethics violation on or after July 1, 2011.

19 SECTION 12. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2011.