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SENATE BILL 293

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

INTRODUCED BY

Pete Campos

AN ACT

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 16 of this act may be cited as the "State Ethics
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1 Commission Act".

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

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

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

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

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

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

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

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

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1 state agency;

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

4 I. "lobbying" means attempting to influence:

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

10 (2) an official action;

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

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

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

23 (3) a state employee or an employee of a
24 political subdivision of the state, specifically designated by
25 an elected or appointed officer, who appears before a

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

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

10 (5) a legislator or legislative staff member;

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

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

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

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

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

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

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

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

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

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

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

24 (1) one commissioner appointed by the speaker
25 of the house of representatives;

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1 (2) one commissioner appointed by the minority
2 floor leader of the house of representatives;

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

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

7 (5) two commissioners appointed by the
8 governor, one of whom shall be of the Democratic party and one
9 of whom shall be of the Republican party; and

10 (6) one commissioner, appointed by the chief
11 justice of the New Mexico supreme court, who shall be a retired
12 judge and who shall be the chair of the commission.

13 B. The appointing authorities shall give due regard
14 to geographic representation and to the cultural diversity of
15 the state.

16 C. Each appointing authority shall file letters of
17 appointment with the secretary of state.

18 D. Commissioners shall be appointed for staggered
19 terms of four years beginning July 1, 2011. The initial
20 commissioners shall draw lots to determine which two
21 commissioners serve an initial term of two years, which two
22 commissioners serve an initial term of three years and which
23 three commissioners serve an initial term of four years;
24 thereafter, all commissioners shall serve four-year terms.

25 Members shall serve until their successors are appointed and

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1 qualified.

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

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

11 G. Four commissioners that include at least two
12 Democrats and two Republicans constitute a quorum for the
13 transaction of business. No action shall be taken by the
14 commission unless at least four members, including at least two
15 Democrats and two Republicans, concur.

16 H. A commissioner may be removed only for
17 incompetence, neglect of duty or malfeasance in office. A
18 proceeding for the removal of a commissioner may be commenced
19 by the commission or by the attorney general upon the request
20 of the commission. The New Mexico supreme court has exclusive
21 jurisdiction over proceedings to remove commissioners, and its
22 decision shall be final. A commissioner shall be given notice
23 of hearing and an opportunity to be heard before the
24 commissioner is removed.

25 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--

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1 LIMITATIONS.--

2 A. To qualify for appointment to the commission, a
3 person shall:

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

5 (2) have been a member of the same political
6 party for at least three years prior to appointment or shall
7 not have been a member of any political party for at least
8 three years prior to appointment.

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

16 C. During a commissioner's tenure, a commissioner
17 shall not:

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

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

22 D. A commissioner who changes political party
23 affiliation or violates the provisions of Subsection C of this
24 section is deemed to have resigned from the commission.

25 E. For a period of one calendar year following a

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1 commissioner's tenure or following the resignation or removal
2 of a commissioner, that commissioner shall not:

3 (1) represent a respondent, unless appearing
4 on the commissioner's own behalf; or

5 (2) accept employment or otherwise provide
6 services to a respondent unless the commissioner accepted
7 employment or provided services prior to the filing of a
8 complaint against that respondent.

9 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND
10 POWERS.--

11 A. The commission shall:

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

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

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

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

23 (5) draft a proposed code of ethics for state
24 officials and state employees and submit the proposed code to
25 each elected state official and state agency for adoption;

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1 (6) employ an executive director, who shall be
2 an attorney; and

3 (7) submit an annual report of its activities,
4 including any recommendations regarding state ethics laws or
5 the scope of its powers and duties, in December of each year to
6 the legislature and the governor.

7 B. The commission may:

8 (1) initiate complaints alleging ethics
9 violations against state officials, state employees, government
10 contractors and lobbyists;

11 (2) petition a district court to issue
12 subpoenas under seal requiring the attendance of witnesses and
13 the production of books, records, documents or other evidence
14 relevant or material to an investigation;

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

19 (4) compile, adopt, publish and make available
20 to all state officials, state employees, government contractors
21 and lobbyists an ethics guide that clearly and plainly explains
22 the ethics requirements set forth in state law, including those
23 that relate to conducting business with the state; and

24 (5) offer annual ethics training to state
25 officials, state employees, government contractors, lobbyists

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1 and other interested persons.

2 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--
3 APPOINTMENT--DUTIES AND POWERS.--

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

11 B. The director shall:

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

14 (2) perform investigations on behalf of the
15 commission;

16 (3) bring complaints and investigation results
17 before the commission for consideration;

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

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

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

25 C. The director may:

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

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

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

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

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

14 (2) 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 against that respondent.

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 two or more commissioners have recused
9 themselves or are disqualified from participating in a
10 proceeding so that there is no longer a quorum, the remaining
11 commissioners shall appoint temporary commissioners to
12 participate in that proceeding. Appointments of temporary
13 commissioners shall be made by the remaining commissioners in
14 accordance with the political party affiliation 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 shall be
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 ethics violation
18 committed by a state official, state employee, government
19 contractor or lobbyist may be:

20 (1) filed with the commission by a person who
21 has actual knowledge of the alleged ethics 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 state official, state employee,

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1 government contractor or lobbyist and the factual allegations
2 that support the charges and shall sign the complaint under
3 penalty of false statement. The complainant shall submit any
4 evidence the complainant has that supports the complaint.
5 Evidence may include documents, records and names of witnesses.
6 The commission shall prescribe the forms on which complaints
7 are to be filed. The complaint form shall include a statement
8 above the signature line that provides the following:

9 "The complainant agrees to be bound by
10 the confidentiality rules of the State
11 Ethics Commission and other provisions of
12 the State Ethics Commission Act."

13 C. The chair of the commission shall sign a
14 complaint initiated by the commission, and the complaint shall
15 set forth in detail the specific charges against the state
16 official, state employee, government contractor or lobbyist and
17 the factual allegations that support the charges.

18 D. The director shall promptly bring all complaints
19 before the commission and make recommendations to the
20 commission as to whether the conduct alleged in a complaint is
21 within the jurisdiction of the commission and warrants
22 investigation.

23 E. The commission shall promptly dismiss complaints
24 that are frivolous, anonymous, unfounded or outside the
25 jurisdiction of the commission. If the commission dismisses a

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1 complaint pursuant to this subsection, the director shall
2 promptly notify the complainant and the respondent.

3 F. If the commission decides to proceed with an
4 investigation, the director shall investigate the complaint.
5 The director shall promptly notify the respondent that a
6 complaint has been filed and is being investigated and shall
7 notify the respondent of the specific allegations in the
8 complaint and the specific ethics violations implicated by the
9 complaint.

10 G. As part of an investigation, the director may
11 administer oaths, interview witnesses and examine books,
12 records, documents and other evidence reasonably related to the
13 complaint. If the director determines that a subpoena is
14 necessary to obtain the testimony of any person or the
15 production of books, records, documents or other evidence, the
16 director shall ask the commission to petition a district court
17 to issue a subpoena under seal. The commission may petition a
18 district court, under seal, to subpoena witnesses, compel their
19 attendance and examine them under oath or affirmation and to
20 require the production of any books, records, documents or
21 other evidence that it deems relevant or material to an
22 investigation. Any challenge to a subpoena shall be heard by
23 the district court in a confidential proceeding. If a person
24 refuses to comply with a subpoena, the district court shall
25 compel compliance.

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

12 SECTION 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
13 LIMITATIONS.--

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

24 B. Upon dismissal or a decision to continue an
25 investigation of a complaint, the commission shall notify the

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1 complainant and respondent in writing of its action. The
2 commission shall not publicly disclose its action or
3 notification except upon the request of the respondent.

4 SECTION 11. [NEW MATERIAL] REPORT--HEARING--FINDINGS AND
5 CONCLUSIONS--DISCLOSURE OF ETHICS VIOLATION.--

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

11 B. The commission may appoint a retired judge to
12 preside over and conduct the hearing. The retired judge shall
13 have no vote at the hearing. The retired judge shall be
14 entitled to receive per diem and mileage as provided in the Per
15 Diem and Mileage Act and shall receive no other compensation,
16 perquisite or allowance.

17 C. At the hearing, the commission has the power to
18 administer oaths. The respondent has the right to be
19 represented by counsel and to present evidence and testimony
20 and examine and cross-examine witnesses. The respondent shall
21 be afforded due process at the hearing.

22 D. After hearing and consideration of all the
23 evidence, if the commission finds by clear and convincing
24 evidence that the respondent's conduct constituted an ethics
25 violation, the commission shall issue a written report that

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1 shall include findings of fact and conclusions of law. The
2 written report may include a public reprimand or censure or
3 recommendations for disciplinary action against the respondent.
4 The commission shall publicly disclose the written report and
5 provide it, along with all evidence collected during its
6 investigation, to the respondent, the attorney general and the:

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

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

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

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

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

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

21 E. If, after consideration of all the evidence, the
22 commission does not find by clear and convincing evidence that
23 the respondent's conduct constituted an ethics violation, the
24 commission shall dismiss the complaint and provide notice of
25 the dismissal to the respondent and complainant no later than

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1 five days after the finding is made. A notice issued pursuant
2 to this subsection shall not be public except upon the request
3 of the respondent.

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

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

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

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

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

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

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

23 SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--

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

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

10 SECTION 14. [NEW MATERIAL] LIMITATIONS ON JURISDICTION.--

11 A. The commission shall not accept or consider a
12 complaint unless the complaint is filed or initiated within
13 three years from the date on which the alleged conduct
14 occurred.

15 B. The commission shall not take action on a
16 complaint filed or initiated against a candidate for a public
17 office covered by the State Ethics Commission Act on or after
18 the filing date for a primary election through election day of
19 the general election, except that the commission shall dismiss
20 complaints that are frivolous, anonymous, unfounded or outside
21 the jurisdiction of the commission. A complainant shall be
22 notified of this provision and shall be notified that the
23 complainant may refer any allegations of criminal conduct to
24 the attorney general or appropriate district attorney. The
25 respondent shall be notified that a complaint has been filed

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1 and of the specific allegations in the complaint.

2 C. The commission shall not investigate allegations
3 of misconduct involving campaign advertisements.

4 SECTION 15. [NEW MATERIAL] PROHIBITED ACTIONS.--

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

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

11 (2) provides testimony, records, documents or
12 other information to the commission during an investigation or
13 at a hearing conducted pursuant to the State Ethics Commission
14 Act.

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

20 SECTION 16. [NEW MATERIAL] CONFIDENTIALITY--PENALTY.--

21 A. Disclosure of any confidential complaint,
22 report, file, record or communication in violation of the State
23 Ethics Commission Act is a misdemeanor and shall be punished by
24 a fine of not more than one thousand dollars (\$1,000) or by
25 imprisonment for not more than one year or both.

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1 B. In addition to a penalty imposed pursuant to
2 Subsection A of this section, a court may impose a civil
3 penalty not to exceed twenty-five thousand dollars (\$25,000)
4 for each violation of Section 12 of the State Ethics Commission
5 Act.

6 C. The provisions of this section apply to a
7 commission member, the director and commission employees or
8 agents and also apply to a complainant from the time the
9 complaint is filed until it is resolved and a final
10 determination is made.

11 **SECTION 17.** Section 10-15-1 NMSA 1978 (being Laws 1974,
12 Chapter 91, Section 1, as amended) is amended to read:

13 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
14 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

15 A. In recognition of the fact that a representative
16 government is dependent upon an informed electorate, it is
17 declared to be public policy of this state that all persons are
18 entitled to the greatest possible information regarding the
19 affairs of government and the official acts of those officers
20 and employees who represent them. The formation of public
21 policy or the conduct of business by vote shall not be
22 conducted in closed meeting. All meetings of any public body
23 except the legislature and the courts shall be public meetings,
24 and all persons so desiring shall be permitted to attend and
25 listen to the deliberations and proceedings. Reasonable

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1 efforts shall be made to accommodate the use of audio and video
2 recording devices.

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

19 C. If otherwise allowed by law or rule of the
20 public body, a member of a public body may participate in a
21 meeting of the public body by means of a conference telephone
22 or other similar communications equipment when it is otherwise
23 difficult or impossible for the member to attend the meeting in
24 person, provided that each member participating by conference
25 telephone can be identified when speaking, all participants are

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1 able to hear each other at the same time and members of the
2 public attending the meeting are able to hear any member of the
3 public body who speaks during the meeting.

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

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

25 F. Meeting notices shall include an agenda

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

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

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

- 25 (1) meetings pertaining to issuance,

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1 suspension, renewal or revocation of a license, except that a
2 hearing at which evidence is offered or rebutted shall be open.
3 All final actions on the issuance, suspension, renewal or
4 revocation of a license shall be taken at an open meeting;

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

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

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1 the proceeding shall occur in an open meeting;

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

5 (5) meetings for the discussion of bargaining
6 strategy preliminary to collective bargaining negotiations
7 between the policymaking body and a bargaining unit
8 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 the
16 contents of competitive sealed proposals solicited pursuant to
17 the Procurement Code are discussed during the contract
18 negotiation process. The actual approval of purchase of the
19 item or final action regarding the selection of a contractor
20 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 to
22 closure by the policymaking body may be discussed in a closed
23 meeting; ~~and~~ or

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

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

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

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

21 A. a detailed plan formulated by the commission for
22 implementation of an extension of its jurisdiction, including a
23 proposed time line;

24 B. the estimated number of additional employees and
25 the amount and type of resources needed by the commission to

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1 carry out its powers and duties if its jurisdiction were
2 extended;

3 C. estimated budget increases and the estimated
4 annual budget for the commission if its jurisdiction were
5 extended; and

6 D. any changes needed to existing law.

7 SECTION 19. APPROPRIATION.--Five hundred thousand
8 dollars (\$500,000) is appropriated from the general fund to the
9 state ethics commission for expenditure in fiscal year 2012 to
10 carry out the provisions of the State Ethics Commission Act.
11 Any unexpended or unencumbered balance remaining at the end of
12 fiscal year 2012 shall revert to the general fund.

13 SECTION 20. SEVERABILITY.--If any part or application of
14 this act is held invalid, the remainder or its application to
15 other situations or persons shall not be affected.

16 SECTION 21. APPLICABILITY.--The provisions of the State
17 Ethics Commission Act apply to conduct that occurs on or after
18 July 1, 2011.

19 SECTION 22. EFFECTIVE DATE.--

20 A. The effective date of the provisions of Sections
21 1 through 7 and 12 through 21 of this act is July 1, 2011.

22 B. The effective date of the provisions of Sections
23 8 through 11 of this act is January 1, 2012.

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