

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE JOINT RESOLUTION 5

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 5 OF THE CONSTITUTION OF NEW MEXICO TO CREATE AN INDEPENDENT STATE ETHICS COMMISSION WITH JURISDICTION TO INVESTIGATE AND ISSUE ADVISORY OPINIONS CONCERNING, AND EXCLUSIVE JURISDICTION TO ADJUDICATE, CIVIL VIOLATIONS OF LAWS GOVERNING STANDARDS OF CONDUCT, INCLUDING ELECTION CAMPAIGNS, OF ELECTED AND APPOINTED MEMBERS OF THE LEGISLATURE AND EXECUTIVE BRANCH, LEGISLATIVE AND EXECUTIVE BRANCH STATE OFFICERS AND EMPLOYEES, GOVERNMENT CONTRACTORS AND LOBBYISTS.

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

**SECTION 1.** It is proposed to amend Article 5 of the constitution of New Mexico by adding a new section to read:

"A. The "state ethics commission" is created as an independent state agency under the direction of nine

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1 commissioners, no more than four of whom may be members of the  
2 same political party, appointed as follows:

3 (1) three commissioners appointed by the  
4 governor, none of whom shall be of the same political party and  
5 with one commissioner appointed from each congressional  
6 district;

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

9 (3) one commissioner appointed by the minority  
10 floor leader of the senate;

11 (4) one commissioner appointed by the speaker  
12 of the house of representatives;

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

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

19 B. At the time of appointment, a commissioner  
20 shall:

21 (1) be a qualified elector of the state;

22 (2) not have changed political party  
23 affiliation within the previous two years; and

24 (3) not be, or within the previous five years  
25 not have been, a state officer or employee in the executive or

1 legislative branch of government, a registered lobbyist or a  
2 state contractor. The legislature may provide by law for  
3 further restrictions on appointees to the commission.

4 C. Commissioners shall be appointed for staggered  
5 terms of four years beginning July 1, 2017. The initial  
6 appointees shall draw lots to determine which three  
7 commissioners will serve an initial term of two years, which  
8 three commissioners shall serve an initial term of three years  
9 and which three commissioners will serve an initial term of  
10 four years. Thereafter, all commissioners shall be appointed  
11 for four-year terms. Members shall serve until their  
12 successors are appointed and qualified.

13 D. A person shall not serve as a commissioner for  
14 more than two consecutive terms. A vacancy on the state ethics  
15 commission shall be filled by appointment by the original  
16 appointing authority for the remainder of the unexpired term.

17 E. No action shall be taken by the state ethics  
18 commission unless at least six members concur.

19 F. A commissioner may be removed only for  
20 incompetence, neglect of duty or malfeasance in office. A  
21 proceeding for the removal of a commissioner may be commenced  
22 by the state ethics commission or by the attorney general upon  
23 the request of the commission. The supreme court has exclusive  
24 jurisdiction over proceedings to remove commissioners, and its  
25 decision shall be final. A commissioner shall be given notice

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1 of hearing and an opportunity to be heard before the  
2 commissioner is removed.

3 G. The state ethics commission shall receive an  
4 annual appropriation by the legislature sufficient to enable it  
5 to perform its duties.

6 H. The state ethics commission shall employ an  
7 executive director, who shall be a licensed attorney in the  
8 state, and other staff as necessary to fulfill its duties. The  
9 executive director shall receive a salary that is equal to the  
10 salary of a district court judge.

11 I. The state ethics commission:

12 (1) may initiate, and shall receive and  
13 investigate, complaints alleging violations:

14 (a) by state officers or employees in  
15 the executive or legislative branch of government of laws  
16 imposing standards of ethical conduct on state officers and  
17 employees;

18 (b) of laws imposing campaign finance  
19 restrictions or reporting requirements for candidates and other  
20 participants in campaigns for state or county elected offices;

21 (c) of registration requirements or  
22 standards of conduct for lobbyists; and

23 (d) of disclosure requirements or  
24 standards of conduct for state contractors or seekers of state  
25 contracts;

1 (2) may dismiss complaints regarded as  
2 frivolous or outside of the jurisdiction of the commission.

3 The commission shall make public complaints that have been  
4 dismissed without a hearing and the reason for the dismissal;

5 (3) shall, upon the presentation of clear and  
6 convincing evidence to the commission in a public hearing:

7 (a) adjudicate complaints alleging  
8 violations for which civil penalties or sanctions may be  
9 imposed under the laws described in Paragraph (1) of this  
10 subsection and may impose such penalties and sanctions as  
11 provided by those laws; or

12 (b) refer to the appropriate  
13 prosecutorial authority complaints alleging conduct that may be  
14 criminal violations of the law;

15 (4) may petition the courts for suspension or  
16 other appropriate action pending investigation by the  
17 appropriate enforcement authority for violations of the laws  
18 described in Paragraph (1) of this subsection;

19 (5) may issue advisory opinions;

20 (6) may promulgate rules necessary to  
21 implement and administer the provisions of this section;

22 (7) may issue subpoenas requiring the  
23 attendance of witnesses or the production of books, records,  
24 documents or other evidence relevant to an investigation; and

25 (8) may have such other powers and duties and

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1 administer or enforce such other acts as the legislature by law  
2 so provides.

3 J. The state ethics commission shall have exclusive  
4 jurisdiction over civil violations of law that are within its  
5 jurisdiction. Commission adjudications of civil violations may  
6 be appealed to the district courts, and in all such appeals,  
7 trial shall be de novo unless otherwise provided by law.

8 K. All complaints received by the state ethics  
9 commission shall be signed and not anonymous. The commission  
10 shall maintain as confidential the complaint and the response  
11 until such time as the response is filed or the date the  
12 response is due to be filed, whichever is earlier.

13 L. This section is not alternative to impeachment  
14 pursuant to Article 4, Section 35 of the constitution of New  
15 Mexico, but the commission may recommend a matter to the  
16 legislature for consideration for impeachment proceedings.

17 M. For the purposes of this section, "state officer  
18 or employee" means any elected or appointed official or  
19 employee of a state agency, instrumentality or institution of  
20 the state in the executive or legislative branch of  
21 government."

22 SECTION 2. The amendment proposed by this resolution  
23 shall be submitted to the people for their approval or  
24 rejection at the next general election or at any special  
25 election prior to that date that may be called for that

1 purpose.

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