

1 SENATE BILL 218

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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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; PROVIDING FOR THE FILING OF COMPLAINTS AGAINST  
17 CERTAIN PUBLIC OFFICIALS, PUBLIC EMPLOYEES, GOVERNMENT  
18 CONTRACTORS AND LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR  
19 INVESTIGATIONS AND HEARINGS; GRANTING SUBPOENA POWERS;  
20 REQUIRING CONFIDENTIALITY; PROHIBITING RETALIATION; PROVIDING  
21 PENALTIES; MAKING AN APPROPRIATION.

22  
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
25 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 violation of the Gift Act; the Governmental Conduct Act; the  
18 Procurement Code; the Lobbyist Regulation Act; the Financial  
19 Disclosure Act; the Voter Action Act; Chapter 1, Article 19  
20 NMSA 1978, including the Campaign Reporting Act; or any code of  
21 ethics adopted pursuant to those laws or Section 5 of the State  
22 Ethics Commission Act;

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

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1 contract with a public 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 public official; provided that the elected official  
8 files the designation with the secretary of state and makes it  
9 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 public official or public 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. "public agency" means any department,  
4 commission, council, board, committee, agency or institution of  
5 the executive or legislative branch of government of the state  
6 or any instrumentality of the state, including the New Mexico  
7 mortgage finance authority, the New Mexico finance authority,  
8 the New Mexico exposition center authority, the New Mexico  
9 hospital equipment loan council and the New Mexico renewable  
10 energy transmission authority; "public agency" also means a  
11 public school district and a charter school;

12 N. "public employee" means an employee of a public  
13 agency; provided that, with respect to a public school district  
14 or a charter school, "public employee" only includes an  
15 employee who works in an administrative capacity;

16 O. "public official" means a person elected to an  
17 office of the executive or legislative branch of the state, a  
18 person appointed to a public agency, a local school board  
19 member, a local superintendent of a school district or a member  
20 of the governing authority of a charter school; and

21 P. "respondent" means a public official, public  
22 employee, government contractor or lobbyist who is the subject  
23 of a complaint filed with or by the commission.

24 SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION  
25 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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

4                   (1) one commissioner appointed by the majority  
5 floor leader of the house of representatives;

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

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

10                  (4) one commissioner appointed by the minority  
11 floor leader of the senate;

12                   (5) two commissioners appointed by the  
13 governor, one of whom shall be a member of the political party  
14 with the largest membership in the state and one of whom shall  
15 be a member of the political party with the second largest  
16 membership in the state; and

17                   (6) one commissioner appointed by the chief  
18 justice of the supreme court, who shall be a retired judge and  
19 who shall chair the commission.

20           B. The appointing authorities shall give due regard  
21 to geographic representation and to the cultural diversity of  
22 the state.

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

25           D. Commissioners shall be appointed for staggered

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1 terms of four years beginning July 1, 2017. The initial  
2 commissioners shall draw lots to determine which two  
3 commissioners serve an initial term of two years, which two  
4 commissioners serve an initial term of three years and which  
5 three commissioners serve an initial term of four years;  
6 thereafter, all commissioners shall serve four-year terms.  
7 Members shall serve until their successors are appointed and  
8 qualified.

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

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

18 G. Four commissioners consisting of two members of  
19 the largest political party in the state and two members of the  
20 second largest political party in the state constitute a quorum  
21 for the transaction of business. No action shall be taken by  
22 the commission unless at least four members, including at least  
23 two members of the largest political party in the state and two  
24 members of the second largest political party in the state,  
25 concur.

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1           H. A commissioner may be removed only for  
2 incompetence, neglect of duty or malfeasance in office. A  
3 proceeding for the removal of a commissioner may be commenced  
4 by the commission or by the attorney general upon the request  
5 of the commission. The New Mexico supreme court has exclusive  
6 jurisdiction over proceedings to remove commissioners, and its  
7 decision shall be final. A commissioner shall be given notice  
8 of hearing and an opportunity to be heard before the  
9 commissioner is removed.

10           SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--  
11 LIMITATIONS.--

12           A. To qualify for appointment to the commission, a  
13 person shall:

- 14                       (1) be a resident of New Mexico; and
- 15                       (2) have been a member of the same political  
16 party for at least three years prior to appointment or shall  
17 not have been a member of any political party for at least  
18 three years prior to appointment.

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

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1 C. During a commissioner's tenure, a commissioner  
2 shall not:

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

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

7 D. A commissioner who changes political party  
8 affiliation or violates the provisions of 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) represent a respondent, unless appearing  
14 on the commissioner's own behalf; or

15 (2) accept employment or otherwise provide  
16 services to a respondent unless the commissioner accepted  
17 employment or provided services prior to the filing of a  
18 complaint against the respondent.

19 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND  
20 POWERS.--

21 A. The commission shall:

22 (1) receive and investigate complaints  
23 alleging ethics violations against public officials, public  
24 employees, government contractors and lobbyists;

25 (2) hold hearings in appropriate cases to

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1 determine whether there has been an ethics violation;

2 (3) develop, adopt and promulgate the rules  
3 necessary for it to implement and administer the provisions of  
4 the State Ethics Commission Act;

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

8 (5) draft a proposed code of ethics for public  
9 officials and public employees and submit the proposed code to  
10 each elected public official and public agency for adoption;

11 (6) employ an executive director, who shall be  
12 an attorney; and

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

17 B. The commission may:

18 (1) initiate complaints alleging ethics  
19 violations against public officials, public employees,  
20 government contractors and lobbyists;

21 (2) petition a district court to issue  
22 subpoenas under seal requiring the attendance of witnesses and  
23 the production of books, records, documents or other evidence  
24 relevant or material to an investigation;

25 (3) issue advisory opinions to public

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1 officials, public employees, government contractors and  
2 lobbyists in accordance with the provisions of the State Ethics  
3 Commission Act;

4 (4) compile, adopt, publish and make available  
5 to all public officials, public employees, government  
6 contractors and lobbyists an ethics guide that clearly and  
7 plainly explains the ethics requirements set forth in state  
8 law, including those that relate to conducting business with  
9 the state and public agencies; and

10 (5) offer annual ethics training to public  
11 officials, public employees, government contractors, lobbyists  
12 and other interested persons.

13 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
14 APPOINTMENT--DUTIES AND POWERS.--

15 A. The commission shall appoint an executive  
16 director who shall be knowledgeable about state ethics laws and  
17 who shall be appointed without reference to party affiliation  
18 and solely on the grounds of fitness to perform the duties of  
19 the office. The director shall hold office from the date of  
20 appointment until such time as the director is removed by the  
21 commission.

22 B. The director shall:

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

25 (2) perform investigations on behalf of the

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1 commission;

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

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

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

9 (6) perform other duties as assigned by the  
10 commission.

11 C. The director may:

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

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

17 (3) administer oaths and take depositions  
18 subject to the Rules of Civil Procedure for the District  
19 Courts.

20 D. For a period of one calendar year immediately  
21 following the director's employment with the commission, the  
22 director shall not:

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

25 (2) accept employment or otherwise provide

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1 services to a respondent, unless the director accepted  
2 employment or provided services prior to the filing of a  
3 complaint against the respondent.

4 SECTION 7. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

5 A. A commissioner shall recuse the commissioner's  
6 self from and not participate in a commission proceeding in  
7 which the commissioner has a conflict of interest. The  
8 commissioner may state the reason for the recusal.

9 B. If the propriety of a commissioner's  
10 participation in a particular matter is questioned on the  
11 grounds that the commissioner has a conflict of interest, the  
12 commission may disqualify that commissioner from participation  
13 in a commission proceeding.

14 C. A recused or disqualified commissioner shall not  
15 participate in any proceeding related to the matter from which  
16 the commissioner is recused or disqualified, and the  
17 commissioner shall be excused from that portion of a meeting at  
18 which the matter is discussed.

19 D. If two or more commissioners have recused  
20 themselves or are disqualified from participating in a  
21 proceeding so that there is no longer a quorum, the remaining  
22 commissioners shall appoint temporary commissioners to  
23 participate in that proceeding. Appointments of temporary  
24 commissioners shall be made by the remaining commissioners in  
25 accordance with the political party affiliation requirements

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1 and the qualifications of Sections 3 and 4 of the State Ethics  
2 Commission Act.

3 E. The commission shall promulgate rules for the  
4 recusal and disqualification of members and for the appointment  
5 of temporary commissioners.

6 SECTION 8. [NEW MATERIAL] ADVISORY OPINIONS.--

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

9 (1) be requested in writing by a public  
10 official, public employee, government contractor or lobbyist;

11 (2) identify a specific set of circumstances  
12 involving an ethics issue;

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

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

19 B. A request for an advisory opinion shall be  
20 confidential and not subject to the provisions of the  
21 Inspection of Public Records Act.

22 C. Unless amended or revoked, an advisory opinion  
23 shall be binding on the commission in any subsequent commission  
24 proceedings concerning a person who acted in good faith and in  
25 reasonable reliance on the advisory opinion.

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1           SECTION 9.   [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--

2   SUBPOENAS.--

3           A.   A complaint of an alleged ethics violation  
4   committed by a public official, public employee, government  
5   contractor or lobbyist may be:

6                   (1)   filed with the commission by a person who  
7   has actual knowledge of the alleged ethics violation; or

8                   (2)   initiated by the commission upon receipt  
9   of evidence deemed sufficient by the commission.

10           B.   The complainant shall set forth in detail the  
11   specific charges against the public official, public employee,  
12   government contractor or lobbyist and the factual allegations  
13   that support the charges and shall sign the complaint under  
14   penalty of false statement. The complainant shall submit any  
15   evidence the complainant has that supports the complaint.  
16   Evidence may include documents, records and names of witnesses.  
17   The commission shall prescribe the forms on which complaints  
18   are to be filed. The complaint form shall include a statement  
19   above the signature line that provides the following:

20           "The complainant agrees to be bound by the  
21           confidentiality rules of the State Ethics Commission  
22           and other provisions of the State Ethics Commission  
23           Act."

24           C.   The chair of the commission shall sign a  
25   complaint initiated by the commission, and the complaint shall

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1 set forth in detail the specific charges against the public  
2 official, public employee, government contractor or lobbyist  
3 and the factual allegations that support the charges.

4 D. The director shall promptly bring all complaints  
5 before the commission and make recommendations to the  
6 commission as to whether the conduct alleged in a complaint is  
7 within the jurisdiction of the commission and warrants  
8 investigation.

9 E. The commission shall promptly dismiss complaints  
10 that are frivolous, unfounded or outside the jurisdiction of  
11 the commission. If the commission dismisses a complaint  
12 pursuant to this subsection, the director shall promptly notify  
13 the complainant and the respondent.

14 F. If the commission decides to proceed with an  
15 investigation, the director shall investigate the complaint.  
16 The director shall promptly notify the respondent that a  
17 complaint has been filed and is being investigated and shall  
18 notify the respondent of the specific allegations in the  
19 complaint and the specific ethics violations implicated by the  
20 complaint.

21 G. As part of an investigation, the director may  
22 administer oaths, interview witnesses and examine books,  
23 records, documents and other evidence reasonably related to the  
24 complaint. If the director determines that a subpoena is  
25 necessary to obtain the testimony of any person or the

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1 production of books, records, documents or other evidence, the  
2 director shall ask the commission to petition a district court  
3 to issue a subpoena under seal. The commission may petition a  
4 district court, under seal, to subpoena witnesses, compel their  
5 attendance and examine them under oath or affirmation and to  
6 require the production of any books, records, documents or  
7 other evidence that it deems relevant or material to an  
8 investigation. Any challenge to a subpoena shall be heard by  
9 the district court in a confidential proceeding. If a person  
10 refuses to comply with a subpoena, the district court shall  
11 compel compliance.

12 H. A public official or public employee who is a  
13 respondent shall be entitled to representation by the risk  
14 management division of the general services department;  
15 provided, however, that if the respondent is found to have  
16 committed an ethics violation, the respondent shall reimburse  
17 the division for the respondent's equitable share of reasonable  
18 attorney fees and costs. If the respondent was represented by  
19 an attorney employee of the risk management division, the  
20 division shall be reimbursed at the full cost incurred by the  
21 division, including benefits and taxes, for employing the  
22 attorney for the hours the attorney provided on the case.

23 SECTION 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME  
24 LIMITATIONS.--

25 A. If the commission has not scheduled a hearing

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1 concerning the disposition of a complaint within ninety days  
2 after the complaint is received or initiated by the commission,  
3 the director shall, as soon as practicable, report to the  
4 commission on the progress and status of the investigation.  
5 The commission may dismiss the complaint or instruct the  
6 director to continue investigating the complaint. Unless the  
7 commission dismisses the complaint, the director shall report  
8 to the commission every ninety days thereafter on the progress  
9 and status of the investigation.

10 B. Upon dismissal or a decision to continue an  
11 investigation of a complaint, the commission shall notify the  
12 complainant and respondent in writing of its action. The  
13 commission shall not publicly disclose its action or  
14 notification except upon the request of the respondent.

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

17 A. The director shall provide a written report of  
18 the investigation to the commission and to the respondent and  
19 complainant. The director shall provide the respondent with  
20 reasonable written notice of the date, time and place of the  
21 commission hearing.

22 B. The commission may appoint a retired judge to  
23 preside over and conduct the hearing. The retired judge shall  
24 have no vote at the hearing. The retired judge shall be  
25 entitled to receive per diem and mileage as provided in the Per

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1 Diem and Mileage Act and shall receive no other compensation,  
2 perquisite or allowance.

3 C. At the hearing, the commission has the power to  
4 administer oaths. The respondent has the right to be  
5 represented by counsel and to present evidence and testimony  
6 and examine and cross-examine witnesses. The respondent shall  
7 be afforded due process at the hearing.

8 D. After hearing and consideration of all the  
9 evidence, if the commission finds by clear and convincing  
10 evidence that the respondent's conduct constituted an ethics  
11 violation, the commission shall issue a written report that  
12 shall include findings of fact and conclusions of law. The  
13 written report may include a public reprimand or censure or  
14 recommendations for disciplinary action against the respondent.  
15 The commission shall publicly disclose the written report and  
16 provide it, along with all evidence collected during its  
17 investigation, to the respondent, the attorney general and the:

- 18 (1) appropriate legislative body if the  
19 respondent is a member of the legislature;  
20 (2) house of representatives if the respondent  
21 is a public official elected to an office of the executive  
22 branch of the state;  
23 (3) respondent's appointing authority if the  
24 respondent is an appointed public official;  
25 (4) appropriate public agency if the

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1 respondent is a public employee;

2 (5) public education department if the  
3 respondent is a member of a local school board or of the  
4 governing authority of a state-chartered charter school;

5 (6) local school board if the respondent is a  
6 member of the governing authority of a locally chartered  
7 charter school;

8 (7) public agency with which the respondent  
9 has a government contract if the respondent is a government  
10 contractor; or

11 (8) respondent's employer and clients and the  
12 secretary of state if the respondent is a lobbyist.

13 E. If, after consideration of all the evidence, the  
14 commission does not find by clear and convincing evidence that  
15 the respondent's conduct constituted an ethics violation, the  
16 commission shall dismiss the complaint and provide notice of  
17 the dismissal to the respondent and complainant no later than  
18 five days after the finding is made. A notice issued pursuant  
19 to this subsection shall not be public except upon the request  
20 of the respondent.

21 F. Notwithstanding the provisions of the Open  
22 Meetings Act, commission hearings held pursuant to this section  
23 are closed to the public. The commission shall promulgate  
24 rules establishing procedures for hearings.

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

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1 All complaints, reports, files, records and communications  
2 collected or generated by the commission or its director that  
3 pertain to alleged ethics violations are confidential and not  
4 subject to the provisions of the Inspection of Public Records  
5 Act. Such complaints, reports, files, records or  
6 communications shall not be disclosed unless:

7 A. disclosure is required pursuant to the  
8 provisions of the State Ethics Commission Act;

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

11 C. disclosure is required by law or ordered by a  
12 court; or

13 D. the respondent files with the commission a  
14 written waiver of confidentiality.

15 SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--  
16 REFERRAL.--If the commission finds at any time that the  
17 respondent's conduct may amount to a criminal violation, the  
18 commission shall immediately refer the matter to the attorney  
19 general or an appropriate district attorney. The commission  
20 shall provide the attorney general or district attorney with  
21 all evidence collected during its investigation that may be  
22 used in a criminal proceeding. Nothing in this section  
23 prevents the commission from taking any action otherwise  
24 authorized by the State Ethics Commission Act or deciding to  
25 hold a matter in abeyance pending resolution of any criminal

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1 charges.

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

3 A. The commission shall not accept or consider a  
4 complaint unless the complaint is filed or initiated within  
5 three years from the date on which the alleged conduct  
6 occurred.

7 B. The commission shall not take action on a  
8 complaint filed or initiated against a candidate for a public  
9 office covered by the State Ethics Commission Act on or after  
10 the filing date for a primary election through election day of  
11 the general election, except that the commission shall dismiss  
12 complaints that are frivolous, unfounded or outside the  
13 jurisdiction of the commission. A complainant shall be  
14 notified of this provision and shall be notified that the  
15 complainant may refer any allegations of criminal conduct to  
16 the attorney general or appropriate district attorney. The  
17 respondent shall be notified that a complaint has been filed  
18 and of the specific allegations in the complaint.

19 C. The commission shall not investigate allegations  
20 of misconduct involving campaign advertisements.

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

22 A. A person shall not take or threaten to take any  
23 retaliatory, disciplinary or other adverse action against  
24 another person who in good faith:

- 25 (1) files a complaint with the commission

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1 alleging an ethics violation against a public official, public  
2 employee, government contractor or lobbyist; or

3 (2) provides testimony, records, documents or  
4 other information to the commission during an investigation or  
5 at a hearing conducted pursuant to the State Ethics Commission  
6 Act.

7 B. Nothing in the State Ethics Commission Act  
8 precludes civil actions or criminal sanctions for libel,  
9 slander or other civil or criminal claims against a person who  
10 files a false claim under that act.

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

12 A. Disclosure of any confidential complaint,  
13 report, file, record or communication in violation of the State  
14 Ethics Commission Act is a misdemeanor and shall be punished by  
15 a fine of not more than ten thousand dollars (\$10,000) or by  
16 imprisonment for not more than one year or both.

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

22 C. The provisions of this section apply to a  
23 commission member, the director and commission employees or  
24 agents and also apply to a complainant from the time the  
25 complaint is filed until it is resolved and a final

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1 determination is made.

2 SECTION 17. 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 OPEN  
5 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

19 B. All meetings of a quorum of members of any  
20 board, commission, administrative adjudicatory body or other  
21 policymaking body of any state agency or any agency or  
22 authority of any county, municipality, district or political  
23 subdivision, held for the purpose of formulating public policy,  
24 including the development of personnel policy, rules,  
25 regulations or ordinances, discussing public business or taking

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

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

20 D. Any meetings at which the discussion or adoption  
21 of any proposed resolution, rule, regulation or formal action  
22 occurs and at which a majority or quorum of the body is in  
23 attendance, and any closed meetings, shall be held only after  
24 reasonable notice to the public. The affected body shall  
25 determine at least annually in a public meeting what notice for

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1 a public meeting is reasonable when applied to that body. That  
2 notice shall include broadcast stations licensed by the federal  
3 communications commission and newspapers of general circulation  
4 that have provided a written request for such notice.

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

16 F. Meeting notices shall include an agenda  
17 containing a list of specific items of business to be discussed  
18 or transacted at the meeting or information on how the public  
19 may obtain a copy of such an agenda. Except in the case of an  
20 emergency or in the case of a public body that ordinarily meets  
21 more frequently than once per week, at least seventy-two hours  
22 prior to the meeting, the agenda shall be available to the  
23 public and posted on the public body's [~~web site~~] website, if  
24 one is maintained. A public body that ordinarily meets more  
25 frequently than once per week shall post a draft agenda at

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1 least seventy-two hours prior to the meeting and a final agenda  
2 at least thirty-six hours prior to the meeting. Except for  
3 emergency matters, a public body shall take action only on  
4 items appearing on the agenda. For purposes of this  
5 subsection, "emergency" refers to unforeseen circumstances  
6 that, if not addressed immediately by the public body, will  
7 likely result in injury or damage to persons or property or  
8 substantial financial loss to the public body. Within ten days  
9 of taking action on an emergency matter, the public body shall  
10 report to the attorney general's office the action taken and  
11 the circumstances creating the emergency; provided that the  
12 requirement to report to the attorney general is waived upon  
13 the declaration of a state or national emergency.

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

25 H. The provisions of Subsections A, B and G of this

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1 section do not apply to:

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

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

18 (3) deliberations by a public body in  
19 connection with an administrative adjudicatory proceeding. For  
20 purposes of this paragraph, "administrative adjudicatory  
21 proceeding" means a proceeding brought by or against a person  
22 before a public body in which individual legal rights, duties  
23 or privileges are required by law to be determined by the  
24 public body after an opportunity for a trial-type hearing.  
25 Except as otherwise provided in this section, the actual

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1 administrative adjudicatory proceeding at which evidence is  
2 offered or rebutted and any final action taken as a result of  
3 the proceeding shall occur in an open meeting;

4 (4) the discussion of personally identifiable  
5 information about any individual student, unless the student or  
6 the student's parent or guardian requests otherwise;

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

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

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

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1 (8) meetings for the discussion of the  
2 purchase, acquisition or disposal of real property or water  
3 rights by the public body;

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

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

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

13 I. If any meeting is closed pursuant to the  
14 exclusions contained in Subsection H of this section:

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

25 (2) if a closure is called for when the

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

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

15 SECTION 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF  
16 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By  
17 January 1, 2020, the state ethics commission shall submit a  
18 report to the legislature and the governor regarding the  
19 extension of commission jurisdiction to elected and appointed  
20 officials and employees of political subdivisions of the state.  
21 The report shall include and make recommendations on:

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

25 B. the estimated number of additional employees and

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1 the amount and type of resources needed by the commission to  
2 carry out its powers and duties if its jurisdiction were  
3 extended;

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

7 D. any changes needed to existing law.

8 SECTION 19. APPROPRIATION.--Two hundred thousand dollars  
9 (\$200,000) is appropriated from the general fund to the state  
10 ethics commission for expenditure in fiscal year 2018 to carry  
11 out the provisions of the State Ethics Commission Act. Any  
12 unexpended or unencumbered balance remaining at the end of  
13 fiscal year 2018 shall revert to the general fund.

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

17 SECTION 21. APPLICABILITY.--The provisions of the State  
18 Ethics Commission Act apply to conduct that occurs on or after  
19 July 1, 2017.

20 SECTION 22. EFFECTIVE DATE.--

21 A. The effective date of the provisions of Sections  
22 1 through 7 and 12 through 21 of this act is July 1, 2017.

23 B. The effective date of the provisions of Sections  
24 8 through 11 of this act is January 1, 2018.