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HOUSE JOINT RESOLUTION 8

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

INTRODUCED BY

Jim Dines and Jeff Steinborn

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 seven

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1 commissioners, no more than three 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; and

7 (2) as certified by the chief clerks of the
8 respective chambers:

9 (a) one commissioner appointed by the
10 president pro tempore of the senate;

11 (b) one commissioner appointed by the
12 minority floor leader of the senate;

13 (c) one commissioner appointed by the
14 speaker of the house of representatives; and

15 (d) one commissioner appointed by the
16 minority floor leader of the house of representatives.

17 B. A commissioner shall:

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

19 (2) not change, or within two years prior to
20 appointment shall not have changed, political party
21 affiliation; and

22 (3) not be, or within the two years prior to
23 appointment shall not have been, a state officer or employee in
24 the executive or legislative branch of government, a registered
25 lobbyist or a state contractor. The legislature may provide by

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1 law for further restrictions on appointees to the commission.

2 C. Commissioners shall be appointed for staggered
3 terms of four years beginning July 1, 2019. The initial
4 appointees shall draw lots to determine which two commissioners
5 will serve an initial term of two years, which two
6 commissioners shall serve an initial term of three years and
7 which three commissioners will serve an initial term of four
8 years. Thereafter, all commissioners shall be appointed for
9 four-year terms. Members shall serve until their successors
10 are appointed and qualified.

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

15 E. No action shall be taken by the state ethics
16 commission unless at least five members concur.

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

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1 G. The state ethics commission shall receive an
2 annual appropriation sufficient to enable it to perform its
3 duties.

4 H. The state ethics commission shall employ an
5 executive director, who shall be a licensed attorney in the
6 state, and other staff as necessary to fulfill its duties.

7 I. The state ethics commission:

8 (1) may initiate, and shall receive and
9 investigate, complaints alleging violations:

10 (a) by state officers or employees in
11 the executive or legislative branch of government of laws
12 imposing standards of conduct on state officers and employees;

13 (b) of laws imposing campaign finance
14 restrictions or reporting requirements for candidates and other
15 participants in elections and campaigns for state elected
16 offices;

17 (c) of registration requirements or
18 standards of conduct for lobbyists; and

19 (d) of disclosure requirements or
20 standards of conduct for state contractors or seekers of state
21 contracts;

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

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

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(3) shall:

(a) adjudicate complaints alleging violations for which civil penalties or sanctions may be imposed under the laws described in Paragraph (1) of this subsection and, upon the presentation of clear and convincing evidence to the commission in a public hearing, may impose such penalties and sanctions as provided by those laws; and

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

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

(5) may issue advisory opinions;

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

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

(8) may have such other powers and duties and administer or enforce such other acts as provided by law.

J. The state ethics commission shall have exclusive jurisdiction over civil violations of law that are within its jurisdiction. Commission adjudications of civil violations may

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1 be appealed to the district courts, and in all such appeals,
2 trial shall be de novo unless otherwise provided by law.

3 K. The state ethics commission shall only accept
4 verified complaints. The commission shall maintain as
5 confidential the complaint and the response to the complaint
6 until such time as the response to the complaint is filed or
7 the date the response to the complaint is due to be filed,
8 whichever is earlier.

9 L. Prosecution or investigation by the commission
10 shall not bar investigation or prosecution by the legislature
11 pursuant to Article 4, Section 11 or 35 of the constitution of
12 New Mexico. The commission may recommend a matter to the
13 legislature for consideration for impeachment proceedings.

14 M. For the purposes of this section:

15 (1) "standards of conduct" include statutes
16 and rules promulgated pursuant to statutes that regulate
17 conduct in a manner designed to:

18 (a) avoid conflicts of interest or the
19 appearance of corruption;

20 (b) define appropriate or inappropriate
21 conduct of public officers and employees, candidates for public
22 office, participants in the political process, government
23 contractors or lobbyists;

24 (c) discourage the inappropriate use of
25 public resources by persons for private gain;

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1 (d) encourage the use of the powers and
2 resources of public office to advance the public interest and
3 to not obtain personal benefits or pursue private interests; or

4 (e) discourage the abuse of power by
5 public officers and employees; and

6 (2) "state officer or employee" means any
7 elected or appointed official or employee of a state agency,
8 instrumentality or institution of the state in the executive or
9 legislative branch of government."

10 SECTION 2. The amendment proposed by this resolution
11 shall be submitted to the people for their approval or
12 rejection at the next general election or at any special
13 election prior to that date that may be called for that
14 purpose.