

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 4

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; ENACTING THE STATE ETHICS COMMISSION ACT; PROVIDING FOR QUALIFICATIONS AND TERMS FOR MEMBERS OF THE STATE ETHICS COMMISSION; PROVIDING FOR AN EXECUTIVE DIRECTOR; PRESCRIBING POWERS AND DUTIES FOR THE COMMISSION AND EXECUTIVE DIRECTOR; PROVIDING FOR JURISDICTION FOR THE INVESTIGATION AND ADJUDICATION OF CERTAIN CIVIL COMPLAINTS; PROVIDING FOR THE ISSUANCE OF ADVISORY OPINIONS; REQUIRING REPORTS ON THE ADMINISTRATION AND ENFORCEMENT OF CERTAIN ACTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 HAFC →; ~~MAKING AN APPROPRIATION~~ ← HAFC.

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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 Commission Act".

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

- A. "candidate" means an individual who seeks a state office covered by the Campaign Reporting Act;
- B. "commission" means the state ethics commission;
- C. "commissioner" mean a member of the commission;
- D. "complainant" means a person who files a verified complaint with the commission;
- E. "complaint" means a complaint that has been signed by the complainant and the complainant verifies before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate;
- F. "director" means the executive director of the commission;
- G. "government contractor" means a person who has, or submits a bid for, a contract subject to the Governmental Conduct Act with a state agency;
- H. "independent state agency" means an agency, board, commission, office or other instrumentality, not assigned to an elected constitutional officer, that is excluded

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from any direct or administrative attachment to a department of state government and that retains policymaking and administrative autonomy from any other agency of state government;

I. "instrumentality of the state" means the New Mexico exposition center authority, New Mexico finance authority, New Mexico industrial and agricultural finance authority, New Mexico lottery authority, New Mexico mortgage finance authority, New Mexico renewable energy transmission authority, New Mexico state fair and water quality control commission;

J. "lobbyist" means a person required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act;

K. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code;

L. "respondent" means a person against whom a verified complaint has been filed with or by the commission;

M. "state agency" means any agency, instrumentality or institution of the executive or legislative branch of the state;

N. "state employee" means an employee of a state agency; and

O. "state officer" means a person elected to an

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office of the executive or legislative branch of the state or a person appointed to a state agency.

SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION-- APPOINTMENTS--MEMBERSHIP--TERMS--VACANCY--REMOVAL.--

A. The members of the state ethics commission, created in Article 5, Section 17 of the constitution of New Mexico as an independent state agency under the direction of seven commissioners, shall be appointed as follows:

(1) one commissioner appointed by the governor;

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

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

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

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

(d) one commissioner appointed by the minority floor leader of the house of representatives; and

(3) two commissioners, who shall not be members of the same political party, appointed by the four legislatively appointed commissioners.

B. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving

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geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

C. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The governor's appointee shall serve an initial term of four years. The other initial commissioners shall draw lots to determine which two commissioners serve an initial term of two years, which two commissioners serve an initial term of three years and which two commissioners serve an initial term of four years. Thereafter, all commissioners shall serve four-year terms.

D. A commissioner shall not serve for more than two consecutive four-year terms.

E. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the appointing authority no later than thirty days following notification of a vacancy for the remainder of the unexpired term.

F. The commission shall elect a chair and a vice chair.

G. Four commissioners constitutes a quorum for the

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transaction of business requiring decisions of the full commission. Unless otherwise provided, decisions of the commission require a majority vote of the commission.

H. A commissioner may be removed for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The New Mexico supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

I. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

J. The commission shall meet as often as necessary to carry out its duties pursuant to the provisions of the State Ethics Commission Act; provided that the commission shall meet at least on a quarterly basis. Meetings of the commission may be held at the call of the chair, the vice chair, the director or at the request of a majority of the members of the commission.

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

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

(1) be a qualified elector registered to vote in New Mexico for not less than five years;

(2) not have changed political party affiliation within five years prior to appointment; and

(3) not be or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

- (a) a state officer;
- (b) a state employee;
- (c) a candidate;
- (d) a lobbyist;
- (e) a government contractor; or
- (f) an office holder in a political party at the state or federal level.

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

C. During a commissioner's tenure, a commissioner shall not hold another state office or be:

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- (1) a state employee;
- (2) a candidate;
- (3) a lobbyist;
- (4) a government contractor; or
- (5) an office holder in a political party at

the state or federal level.

D. A commissioner who chooses to seek or hold an office in violation of Subsection C of this section shall resign from the commission or be deemed to have resigned.

SECTION 5. [NEW MATERIAL] RECUSAL AND DISQUALIFICATION OF A COMMISSIONER.--

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

- (1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's

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functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the names of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused

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themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

SECTION 6. [NEW MATERIAL] COMMISSION--DUTIES AND POWERS.--

A. The commission shall:

(1) hire an executive director by agreement of at least five commissioners; and

(2) promulgate rules necessary to implement and administer the provisions of the State Ethics Commission Act and enforce the applicable civil compliance provisions of the laws set forth in Section 8 of the State Ethics Commission Act.

B. Beginning January 1, 2020, the commission shall:

(1) have jurisdiction to enforce the applicable civil compliance provisions of the laws set forth in

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Section 8 of the State Ethics Commission Act;

(2) receive and investigate complaints that allege a violation of a law under its jurisdiction;

(3) hold hearings when necessary to determine whether there has been a violation of a law under its jurisdiction;

(4) establish one or more hearing panels, as needed, which may consist of up to three hearing officers, and establish qualifications for hearing officers;

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

(6) prepare an annual report of its activities and submit the report to the legislature and office of the governor by December of each year.

C. Beginning January 1, 2020, the commission may:

(1) request the general counsel to investigate an alleged violation upon information received and agreement of at least five of the commissioners voting on the issue;

(2) issue advisory opinions;

(3) draft a proposed code of ethics for state officers and state employees and submit the proposed code to state officers and state agencies for adoption;

(4) compile, adopt, publish and make available

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to state officers, state employees, government contractors and lobbyists an ethics guide that clearly explains ethics requirements set forth in state law; and

(5) offer annual ethics training to state officers, state employees, government contractors and lobbyists.

SECTION 7. [NEW MATERIAL] EXECUTIVE DIRECTOR--DUTIES AND POWERS.--

A. The director shall be:

(1) a former state or federal court judge or justice or an attorney licensed to practice law in New Mexico who is knowledgeable about the laws listed in Section 8 of the State Ethics Commission Act;

(2) appointed without regard to political party affiliation; and

(3) appointed, retained and reappointed solely on the grounds of fitness to perform the duties of the position.

B. The director may only be removed by the commission for cause and with the concurrence of a majority of commissioners.

C. Following appointment, the director shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico.

D. The director shall:

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

(2) make recommendations to the commission regarding proposed rules to improve administration of the State Ethics Commission Act;

(3) make recommendations to the commission regarding proposed legislation to improve administration of the State Ethics Commission Act;

(4) publish the commission's advisory opinions and annual reports on the commission's website and may post on the website any other information pertaining to the commission;

(5) hire a general counsel; and

(6) at each commission meeting, report on the status of investigations closed since the previous commission meeting.

E. The director may:

(1) appoint hearing officers and employ additional personnel needed to perform the duties of the commission; and

(2) enter into contracts and agreements on behalf of the commission.

F. The director shall not seek or hold an office in a political party or in a political party that has not been qualified in accordance with the provisions of the Election Code.

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G. A director who chooses to seek or hold an office described in Subsection F of this section shall resign from the commission or be deemed to have resigned.

**SECTION 8. [NEW MATERIAL] COMMISSION JURISDICTION--
COMPLIANCE PROVISIONS.--**

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for state officers and state employees, candidates and other participants in elections, lobbyists and government contractors and seekers of government contracts of the:

- (1) Campaign Reporting Act;
- (2) Financial Disclosure Act;
- (3) Gift Act;
- (4) Lobbyist Regulation Act;
- (5) Voter Action Act;
- (6) Governmental Conduct Act;
- (7) Procurement Code; and
- (8) State Ethics Commission Act.

B. All complaints filed with a state agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

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D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another state agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the state agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10 of the State Ethics Commission Act.

E. The commission may elect to share jurisdiction with another state agency to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through a memorandum of understanding entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the respondent

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resides.

SECTION 9. [NEW MATERIAL] ADVISORY OPINIONS.--

A. The commission may issue advisory opinions on issues related to the laws listed in Section 8 of the State Ethics Commission Act. An individual may request an advisory opinion from the commission, or the commission may initiate an advisory opinion.

B. A request by an individual for an advisory opinion shall be requested in writing. A request for an advisory opinion shall present a question regarding whether the conduct of a person would violate the provisions of a law listed in Section 8 of the State Ethics Commission Act.

C. If the commission decides to issue an advisory opinion, the commission shall publish the advisory opinion within thirty days following receipt of the request. If the advisory opinion is not published on or before the thirtieth day following the request, the commission shall notify the requester in writing regarding the reason for the delay. The commission shall continue to notify the requester in writing every thirty days until the advisory opinion is published; provided that the advisory opinion shall be published no later than one hundred eighty days following the request.

D. Advisory opinions shall be published on the commission's website. The commission shall redact the requester's name and identifying information from the published

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advisory opinion.

E. Unless amended or revoked, an advisory opinion published by the commission shall be binding on the commission in subsequent proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

F. The commission may promulgate rules for advisory opinion requests, commission-initiated advisory opinions and the publication of advisory opinions.

SECTION 10. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--PROCESS--SUBPOENA POWERS--LEGAL REPRESENTATION.--

A. A complainant may file a complaint with the commission that alleges a violation of a provision of a law under the jurisdiction of the commission committed by a:

- (1) candidate or person subject to the Campaign Reporting Act;
- (2) state officer;
- (3) state employee;
- (4) government contractor;
- (5) restricted donor, lobbyist or lobbyist's employer; or
- (6) person appointed to a board or commission of the state.

B. The complaint shall set forth in detail the specific allegations against the respondent and the facts that support the allegations. The complainant shall submit any

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available evidence that supports the complaint, including documents, records, names of witnesses and other evidence. The complaint shall be in writing, signed and sworn by the complainant and notarized.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to a memorandum of understanding or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the complaint shall be referred to the general counsel.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal unless requested by the respondent or complainant.

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F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is probable cause, the general counsel shall promptly notify the hearing panel, the respondent and the complainant that the complaint is being investigated and of the specific allegations in the complaint that are being investigated. HAFCA→The notification, complaint, specific allegations to be investigated and any response to the complaint shall be made public.←HAFCA

H. Notwithstanding the provisions of Subsections C and G of this section, the general counsel may delay notifying a respondent HAFCA→and releasing to the public the complaint and related information required by Subsection G of this section←HAFCA if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the hearing panel and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books,

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records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent has the right to be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission issue an appropriate subpoena.

J. The commission may issue a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. A subpoena shall be signed by the chair of the commission and shall command the person to whom it is directed to attend and give testimony or to produce and permit the inspection of books, records, documents or other evidence. A subpoena shall state the general nature of the investigation and shall describe with reasonable specificity the nature of the information to be produced, the time and place where the information shall be produced and the consequences of failure to obey the subpoena. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance.

K. A state officer or state employee who is a respondent that is subject to a complaint alleging a violation

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made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

SECTION 11. [NEW MATERIAL] STATUS OF INVESTIGATION--
REPORTS TO COMMISSION.--

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection H of Section 10 of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

SECTION 12. [NEW MATERIAL] INVESTIGATION REPORT--
COMMISSION HEARINGS--DECISIONS AND REASONS GIVEN--DISCLOSURE OF

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AN ETHICS VIOLATION.--

A. Upon receipt of the general counsel's recommendation, the hearing panel shall:

(1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or

(2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing panel may, at a public meeting of the hearing panel, approve a disposition of a complaint agreed to by the general counsel and the respondent.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing panel shall issue a written decision that shall include its reasons for the decision. If the panel finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the panel may impose any fines provided for by law. A

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finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing panel within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal. The commission shall uphold a decision if there is substantial evidence to support the decision in the record.

F. The commission shall promulgate rules establishing procedures for hearings and appeals.

G. The commission shall publicly disclose a decision, including a dismissal or terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the respondent and the:

(1) house of representatives if the respondent is a state officer who is subject to impeachment;

(2) appropriate legislative body if the respondent is a member of the legislature;

(3) respondent's appointing authority if the respondent is an appointed state officer;

(4) appropriate public body if the respondent is a state employee;

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

(6) secretary of state and the respondent's

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employer, if any, if the respondent is a lobbyist.

H. The commission shall produce a quarterly report subject to public inspection containing the following information:

- (1) the number of complaints filed with and referred to the commission;
- (2) the disposition of the complaints; and
- (3) the type of violation alleged in the complaints.

SECTION 13. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complainant or the respondent may release the complaint.

C. Except as otherwise provided in the acts listed in Section 8 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing panel, general counsel or director that pertain to alleged violations

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shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

- (1) disclosure is necessary to pursue an investigation by the commission;
- (2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or
- (3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing panel of the commission.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

SECTION 14. [NEW MATERIAL] CRIMINAL VIOLATIONS--
REFERRAL.--If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

SECTION 15. [NEW MATERIAL] TIME LIMITATIONS ON

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JURISDICTION.--

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

- (1) on which the alleged conduct occurred; or
- (2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act or Voter Action Act, less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

SECTION 16. [NEW MATERIAL] PROHIBITED ACTIONS.--

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

(1) files a verified complaint with the commission that alleges a violation; or

(2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent undergoing investigation or a hearing process shall not communicate ex parte with any hearing officer, hearing panel member, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

SECTION 17. Section 1-19-32 NMSA 1978 (being Laws 1979, Chapter 360, Section 8, as amended) is amended to read:

"1-19-32. INSPECTION OF PUBLIC RECORDS.--

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

(1) a statement of [~~exception~~] no activity;

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- (2) a report of expenditures and contributions;
- (3) an advisory opinion issued by the ~~[secretary of]~~ state ethics commission;
- (4) a document specified as a public record in the Campaign Reporting Act; and
- (5) an arbitration decision issued by an arbitration panel and filed with the secretary of state or state ethics commission.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of ~~[exception]~~ no activity submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format."

SECTION 18. A new section of the Campaign Reporting Act is enacted to read:

"[NEW MATERIAL] STATE ETHICS COMMISSION--JURISDICTION.--

A. On and after January 1, 2020:

- (1) the state ethics commission shall have

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jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through a memorandum of understanding. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the memorandum of understanding.

B. The state ethics commission and the secretary of state shall make recommendations to the second session of the fifty-fourth legislature on any changes to the Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act."

SECTION 19. A new section of the Voter Action Act is enacted to read:

"[NEW MATERIAL] STATE ETHICS COMMISSION--JURISDICTION.--

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share

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jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through a memorandum of understanding. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with the memorandum of understanding.

B. The state ethics commission and the secretary of state shall make recommendations to the second session of the fifty-fourth legislature on any changes to the Voter Action Act necessary for the efficient administration and enforcement of the provisions of that act."

SECTION 20. A new section of the Lobbyist Regulation Act is enacted to read:

"[NEW MATERIAL] STATE ETHICS COMMISSION--JURISDICTION.--

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through a memorandum of understanding. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state

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ethics commission in accordance with the memorandum of understanding.

B. The state ethics commission and the secretary of state shall make recommendations to the second session of the fifty-fourth legislature on any changes to the Lobbyist Regulation Act necessary for the efficient administration and enforcement of the provisions of that act."

SECTION 21. Section 2-15-8 NMSA 1978 (being Laws 1993, Chapter 46, Section 53) is amended to read:

"2-15-8. INTERIM LEGISLATIVE ETHICS COMMITTEE--DUTIES.--
The interim legislative ethics committee is authorized to:

A. issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature and that are not under the jurisdiction of the state ethics commission;

B. investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;

C. investigate referrals made to the ~~[co-chairmen]~~ co-chairs of the New Mexico legislative council from the state ethics commission, attorney general, the secretary of state or a district attorney;

D. hire special counsel or independent hearing officers as necessary; and

E. make recommendations to the respective houses by

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the end of the first full week of the next convened regular session regarding proposed sanctions for ethical misconduct."

SECTION 22. Section 10-16-11 NMSA 1978 (being Laws 1967, Chapter 306, Section 11, as amended) is amended to read:

"10-16-11. CODES OF CONDUCT.--

A. [~~By January 1, 1994~~] Each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to [~~his~~] the officer's control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and

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employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the [~~secretary of~~] state ethics commission and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially."

SECTION 23. Section 10-16-13.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 35) is amended to read:

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"10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

A. The [~~secretary of~~] state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The [~~secretary of~~] state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed."

SECTION 24. Section 10-16-14 NMSA 1978 (being Laws 1967, Chapter 306, Section 14, as amended) is amended to read:

"10-16-14. ENFORCEMENT PROCEDURES.--

A. The [~~secretary of~~] state ethics commission may [~~refer~~] investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the [~~secretary of~~] state ethics commission, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

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B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the [~~attorney general~~] state ethics commission determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, [~~he~~] the commission shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the [~~attorney general~~] state ethics commission shall make public the nature of the charges but [~~he~~] shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council.

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Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules. Complaints against state employees may also be filed with the state ethics commission, which shall determine whether to forward a complaint to the appropriate state agency or investigate the complaint on its own.

E. Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the ~~[attorney general]~~ state ethics commission. Except as regards legislators, state employees or statewide elected officials, a district attorney in the county where a person who allegedly violated the provisions resides or where ~~[a]~~ an alleged violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders."

SECTION 25. Section 10-16-18 NMSA 1978 (being Laws 1995, Chapter 153, Section 23) is amended to read:

"10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

A. If the ~~[secretary of]~~ state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the ~~[secretary of]~~ state ~~[shall]~~ ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a

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civil action in district court or refer a matter to the attorney general or a district attorney [may] to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000)."

SECTION 26. Section 10-16A-1 NMSA 1978 (being Laws 1993, Chapter 46, Section 39) is amended to read:

"10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--
[Sections 39 through 45 of this act] Chapter 10, Article 16A NMSA 1978 may be cited as the "Financial Disclosure Act"."

SECTION 27. Section 10-16A-5 NMSA 1978 (being Laws 1993, Chapter 46, Section 43) is amended to read:

"10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the

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Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals to the state ethics commission for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed."

SECTION 28. Section 10-16A-6 NMSA 1978 (being Laws 1993, Chapter 46, Section 44, as amended) is amended to read:

"10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--FINES--ENFORCEMENT.--

A. The state ethics commission and the secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the [~~secretary of~~] state ethics commission. The [~~secretary of state~~] commission shall adopt procedures for processing complaints and notifications of violations.

B. If the [~~secretary of~~] state ethics commission determines that a violation has occurred for which a penalty should be imposed, the [~~secretary of state~~] commission shall so notify the person charged and impose the penalty. If the person charged disputes the [~~secretary of state's~~] commission's determination, the person charged may request binding

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arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the [~~secretary of~~] state ethics commission. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the [~~secretary of~~] state ethics commission is authorized to take. The arbitrator shall state the reasons for [~~his~~] the decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the [~~secretary of~~] state ethics commission, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is

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liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement."

SECTION 29. Section 10-16A-8 NMSA 1978 (being Laws 1995, Chapter 153, Section 25) is amended to read:

"10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--

A. If the [~~secretary of~~] state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the [~~secretary of state shall~~] commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney [~~may~~] to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order,

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an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000)."

SECTION 30. Section 10-16B-1 NMSA 1978 (being Laws 2007, Chapter 226, Section 1) is amended to read:

"10-16B-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article 16B NMSA 1978 may be cited as the "Gift Act"."

SECTION 31. A new section of the Gift Act is enacted to read:

"[NEW MATERIAL] INVESTIGATIONS--COMPLAINTS--ENFORCEMENT.--

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution."

SECTION 32. Section 13-1-177 NMSA 1978 (being Laws 1984, Chapter 65, Section 150, as amended) is amended to read:

"13-1-177. AUTHORITY TO SUSPEND OR DEBAR.--

A. The state [~~purchasing agent or a central purchasing office~~] ethics commission or a central purchasing office of a local public body, after consultation with the using agency, may suspend a person from consideration for award

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of contracts if the state [~~purchasing agent or central purchasing office~~] ethics commission or a central purchasing office of a local public body, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

B. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to Section 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.

C. The state [~~purchasing agent or a central purchasing office~~] ethics commission or local public body, after reasonable notice to the person involved, shall have authority to [~~recommend to the governing authority of a state agency or a local public body the debarment of~~] debar a person for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the [~~governing authority of a state agency or a~~] local public body or the state ethics commission in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

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D. As used in this section, the terms "person", "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the person, bidder, offeror or contractor."

SECTION 33. Section 13-1-178 NMSA 1978 (being Laws 1984, Chapter 65, Section 151, as amended) is amended to read:

"13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME LIMIT.--

A. The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but are not limited to the following:

(1) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(2) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving

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stolen property or for violation of federal or state tax laws;

(4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

(5) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;

(6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

(7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;

(8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state [~~purchasing agent or a central purchasing office~~] ethics commission or central purchasing office of a local public body to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or

(b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to

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impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(9) any other cause that the state [~~purchasing agent or a central purchasing office~~] ethics commission or central purchasing office of a local public body determines to be so serious and compelling as to affect responsibility as a contractor; or

(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

B. As used in this section, the terms "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor."

SECTION 34. Section 13-1-196 NMSA 1978 (being Laws 1984, Chapter 65, Section 169) is amended to read:

"13-1-196. CIVIL PENALTY.--Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The [~~attorney general or the~~] district attorney in the jurisdiction in which the violation occurs or the state ethics commission is

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empowered to bring a civil action for the enforcement of any provision of the Procurement Code; provided that the commission may refer a matter for enforcement to the attorney general or the district attorney in the jurisdiction in which the violation occurred. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought."

SECTION 35. TEMPORARY PROVISION--REPORT ON EXTENSION OF JURISDICTION.--

A. By October 1, 2022, the state ethics commission shall submit a report to the legislature and the office of the governor regarding whether to extend commission jurisdiction.

B. If the report recommends extension of the state ethics commission's jurisdiction, the report shall address:

(1) a detailed plan for implementation of an extension of the commission's jurisdiction and a proposed time line for the implementation;

(2) the estimated number of additional employees and other resources needed by the commission to perform its expanded duties;

(3) estimated budget increases needed for the commission to perform its expanded duties; and

(4) recommended changes to existing law.

~~HAFC → SECTION 36. APPROPRIATION. --One million dollars~~

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~~(\$1,000,000) is appropriated from the general fund to the state ethics commission for expenditure in fiscal year 2020 to carry out the provisions of the State Ethics Commission Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2020 shall revert to the general fund.~~ ←H AFC

SECTION H AFC → ~~37~~ **36** ← H AFC. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 7 H AFC → ~~and 36~~ ← H AFC of this act is July 1, 2019.

B. The effective date of the provisions of Sections 8 through 35 of this act is January 1, 2020.

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