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HOUSE BILL 4

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

INTRODUCED BY

Daymon Ely and Daniel A. Ivey-Soto

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;
MAKING AN APPROPRIATION.

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

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

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

3 A. "candidate" means an individual who seeks an
4 office covered by the Campaign Reporting Act;

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

6 C. "commissioner" mean a member of the commission;

7 D. "complainant" means a person who files a
8 verified complaint with the commission;

9 E. "director" means the executive director of the
10 commission;

11 F. "government contractor" means a person who has,
12 or submits a bid for, a contract subject to the Governmental
13 Conduct Act with a state agency;

14 G. "independent state agency" means an agency,
15 board, commission, office or other instrumentality, not
16 assigned to an elected constitutional officer, that is excluded
17 from any direct or administrative attachment to a department of
18 state government and that retains policymaking and
19 administrative autonomy from any other agency of state
20 government;

21 H. "instrumentality of the state" means the New
22 Mexico exposition center authority, New Mexico finance
23 authority, New Mexico industrial and agricultural finance
24 authority, New Mexico lottery authority, New Mexico mortgage
25 finance authority, New Mexico renewable energy transmission

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1 authority, New Mexico state fair and water quality control
2 commission;

3 I. "lobbyist" means a person required to register
4 as a lobbyist pursuant to the provisions of the Lobbyist
5 Regulation Act;

6 J. "political party" means a political party that
7 has been qualified in accordance with the provisions of the
8 Election Code;

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

11 L. "state agency" means any agency, instrumentality
12 or institution of the executive or legislative branch of the
13 state;

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

16 N. "state officer" means a person elected to an
17 office of the executive or legislative branch of the state or a
18 person appointed to a state agency; and

19 O. "verified complaint" means a complaint that has
20 been signed by the complainant and the complainant swears
21 before a notary public that the information in the complaint,
22 and any attachments provided with the complaint, are true and
23 accurate.

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

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1 A. The "state ethics commission" is created as an
2 independent state agency under the direction of seven
3 commissioners, no more than three of whom may be registered
4 members of the same political party, appointed as follows:

5 (1) one commissioner appointed by the
6 governor;

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; and

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

20 B. The appointing authorities shall give due regard
21 to the cultural diversity of the state and to achieving
22 geographical representation from across the state. Each
23 appointing authority shall file letters of appointment with the
24 secretary of state.

25 C. Commissioners shall be appointed for staggered

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1 terms of four years beginning July 1, 2019. The governor's
2 appointee shall serve an initial term of four years. The other
3 initial commissioners shall draw lots to determine which two
4 commissioners serve an initial term of two years, which two
5 commissioners serve an initial term of three years and which
6 two commissioners serve an initial term of four years.

7 Thereafter, all commissioners shall serve four-year terms.

8 D. A commissioner shall not serve for more than two
9 consecutive terms.

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

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

22 G. Four commissioners constitutes a quorum for the
23 transaction of business requiring decisions of the full
24 commission.

25 H. A commissioner may be removed for incompetence,

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1 neglect of duty or malfeasance in office. A proceeding for the
2 removal of a commissioner may be commenced by the commission or
3 by the attorney general upon the request of the commission.
4 The New Mexico supreme court has original jurisdiction over
5 proceedings to remove commissioners, and its decision shall be
6 final. A commissioner shall be given notice of hearing and an
7 opportunity to be heard before the commissioner is removed. A
8 commissioner is also liable to impeachment pursuant to Article
9 4, Section 36 of the constitution of New Mexico.

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

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

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

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

- 24 (1) be a qualified elector registered to vote
25 in New Mexico for not less than two years;

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

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

- 6 (a) a state officer;
7 (b) a state employee;
8 (c) a candidate;
9 (d) a lobbyist;
10 (e) a government contractor; or
11 (f) an office holder in a political
12 party.

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

20 C. During a commissioner's tenure, a commissioner
21 shall not be:

- 22 (1) a state officer;
23 (2) a state employee;
24 (3) a candidate;
25 (4) a lobbyist;

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1 (5) a government contractor; or

2 (6) an office holder in a political party.

3 D. A commissioner who violates Subsection C of this
4 section shall resign from the commission.

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

7 A. A commissioner may recuse from a particular
8 matter.

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

14 (1) when the commissioner has a personal bias
15 or prejudice concerning a party to the proceeding or has
16 prejudged a disputed evidentiary fact involved in a proceeding
17 prior to a hearing. For the purposes of this paragraph,
18 "personal bias or prejudice" means a predisposition toward a
19 person based on a previous or ongoing relationship that renders
20 the commissioner unable to exercise the commissioner's
21 functions impartially;

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

24 (3) when in previous employment the
25 commissioner served as an attorney, adviser, consultant or

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1 witness in the matter in controversy.

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

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

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

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

21 G. If two or more commissioners have recused
22 themselves or are disqualified from participating in a
23 proceeding, the remaining commissioners shall appoint temporary
24 commissioners to participate in that proceeding. Appointments
25 of temporary commissioners shall be made by a majority vote of

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1 the remaining commissioners in accordance with the political
2 affiliation and geographical representation requirements and
3 the qualifications set forth in the State Ethics Commission
4 Act.

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

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

11 A. The commission shall:

12 (1) have jurisdiction to enforce the
13 applicable civil compliance provisions of the laws set forth in
14 Section 8 of the State Ethics Commission Act;

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

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

21 (4) promulgate rules necessary to implement
22 and administer the provisions of the State Ethics Commission
23 Act and enforce the applicable civil compliance provisions of
24 the laws set forth in Section 8 of the State Ethics Commission
25 Act;

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1 (5) establish one or more hearing panels, as
2 needed, which shall consist of at least three members, at least
3 two of whom are commissioners;

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

8 (7) prepare an annual report of its activities
9 and submit the report to the legislature and office of the
10 governor by December of each year; and

11 (8) hire an executive director.

12 B. The commission may:

13 (1) initiate complaints that allege an ethics
14 violation upon information received and agreement of at least
15 three-fourths of the commissioners voting on the issue;

16 (2) issue advisory opinions;

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

20 (4) compile, adopt, publish and make available
21 to state officers, state employees, government contractors and
22 lobbyists an ethics guide that clearly explains ethics
23 requirements set forth in state law; and

24 (5) offer annual ethics training to state
25 officers, state employees, government contractors and

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1 lobbyists.

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

4 A. The director shall be:

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

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

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

14 B. Prior to the end of the director's term of
15 service, the director may only be removed by the commission for
16 cause and with the concurrence of a majority of commissioners.

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

20 D. The director shall:

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

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

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

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

7 (5) at each commission meeting, report on the
8 status of all open investigations; and

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

12 E. The director may:

13 (1) hire a general counsel and additional
14 personnel needed to perform the duties of the commission; and

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

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

21 G. A director who violates Subsection F of this
22 section shall resign from the commission.

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

25 A. The commission shall have jurisdiction to

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1 enforce the applicable civil compliance provisions for state
2 officers and employees, candidates and other participants in
3 elections, lobbyists and government contractors and seekers of
4 government contracts of the:

5 (1) Campaign Reporting Act;

6 (2) Financial Disclosure Act;

7 (3) Gift Act;

8 (4) Lobbyist Regulation Act;

9 (5) Voter Action Act;

10 (6) Governmental Conduct Act;

11 (7) Procurement Code; and

12 (8) State Ethics Commission Act.

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

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

20 D. If the commission decides not to act on a
21 complaint, whether the complaint was filed with the commission
22 or forwarded from another state agency, or decides only to act
23 on part of a complaint, the commission shall promptly forward
24 the complaint, or any part of a complaint on which it does not
25 wish to act, to the state agency or office that has appropriate

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1 jurisdiction within ten days of the decision. The complainant
2 shall be notified in writing when the complainant's request has
3 been forwarded to another agency or office.

4 E. The commission may elect to share jurisdiction
5 with another state agency or office to act on a complaint or
6 any aspect of a complaint. Such shared jurisdiction shall be
7 formalized through a memorandum of understanding entered into
8 by all participating agencies or offices involved with the
9 complaint and the director.

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

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

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

21 B. A request by an individual for an advisory
22 opinion shall be requested in writing. A request for an
23 advisory opinion shall present a question regarding whether the
24 conduct of a person in the requestor's position would violate
25 the provisions of a law listed in Section 8 of the State Ethics

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1 Commission Act.

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

12 D. Advisory opinions shall be published on the
13 commission's website. The commission shall redact the
14 requester's name and identifying information from the published
15 advisory opinion.

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

20 F. The commission shall promulgate rules for
21 advisory opinion requests, commission-initiated advisory
22 opinions and the publication of advisory opinions.

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

25 A. A complainant may file a verified complaint with

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1 the commission that alleges a violation of a provision of a law
2 under the jurisdiction of the commission committed by a:

- 3 (1) candidate or person subject to the
4 Campaign Reporting Act;
5 (2) state officer;
6 (3) state employee;
7 (4) government contractor;
8 (5) lobbyist; or
9 (6) person appointed to a board or commission
10 of the state.

11 B. The complaint shall set forth in detail the
12 specific allegations against the respondent and the facts that
13 support the allegations. The complainant shall submit any
14 available evidence that supports the complaint, including
15 documents, records, names of witnesses and other evidence. The
16 complaint shall be in writing, signed and sworn by the
17 complainant and notarized.

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

22 D. The director shall advise and make
23 recommendations to a hearing panel regarding whether the
24 conduct alleged in a complaint is within the jurisdiction of
25 the commission and warrants further investigation.

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1 E. A hearing panel shall dismiss complaints that
2 are frivolous or unfounded. If the panel dismisses a complaint
3 pursuant to this subsection, the director shall promptly notify
4 the complainant and respondent in writing of the decision and
5 the reasons therefor. The commission shall not make public
6 complaints that have been dismissed and the reason for the
7 dismissal, unless requested by the respondent or complainant.

8 F. If the hearing panel determines there is
9 sufficient cause to proceed with an investigation, the director
10 shall investigate the complaint. The director shall promptly
11 notify the respondent and complainant:

12 (1) that a verified complaint has been filed
13 and is being investigated; and

14 (2) of the specific allegations in the
15 complaint and the specific violations charged in the complaint.

16 G. Notwithstanding the provisions of Subsection F
17 of this section, the hearing panel may delay notifying a
18 respondent if it is deemed necessary to protect the integrity
19 of a criminal investigation. A decision whether to delay
20 notifying a respondent shall be taken by a majority vote of the
21 hearing panel and shall be documented in writing with
22 reasonable specificity.

23 H. As part of an investigation, the director may
24 administer oaths, interview witnesses and examine books,
25 records, documents and other evidence reasonably related to the

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

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

23 J. A state officer or state employee who is a
24 respondent that is subject to a complaint alleging a violation
25 made in the performance of the respondent's duties shall be

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1 entitled to representation by the risk management division of
2 the general services department.

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

5 A. If a hearing has not been scheduled concerning
6 the disposition of a verified complaint within ninety days
7 after the complaint is received, the director shall report to
8 the commission on the status of the investigation. The
9 commission may dismiss the complaint or instruct the director
10 to continue the investigation of the complaint. Unless the
11 commission dismisses the complaint, the director shall report
12 to the commission every ninety days thereafter on the status of
13 the investigation.

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

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

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1 AN ETHICS VIOLATION.--

2 A. Upon receipt of the director's recommendation,
3 the hearing panel shall:

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

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

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

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

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

24 E. The complainant or respondent may appeal a
25 decision of the hearing panel within thirty days of the

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1 decision to the full commission, which shall hear the matter
2 within sixty days of notice of the appeal. The commission
3 shall uphold a decision if there is substantial evidence to
4 support the decision in the record.

5 F. The commission shall publicly disclose a
6 decision issued pursuant to Subsection D of this section. The
7 commission shall provide the decision to the respondent and
8 the:

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

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

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

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

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

20 (6) respondent's employer if the respondent is
21 a lobbyist.

22 G. The commission shall promulgate rules
23 establishing procedures for hearings and appeals.

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

25 A. A decision that a respondent's conduct

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1 constituted a violation shall be a public record. Pleadings,
2 motions, briefs and other documents or information related to
3 the decision shall be a public record, except for information
4 that is confidential or protected pursuant to attorney-client
5 privilege, provider-patient privilege or state or federal law.

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

9 C. Except as otherwise provided in the acts listed
10 in Section 8 of the State Ethics Commission Act, all
11 complaints, reports, files, records and communications
12 collected or generated by the commission, hearing panel or
13 director that pertain to alleged violations shall not be
14 disclosed by the commission or any commissioner, agent or
15 employee of the commission, unless:

16 (1) disclosure is necessary to pursue an
17 investigation by the director or the commission;

18 (2) disclosure is required pursuant to the
19 provisions of the State Ethics Commission Act; or

20 (3) they are offered into evidence by the
21 commission, respondent or another party at a judicial,
22 legislative or administrative proceeding, including a hearing
23 before a hearing panel of the commission.

24 D. Information and reports containing information
25 made confidential by law shall not be disclosed by the

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1 commission or its director, staff or contractors.

2 SECTION 14. [NEW MATERIAL] CRIMINAL VIOLATIONS--

3 REFERRAL.--If the commission finds at any time that a
4 respondent's conduct amounts to a criminal violation, the
5 director shall consult with the attorney general or district
6 attorney and the commission may refer the matter to the
7 attorney general or an appropriate district attorney. The
8 commission may provide the attorney general or district
9 attorney with all evidence collected during the commission's
10 investigation. Nothing in this section prevents the commission
11 from taking any action authorized by the State Ethics
12 Commission Act or deciding to suspend an investigation pending
13 resolution of any criminal charges.

14 SECTION 15. [NEW MATERIAL] TIME LIMITATIONS ON

15 JURISDICTION.--

16 A. The commission shall not accept or consider a
17 complaint unless the complaint is filed with the commission
18 within three years from the date on which the alleged conduct
19 occurred.

20 B. The commission shall not adjudicate a complaint
21 filed against a candidate, except pursuant to the Campaign
22 Reporting Act or Voter Action Act, less than forty-five days
23 before a primary or general election. During that time period,
24 the commission may dismiss complaints that are frivolous or
25 unfounded or refer complaints that are outside the jurisdiction

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1 of the commission.

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

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

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

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

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

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

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

25 C. Nothing in the State Ethics Commission Act

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1 precludes civil or criminal actions for libel or slander or
2 other civil or criminal actions against a person who files a
3 false claim.

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

6 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

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

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

12 (2) a report of expenditures and
13 contributions;

14 (3) an advisory opinion issued by the
15 [~~secretary of~~] state ethics commission;

16 (4) a document specified as a public record in
17 the Campaign Reporting Act; and

18 (5) an arbitration decision issued by an
19 arbitration panel and filed with the secretary of state or
20 state ethics commission.

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

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

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

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

10 A. On and after January 1, 2020:

11 (1) the state ethics commission shall have
12 jurisdiction to investigate and adjudicate a complaint alleging
13 a civil violation of a provision of the Campaign Reporting Act
14 in accordance with the provisions of that act;

15 (2) the secretary of state shall forward
16 complaints it receives alleging violations of the Campaign
17 Reporting Act to the state ethics commission. The commission
18 may elect to share jurisdiction to investigate and adjudicate
19 complaints, or any aspect of a complaint, with the secretary of
20 state as formalized through a memorandum of understanding; and

21 (3) references to the secretary of state in
22 Sections 1-19-34.4, 1-19-34.6, 1-19-34.7 and 1-19-35 NMSA 1978
23 shall be deemed references to the state ethics commission when
24 necessary to carry out the provisions of this section.

25 B. The state ethics commission and the secretary of

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1 state shall make recommendations to the second session of the
2 fifty-fourth legislature on any changes to the Campaign
3 Reporting Act necessary for the efficient administration and
4 enforcement of the provisions of that act."

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

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

8 A. On and after January 1, 2020:

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

13 (2) the secretary of state shall forward
14 complaints it receives alleging violations of the Voter Action
15 Act to the state ethics commission. The commission may elect
16 to share jurisdiction to investigate and adjudicate complaints,
17 or any aspect of a complaint, with the secretary of state as
18 formalized through a memorandum of understanding; and

19 (3) references to the secretary of state in
20 Sections 1-19A-16 and 1-19A-17 NMSA 1978 shall be deemed
21 references to the state ethics commission when necessary to
22 carry out the provisions of this section.

23 B. The state ethics commission and the secretary of
24 state shall make recommendations to the second session of the
25 fifty-fourth legislature on any changes to the Voter Action Act

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1 necessary for the efficient administration and enforcement of
2 the provisions of that act."

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

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

6 A. On and after January 1, 2020:

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

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

17 (3) references to the secretary of state in
18 Section 2-11-8.2 NMSA 1978 shall be deemed references to the
19 state ethics commission when necessary to carry out the
20 provisions of this section.

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

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

3 "2-15-8. INTERIM LEGISLATIVE ETHICS COMMITTEE--DUTIES.--
4 The interim legislative ethics committee is authorized to:

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

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

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

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

18 E. make recommendations to the respective houses by
19 the end of the first full week of the next convened regular
20 session regarding proposed sanctions for ethical misconduct."

21 SECTION 22. Section 2-15-9 NMSA 1978 (being Laws 1993,
22 Chapter 46, Section 54) is amended to read:

23 "2-15-9. INTERIM LEGISLATIVE ETHICS COMMITTEE--
24 PROCEDURES--CONFIDENTIALITY.--

25 A. Except as provided in this section, the

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1 New Mexico legislative council shall develop procedures to
2 carry out the provisions of this section, in accordance with
3 the existing procedures in the house and senate rules.

4 B. A member of the interim legislative ethics
5 committee [~~shall be~~] is ineligible to participate in any matter
6 relating directly to that member's conduct. In any such case,
7 a substitute member to the committee shall be appointed from
8 the same house from the same political party by the appropriate
9 appointing authority. A member may seek to be disqualified
10 from any matter brought before the interim legislative ethics
11 committee on the grounds that the member cannot render a fair
12 and impartial decision. Disqualification must be approved by
13 [~~a majority vote of the remaining members of the committee~~] the
14 appropriate appointing authority. In any such case, a
15 substitute member to the committee shall be appointed from the
16 same political party as provided in this section.

17 C. The interim legislative ethics committee is
18 authorized to issue advisory opinions on matters relating to
19 ethical conduct during the interim. Any question relating to
20 the interpretation and enforcement of ethical principles as
21 applied to the legislature may be submitted in writing to the
22 New Mexico legislative council by a legislator describing a
23 real or hypothetical situation and requesting an advisory
24 opinion establishing an appropriate standard of ethical conduct
25 for that situation. The question shall be referred to the

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1 ~~[joint]~~ interim legislative ethics committee.

2 D. To initiate any action during the interim on
3 alleged misconduct ~~[any]~~:

4 (1) a legislator or member of the public may
5 file with the director of the legislative council service a
6 written, sworn complaint setting forth, with specificity, the
7 facts alleged to constitute unethical conduct ~~[A complaint~~
8 ~~shall be filed with the New Mexico legislative council]~~;

9 (2) a member of the public shall file with the
10 state ethics commission a written, sworn complaint setting
11 forth, with specificity, the facts alleged to constitute a
12 violation of the provisions of a statute under the jurisdiction
13 of the state ethics commission; and

14 (3) the state ethics commission shall refer to
15 the interim legislative ethics committee any matter it finds to
16 be solely under the jurisdiction of the legislature.

17 E. Upon receipt of ~~[the]~~ a complaint, the
18 ~~[co-chairmen]~~ relevant co-chair of the New Mexico legislative
19 council and majority and minority floor leaders of the relevant
20 house of the legislature shall convene the interim legislative
21 ethics committee.

22 ~~[E.]~~ F. The interim legislative ethics committee
23 shall maintain rules of confidentiality ~~[unless the legislator~~
24 ~~against whom a complaint is filed waives the rules or any part~~
25 ~~of them in writing]~~. The confidentiality rules shall include

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1 the following provisions:

2 (1) the complainant and respondent and the
3 committee and its staff shall not publicly disclose any
4 information relating to the filing or investigation of a
5 complaint, including the identity of the complainant or
6 respondent, until after a finding of probable cause has been
7 made that a violation has occurred;

8 (2) the identity of the complainant shall be
9 released to the respondent immediately upon request; ~~and~~

10 (3) no member of the committee or its staff
11 may knowingly disclose any confidential information except as
12 authorized by the committee; and

13 (4) the complainant and respondent shall not
14 have any ex parte communications with committee members.

15 G. The interim legislative ethics committee may
16 enter into an agreement for investigation of a complaint with
17 the state ethics commission in accordance with policies adopted
18 by the New Mexico legislative council."

19 SECTION 23. Section 10-16-11 NMSA 1978 (being Laws 1967,
20 Chapter 306, Section 11, as amended) is amended to read:

21 "10-16-11. CODES OF CONDUCT.--

22 A. [~~By January 1, 1994~~] Each elected statewide
23 executive branch public officer shall adopt a general code of
24 conduct for employees subject to [~~his~~] the officer's control.
25 The New Mexico legislative council shall adopt a general code

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1 of conduct for all legislative branch employees. The general
2 codes of conduct shall be based on the principles set forth in
3 the Governmental Conduct Act.

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

10 C. The head of every executive and legislative
11 agency and institution of the state may draft a separate code
12 of conduct for all public officers and employees in that agency
13 or institution. The separate agency code of conduct shall
14 prescribe standards, in addition to those set forth in the
15 Governmental Conduct Act and the general codes of conduct for
16 all executive and legislative branch public officers and
17 employees, that are peculiar and appropriate to the function
18 and purpose for which the agency or institution was created or
19 exists. The separate codes, upon approval of the responsible
20 executive branch public officer for executive branch public
21 officers and employees or the New Mexico legislative council
22 for legislative branch employees, govern the conduct of the
23 public officers and employees of that agency or institution
24 and, except for those public officers and employees removable
25 only by impeachment, shall, if violated, constitute cause for

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1 dismissal, demotion or suspension. The head of each executive
2 and legislative branch agency shall adopt ongoing education
3 programs to advise public officers and employees about the
4 codes of conduct. All codes shall be filed with the [~~secretary~~
5 ~~of~~] state ethics commission and are open to public inspection.

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

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

15 SECTION 24. Section 10-16-13.1 NMSA 1978 (being Laws
16 1993, Chapter 46, Section 35) is amended to read:

17 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

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

23 B. The [~~secretary of~~] state ethics commission shall
24 seek first to ensure voluntary compliance with the provisions
25 of the Governmental Conduct Act. A person who violates that

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1 act unintentionally or for good cause shall be given ten days'
2 notice to correct the matter. Referrals for civil enforcement
3 of that act shall be pursued only after efforts to secure
4 voluntary compliance with that act have failed."

5 SECTION 25. Section 10-16-14 NMSA 1978 (being Laws 1967,
6 Chapter 306, Section 14, as amended) is amended to read:

7 "10-16-14. ENFORCEMENT PROCEDURES.--

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

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

20 C. If the [~~attorney general~~] state ethics
21 commission determines that there is sufficient cause to file a
22 complaint against a public officer removable only by
23 impeachment, [~~he~~] the commission shall refer the matter to the
24 house of representatives of the legislature. If within thirty
25 days after the referral the house of representatives has

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1 neither formally declared that the charges contained in the
2 complaint are not substantial nor instituted hearings on the
3 complaint, the ~~[attorney general]~~ state ethics commission shall
4 make public the nature of the charges but ~~[he]~~ shall make clear
5 that the merits of the charges have never been determined.
6 Days during which the legislature is not in session shall not
7 be included in determining the thirty-day period.

8 D. Violation of the provisions of the Governmental
9 Conduct Act by any public officer or employee, other than those
10 covered by Subsection C of this section, is grounds for
11 discipline, including dismissal, demotion or suspension.
12 Complaints against executive branch employees may be filed with
13 the agency head and reviewed pursuant to the procedures
14 provided in the Personnel Act. Complaints against legislative
15 branch employees may be filed with and reviewed pursuant to
16 procedures adopted by the New Mexico legislative council.
17 Complaints against judicial branch employees may be filed and
18 reviewed pursuant to the procedures provided in the judicial
19 personnel rules. Complaints against state employees may also
20 be filed with the state ethics commission, which shall
21 determine whether to forward a complaint to the appropriate
22 state agency or investigate the complaint on its own.

23 E. Subject to the provisions of this section, the
24 provisions of the Governmental Conduct Act may be enforced by
25 the ~~[attorney general]~~ state ethics commission. Except as

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1 regards legislators, state employees or statewide elected
2 officials, a district attorney in the county where a person who
3 allegedly violated the provisions resides or where [~~a~~] an
4 alleged violation occurred may also enforce that act.
5 Enforcement actions may include seeking civil injunctive or
6 other appropriate orders."

7 SECTION 26. Section 10-16-18 NMSA 1978 (being Laws 1995,
8 Chapter 153, Section 23) is amended to read:

9 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

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

16 B. The state ethics commission may institute a
17 civil action in district court or refer a matter to the
18 attorney general or a district attorney [~~may~~] to institute a
19 civil action in district court if a violation has occurred or
20 to prevent a violation of any provision of the Governmental
21 Conduct Act. Relief may include a permanent or temporary
22 injunction, a restraining order or any other appropriate order,
23 including an order for a civil penalty of two hundred fifty
24 dollars (\$250) for each violation not to exceed five thousand
25 dollars (\$5,000)."

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1 SECTION 27. Section 10-16A-1 NMSA 1978 (being Laws 1993,
2 Chapter 46, Section 39) is amended to read:

3 "10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--
4 [~~Sections 39 through 45 of this act~~] Chapter 10, Article 16A
5 NMSA 1978 may be cited as the "Financial Disclosure Act"."

6 SECTION 28. Section 10-16A-5 NMSA 1978 (being Laws 1993,
7 Chapter 46, Section 43) is amended to read:

8 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

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

15 B. The secretary of state shall seek first to
16 ensure voluntary compliance with the provisions of the
17 Financial Disclosure Act. A person who violates that act
18 unintentionally or for good cause shall be given ten days'
19 notice to correct the matter before fines are imposed.
20 Referrals to the state ethics commission for civil enforcement
21 of the Financial Disclosure Act shall be pursued only after
22 efforts to secure voluntary compliance with that act have
23 failed."

24 SECTION 29. Section 10-16A-6 NMSA 1978 (being Laws 1993,
25 Chapter 46, Section 44, as amended) is amended to read:

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1 "10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--FINES--
2 ENFORCEMENT.--

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

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

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

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1 mileage.

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

14 E. Any person who files a statement or report after
15 the deadline imposed by the Financial Disclosure Act or any
16 person who files a false or incomplete statement or report is
17 liable for and shall pay to the secretary of state, at or from
18 the time initially required for the filing, fifty dollars
19 (\$50.00) per day for each regular working day after the time
20 required for the filing of the statement or report until the
21 complete report is filed, up to a maximum of five thousand
22 dollars (\$5,000).

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

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1 enforcement."

2 SECTION 30. Section 10-16A-8 NMSA 1978 (being Laws 1995,
3 Chapter 153, Section 25) is amended to read:

4 "10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--

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

10 B. The state ethics commission may institute a
11 civil action in district court or refer a matter to the
12 attorney general or a district attorney [~~may~~] to institute a
13 civil action in district court if a violation has occurred or
14 to prevent a violation of any provision of the Financial
15 Disclosure Act. Relief may include a permanent or temporary
16 injunction, a restraining order or any other appropriate order,
17 including an order for a civil penalty of two hundred fifty
18 dollars (\$250) for each violation not to exceed five thousand
19 dollars (\$5,000)."

20 SECTION 31. Section 10-16B-1 NMSA 1978 (being Laws 2007,
21 Chapter 226, Section 1) is amended to read:

22 "10-16B-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article
23 16B NMSA 1978 may be cited as the "Gift Act"."

24 SECTION 32. A new section of the Gift Act is enacted to
25 read:

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

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

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

10 **SECTION 33.** Section 13-1-177 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 150, as amended) is amended to read:

12 "13-1-177. **AUTHORITY TO SUSPEND OR DEBAR.--**

13 A. The state [~~purchasing agent or a central~~
14 ~~purchasing office~~] ethics commission or a central purchasing
15 office of a local public body, after consultation with the
16 using agency, may suspend a person from consideration for award
17 of contracts if the state [~~purchasing agent or central~~
18 ~~purchasing office~~] ethics commission or a central purchasing
19 office of a local public body, after reasonable investigation,
20 finds that a person has engaged in conduct that constitutes
21 cause for debarment pursuant to Section 13-1-178 NMSA 1978.

22 B. The term of a suspension pursuant to this
23 section shall not exceed three months; however, if a person,
24 including a bidder, offeror or contractor, has been charged
25 with a criminal offense that would be a cause for debarment

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1 pursuant to Section 13-1-178 NMSA 1978, the suspension shall
2 remain in effect until the criminal charge is resolved and the
3 person is debarred or the reason for suspension no longer
4 exists.

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

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

21 SECTION 34. Section 13-1-178 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 151, as amended) is amended to read:

23 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME
24 LIMIT.--

25 A. The causes for debarment or suspension occurring

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1 within three years of the date final action on a procurement is
2 taken include but are not limited to the following:

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

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

13 (3) conviction of a bidder, offeror or
14 contractor under state or federal statutes related to
15 embezzlement, theft, forgery, bribery, fraud, falsification or
16 destruction of records, making false statements or receiving
17 stolen property or for violation of federal or state tax laws;

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

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

24 (6) civil judgment against a bidder, offeror
25 or contractor for a civil violation related to honesty,

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1 integrity or business ethics;

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

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

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

13 (b) a history of failure to perform or
14 of unsatisfactory performance of one or more contracts;
15 provided that this failure or unsatisfactory performance has
16 occurred within a reasonable time preceding the decision to
17 impose debarment; and provided further that failure to perform
18 or unsatisfactory performance caused by acts beyond the control
19 of the contractor shall not be considered to be a basis for
20 debarment;

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

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

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

8 SECTION 35. Section 13-1-196 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 169) is amended to read:

10 "13-1-196. CIVIL PENALTY.--Any person, firm or
11 corporation that knowingly violates any provision of the
12 Procurement Code is subject to a civil penalty of not more than
13 one thousand dollars (\$1,000) for each procurement in violation
14 of any provision of the Procurement Code. The [~~attorney~~
15 ~~general or the~~] district attorney in the jurisdiction in which
16 the violation occurs or the state ethics commission is
17 empowered to bring a civil action for the enforcement of any
18 provision of the Procurement Code; provided that the commission
19 may refer a matter for enforcement to the attorney general or
20 the district attorney in the jurisdiction in which the
21 violation occurred. Any penalty collected under the provisions
22 of this section shall be credited to the general fund of the
23 political subdivision in which the violation occurred and on
24 whose behalf the suit was brought."

25 SECTION 36. TEMPORARY PROVISION--REPORT ON EXTENSION OF

.212430.6

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1 JURISDICTION.--

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

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

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

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

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

15 (4) recommended changes to existing law.

16 **SECTION 37. APPROPRIATION.--**One million dollars
17 (\$1,000,000) is appropriated from the general fund to the state
18 ethics commission for expenditure in fiscal year 2020 to carry
19 out the provisions of the State Ethics Commission Act. Any
20 unexpended or unencumbered balance remaining at the end of
21 fiscal year 2020 shall revert to the general fund.

22 **SECTION 38. EFFECTIVE DATE.--**

23 A. The effective date of the provisions of Sections
24 1 through 5, 7 and 37 of this act is July 1, 2019.

25 B. The effective date of the provisions of Sections

.212430.6

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1 6 and 8 through 36 of this act is January 1, 2020.

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