

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 4

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

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 a
4 state 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. "complaint" means a complaint that has been
10 signed by the complainant and the complainant verifies before a
11 notary public that the information in the complaint, and any
12 attachments provided with the complaint, are true and accurate;

13 F. "director" means the executive director of the
14 commission;

15 G. "government contractor" means a person who has,
16 or submits a bid for, a contract subject to the Governmental
17 Conduct Act with a state agency;

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

25 I. "instrumentality of the state" means the New

1 Mexico exposition center authority, New Mexico finance
 2 authority, New Mexico industrial and agricultural finance
 3 authority, New Mexico lottery authority, New Mexico mortgage
 4 finance authority, New Mexico renewable energy transmission
 5 authority, New Mexico state fair and water quality control
 6 commission;

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

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

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

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

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

20 O. "state officer" means a person elected to an
 21 office of the executive or legislative branch of the state or a
 22 person appointed to a state agency.

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

25 A. The members of the state ethics commission,

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1 created in Article 5, Section 17 of the constitution of New
2 Mexico as an independent state agency under the direction of
3 seven commissioners, shall be appointed as follows:

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

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

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

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

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

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

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

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

24 C. Commissioners shall be appointed for staggered
25 terms of four years beginning July 1, 2019. The governor's

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1 appointee shall serve an initial term of four years. The other
2 initial commissioners shall draw lots to determine which two
3 commissioners serve an initial term of two years, which two
4 commissioners serve an initial term of three years and which
5 two commissioners serve an initial term of four years.

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

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

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

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

21 G. Four commissioners constitutes a quorum for the
22 transaction of business requiring decisions of the full
23 commission. Unless otherwise provided, decisions of the
24 commission require a majority vote of the 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. A
4 commissioner shall be given notice of hearing and an
5 opportunity to be heard before the commissioner is removed.
6 The New Mexico supreme court has original jurisdiction over
7 proceedings to remove commissioners, and its decision shall be
8 final. A commissioner is also liable to impeachment pursuant
9 to Article 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 five years;

1 (2) not have changed political party
2 affiliation within five 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 at the state or federal level.

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 hold another state office or be:

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

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1 (5) an office holder in a political party at
2 the state or federal level.

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

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

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

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

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

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

25 (3) when in previous employment the

1 commissioner served as an attorney, adviser, consultant or
2 witness in the matter in controversy.

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

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

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

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

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

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1 of temporary commissioners shall be made by a majority vote of
2 the remaining commissioners in accordance with the political
3 affiliation and geographical representation requirements and
4 the qualifications set forth in the State Ethics Commission
5 Act.

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

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

12 A. The commission shall:

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

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

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

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

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

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

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

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

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

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

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

18 (2) issue advisory opinions;

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

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

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

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

6 A. The director shall be:

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

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

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

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

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

22 D. The director shall:

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

25 (2) make recommendations to the commission

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1 regarding proposed rules to improve administration of the State
2 Ethics Commission Act;

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

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

9 (5) hire a general counsel; and

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

13 E. The director may:

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

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

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

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

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1 SECTION 8. ~~[NEW MATERIAL]~~ COMMISSION JURISDICTION--
2 COMPLIANCE PROVISIONS.--

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

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

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

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

23 D. If the commission decides not to act on a
24 complaint, whether the complaint was filed with the commission
25 or forwarded from another state agency, or decides only to act

1 on part of a complaint, the commission shall promptly forward
 2 the complaint, or any part of a complaint on which it does not
 3 wish to act, to the state agency that has appropriate
 4 jurisdiction within ten days of the decision. The complainant
 5 and respondent shall be notified in writing when the
 6 complainant's request has been forwarded to another agency
 7 unless otherwise provided pursuant to Subsection H of Section
 8 10 of the State Ethics Commission Act.

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

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

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

25 A. The commission may issue advisory opinions on

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1 issues related to the laws listed in Section 8 of the State
2 Ethics Commission Act. An individual may request an advisory
3 opinion from the commission, or the commission may initiate an
4 advisory opinion.

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

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

20 D. Advisory opinions shall be published on the
21 commission's website. The commission shall redact the
22 requester's name and identifying information from the published
23 advisory opinion.

24 E. Unless amended or revoked, an advisory opinion
25 published by the commission shall be binding on the commission

1 in subsequent proceedings concerning a person who acted in good
2 faith and in reasonable reliance on the advisory opinion.

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

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

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

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

20 B. The complaint shall set forth in detail the
21 specific allegations against the respondent and the facts that
22 support the allegations. The complainant shall submit any
23 available evidence that supports the complaint, including
24 documents, records, names of witnesses and other evidence. The
25 complaint shall be in writing, signed and sworn by the

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1 complainant and notarized.

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

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

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

23 F. If the general counsel and the respondent reach
24 a settlement on the matters of the complaint, the settlement
25 shall be submitted to the commission for its approval, and if

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1 the matter has been resolved to the satisfaction of the
2 commission, the complaint and terms of the settlement shall be
3 subject to public disclosure.

4 G. If the general counsel determines that there is
5 probable cause, the general counsel shall promptly notify the
6 hearing panel, the respondent and the complainant that the
7 complaint is being investigated and of the specific allegations
8 in the complaint that are being investigated.

9 H. Notwithstanding the provisions of Subsections C
10 and G of this section, the general counsel may delay notifying
11 a respondent if it is deemed necessary to protect the integrity
12 of a criminal investigation. A decision whether to delay
13 notifying a respondent shall be taken by a majority vote of the
14 hearing panel and shall be documented in writing with
15 reasonable specificity.

16 I. As part of an investigation, the general counsel
17 may administer oaths, interview witnesses and examine books,
18 records, documents and other evidence reasonably related to the
19 complaint. All testimony in an investigation shall be under
20 oath, and the respondent has the right to be represented by
21 legal counsel. If the general counsel determines that a
22 subpoena is necessary to obtain the testimony of a person or
23 the production of books, records, documents or other evidence,
24 the director shall request that the commission issue an
25 appropriate subpoena.

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

16 K. A state officer or state employee who is a
17 respondent that is subject to a complaint alleging a violation
18 made in the performance of the respondent's duties shall be
19 entitled to representation by the risk management division of
20 the general services department.

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

23 A. If a hearing has not been scheduled concerning
24 the disposition of a complaint within ninety days after the
25 complaint is received, the director shall report to the

1 commission on the status of the investigation. The commission
2 may dismiss the complaint or instruct the director to continue
3 the investigation of the complaint. Unless the commission
4 dismisses the complaint, the director shall report to the
5 commission every ninety days thereafter on the status of the
6 investigation.

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

17 SECTION 12. [NEW MATERIAL] INVESTIGATION REPORT--
18 COMMISSION HEARINGS--DECISIONS AND REASONS GIVEN--DISCLOSURE OF
19 AN ETHICS VIOLATION.--

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

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

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

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

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

13 D. The hearing panel shall issue a written decision
14 that shall include its reasons for the decision. If the panel
15 finds by a preponderance of the evidence that the respondent's
16 conduct constituted a violation, the decision may include
17 recommendations for disciplinary action against the respondent,
18 and the panel may impose any fines provided for by law. A
19 finding of fraudulent or willful misconduct shall require clear
20 and convincing evidence.

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

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1 support the decision in the record.

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

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

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

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

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

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

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

19 (6) secretary of state and the respondent's
20 employer, if any, if the respondent is a lobbyist.

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

24 (1) the number of complaints filed with and
25 referred to the commission;

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1 (2) the disposition of the complaints; and
2 (3) the type of violation alleged in the
3 complaints.

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

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

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

15 C. Except as otherwise provided in the acts listed
16 in Section 8 of the State Ethics Commission Act, all
17 complaints, reports, files, records and communications
18 collected or generated by the commission, hearing panel,
19 general counsel or director that pertain to alleged violations
20 shall not be disclosed by the commission or any commissioner,
21 agent or employee of the commission, unless:

22 (1) disclosure is necessary to pursue an
23 investigation by the commission;

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

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

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

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

20 SECTION 15. [NEW MATERIAL] TIME LIMITATIONS ON
 21 JURISDICTION.--

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

25 (1) on which the alleged conduct occurred; or

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1 (2) the alleged conduct could reasonably have
2 been discovered.

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

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

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

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

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

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

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

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

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

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

15 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

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

- 20 (1) a statement of [~~exception~~] no activity;
- 21 (2) a report of expenditures and
22 contributions;
- 23 (3) an advisory opinion issued by the
24 [~~secretary of~~] state ethics commission;
- 25 (4) a document specified as a public record in

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1 the Campaign Reporting Act; and

2 (5) an arbitration decision issued by an
3 arbitration panel and filed with the secretary of state or
4 state ethics commission.

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

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

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

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

19 A. On and after January 1, 2020:

20 (1) the state ethics commission shall have
21 jurisdiction to investigate and adjudicate a complaint alleging
22 a civil violation of a provision of the Campaign Reporting Act
23 in accordance with the provisions of that act; and

24 (2) the state ethics commission shall share
25 jurisdiction to investigate and adjudicate complaints, or any

1 aspect of a complaint, with the secretary of state as
 2 formalized through a memorandum of understanding. The
 3 secretary of state shall forward complaints it receives
 4 alleging violations of the Campaign Reporting Act to the state
 5 ethics commission in accordance with the memorandum of
 6 understanding.

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

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

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

15 A. On and after January 1, 2020:

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

20 (2) the state ethics commission shall share
 21 jurisdiction to investigate and adjudicate complaints, or any
 22 aspect of a complaint, with the secretary of state as
 23 formalized through a memorandum of understanding. The
 24 secretary of state shall forward complaints it receives
 25 alleging violations of the Voter Action Act to the state ethics

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1 commission in accordance with the memorandum of understanding.

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

7 SECTION 20. A new section of the Lobbyist Regulation 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 Lobbyist Regulation Act
14 in accordance with the provisions of that act; and

15 (2) the state ethics commission shall share
16 jurisdiction to investigate and adjudicate complaints, or any
17 aspect of a complaint, with the secretary of state as
18 formalized through a memorandum of understanding. The
19 secretary of state shall forward complaints it receives
20 alleging violations of the Lobbyist Regulation Act to the state
21 ethics commission in accordance with the memorandum of
22 understanding.

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 Lobbyist

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

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

5 "2-15-8. INTERIM LEGISLATIVE ETHICS COMMITTEE--DUTIES.--
6 The interim legislative ethics committee is authorized to:

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

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

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

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

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

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

25 "10-16-11. CODES OF CONDUCT.--

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

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

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

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1 for legislative branch employees, govern the conduct of the
 2 public officers and employees of that agency or institution
 3 and, except for those public officers and employees removable
 4 only by impeachment, shall, if violated, constitute cause for
 5 dismissal, demotion or suspension. The head of each executive
 6 and legislative branch agency shall adopt ongoing education
 7 programs to advise public officers and employees about the
 8 codes of conduct. All codes shall be filed with the [~~secretary~~
 9 ~~of~~] state ethics commission and are open to public inspection.

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

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

19 **SECTION 23.** Section 10-16-13.1 NMSA 1978 (being Laws
 20 1993, Chapter 46, Section 35) is amended to read:

21 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

22 A. The [~~secretary of~~] state ethics commission shall
 23 advise and seek to educate all persons required to perform
 24 duties under the Governmental Conduct Act of those duties.
 25 This includes advising all those persons at least annually of

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1 that act's ethical principles.

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

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

11 "10-16-14. ENFORCEMENT PROCEDURES.--

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

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

24 C. If the ~~[attorney general]~~ state ethics
25 commission determines that there is sufficient cause to file a

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

12 D. Violation of the provisions of the Governmental
13 Conduct Act by any public officer or employee, other than those
14 covered by Subsection C of this section, is grounds for
15 discipline, including dismissal, demotion or suspension.

16 Complaints against executive branch employees may be filed with
17 the agency head and reviewed pursuant to the procedures
18 provided in the Personnel Act. Complaints against legislative
19 branch employees may be filed with and reviewed pursuant to
20 procedures adopted by the New Mexico legislative council.

21 Complaints against judicial branch employees may be filed and
22 reviewed pursuant to the procedures provided in the judicial
23 personnel rules. Complaints against state employees may also
24 be filed with the state ethics commission, which shall
25 determine whether to forward a complaint to the appropriate

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1 state agency or investigate the complaint on its own.

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

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

13 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

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

20 B. The state ethics commission may institute a
21 civil action in district court or refer a matter to the
22 attorney general or a district attorney ~~[may]~~ to institute a
23 civil action in district court if a violation has occurred or
24 to prevent a violation of any provision of the Governmental
25 Conduct Act. Relief may include a permanent or temporary

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1 injunction, a restraining order or any other appropriate order,
 2 including an order for a civil penalty of two hundred fifty
 3 dollars (\$250) for each violation not to exceed five thousand
 4 dollars (\$5,000)."

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

7 "10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--
 8 [~~Sections 39 through 45 of this act~~] Chapter 10, Article 16A
 9 NMSA 1978 may be cited as the "Financial Disclosure Act"."

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

12 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

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

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

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1 efforts to secure voluntary compliance with that act have
2 failed."

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

5 "10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--FINES--
6 ENFORCEMENT.--

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

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

22 C. The arbitration decision shall be decided by a
23 single arbitrator selected within ten days by the person
24 against whom the penalty has been imposed from a list of five
25 arbitrators provided by the [~~secretary of~~] state ethics

1 commission. No arbitrator may be a person subject to the
 2 Financial Disclosure Act, Campaign Reporting Act or Lobbyist
 3 Regulation Act. Arbitrators shall be considered to be
 4 independent contractors, not public officers or employees, and
 5 shall not be paid per diem and mileage.

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

18 E. Any person who files a statement or report after
 19 the deadline imposed by the Financial Disclosure Act or any
 20 person who files a false or incomplete statement or report is
 21 liable for and shall pay to the secretary of state, at or from
 22 the time initially required for the filing, fifty dollars
 23 (\$50.00) per day for each regular working day after the time
 24 required for the filing of the statement or report until the
 25 complete report is filed, up to a maximum of five thousand

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1 dollars (\$5,000).

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

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

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

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

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

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

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1 "10-16B-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article
2 16B NMSA 1978 may be cited as the "Gift Act"."

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

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

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

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

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

16 "13-1-177. AUTHORITY TO SUSPEND OR DEBAR.--

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

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

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

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

25 SECTION 33. Section 13-1-178 NMSA 1978 (being Laws 1984,

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1 Chapter 65, Section 151, as amended) is amended to read:

2 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME
3 LIMIT.--

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

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

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

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

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

25 (5) criminal conviction against a bidder,

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1 offeror or contractor for any other offense related to honesty,
2 integrity or business ethics;

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

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

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

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

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

25 (9) any other cause that the state [~~purchasing~~

1 ~~agent or a central purchasing office]~~ ethics commission or
 2 central purchasing office of a local public body determines to
 3 be so serious and compelling as to affect responsibility as a
 4 contractor; or

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

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

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

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

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1 of this section shall be credited to the general fund of the
2 political subdivision in which the violation occurred and on
3 whose behalf the suit was brought."

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

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

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

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

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

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

19 (4) recommended changes to existing law.

20 SECTION 36. APPROPRIATION.--One million dollars
21 (\$1,000,000) is appropriated from the general fund to the state
22 ethics commission for expenditure in fiscal year 2020 to carry
23 out the provisions of the State Ethics Commission Act. Any
24 unexpended or unencumbered balance remaining at the end of
25 fiscal year 2020 shall revert to the general fund.

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SECTION 37. EFFECTIVE DATE.--

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A. The effective date of the provisions of Sections 1 through 7 and 36 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.

underscoring material = new
~~[bracketed material]~~ = delete