SENATE BILL 619
54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY
Linda M. Lopez

AN ACT
RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
CREATING THE STATE ETHICS COMMISSION; PROVIDING FOR AN
EXECUTIVE DIRECTOR; PROVIDING FOR ANNUAL ETHICS TRAINING AND
THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE DEVELOPMENT OF
A PROPOSED ETHICS CODE; PROVIDING FOR THE ISSUANCE OF ADVISORY
OPINIONS; PROVIDING FOR THE FILING OF COMPLAINTS AGAINST
CERTAIN PUBLIC OFFICIALS, PUBLIC EMPLOYEES, GOVERNMENT
CONTRACTORS AND LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR
INVESTIGATIONS AND HEARINGS; GRANTING SUBPOENA POWERS;
REQUIRING CONFIDENTIALITY; PROHIBITING RETALIATION; PROVIDING
PENALTIES; 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
.213798.2
Commission Act".

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

A. "adjunct agency" means an agency, board, commission, office or other instrumentality, not assigned to an elected constitutional officer, that is excluded from any direct or administrative attachment to a department and that retains policymaking and administrative autonomy separate from any other agency of state government;

B. "commission" means the state ethics commission;

C. "commissioner" means a member of the commission;

D. "complainant" means a person who files an ethics complaint with the commission;

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

F. "ethics violation" means an action that is a violation of the Gift Act; the Governmental Conduct Act; the Procurement Code; the Lobbyist Regulation Act; the Financial Disclosure Act; the Voter Action Act; Chapter 1, Article 19 NMSA 1978, including the Campaign Reporting Act; or any code of ethics adopted pursuant to those laws or Section 5 of the State Ethics Commission Act;

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

H. "legislative body" means the house of representatives or the senate;

I. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or to any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

J. "lobbyist" means a person who is compensated for the specific purpose of lobbying; who is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or who, in the course of the person's employment, is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

(1) a person who appears on the person's own behalf in connection with legislation or an official action;

(2) an elected or appointed officer of the state, a political subdivision of the state or an Indian nation, tribe or pueblo who is acting in the officer's official capacity;

(3) a state employee or an employee of a political subdivision of the state, specifically designated by an elected or appointed officer, who appears before a
legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on that employee's agency or political subdivision; provided that the elected or appointed officer files the designation with the secretary of state and makes it available for public inspection;

(4) a designated member of the staff of an elected public official; provided that the elected official files the designation with the secretary of state and makes it available for public inspection;

(5) a legislator or legislative staff member;

(6) a witness called by a legislative committee or administrative agency to appear before it in connection with legislation or an official action;

(7) a person who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which the person testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the news media while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

K. "official action" means a decision, action or nonaction of a public official or public agency in a rulemaking or other matter, except an adjudicatory proceeding;
L. "political party" means a political party that has complied with the provisions of Section 1-7-2 NMSA 1978;

M. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority; "public agency" also means a public school district and a charter school;

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

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

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

SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION CREATED--MEMBERSHIP--TERMS--REMOVAL.--
A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

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

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

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

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

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to geographic representation and to the cultural diversity of the state.

D. Each appointing authority shall file letters of appointment with the secretary of state.

E. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial
commissioners shall draw lots to determine which two
commissioners serve an initial term of two years, which two
commissioners serve an initial term of three years and which
three commissioners serve an initial term of four years;
thereafter, all commissioners shall serve four-year terms.
Members shall serve until their successors are appointed and
qualified.

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

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

H. Four commissioners consisting of two members of
the largest political party in the state and two members of the
second largest political party in the state constitute a quorum
for the transaction of business. No action shall be taken by
the commission unless at least four members, including at least
two members of the largest political party in the state and two
members of the second largest political party in the state,
concur.

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

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

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

(1) be a resident of New Mexico; and

(2) have been a member of the same political party for at least three years prior to appointment or shall not have been a member of any political party for at least three years prior to appointment.

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

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

(1) seek or hold an elective public office, an
appointed public position or an office in a political party; or
(2) be a public employee, government
contractor or lobbyist.

D. A commissioner who changes political party
affiliation or violates the provisions of Subsection C of this
section is deemed to have resigned from the commission.

E. For a period of one calendar year following a
commssioner's tenure or following the resignation or removal
of a commissioner, the commissioner shall not:

(1) represent a respondent, unless appearing
on the commissioner's own behalf; or
(2) accept employment or otherwise provide
services to a respondent unless the commissioner accepted
employment or provided services prior to the filing of a
complaint against the respondent.

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

A. The commission shall:

(1) receive and investigate complaints
alleging ethics violations against public officials, public
employees, government contractors and lobbyists;
(2) hold hearings in appropriate cases to
determine whether there has been an ethics violation;
(3) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act;

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

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

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

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

B. The commission may:

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

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

(3) issue advisory opinions to public officials, public employees, government contractors and
lobbyists in accordance with the provisions of the State Ethics Commission Act;

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

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

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

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

B. The director shall:

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

(2) perform investigations on behalf of the commission;
(3) bring complaints and investigation results before the commission for consideration;

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

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

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

C. The director may:

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

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

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

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

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

(2) accept employment or otherwise provide services to a respondent, unless the director accepted
employment or provided services prior to the filing of a complaint against the respondent.

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

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

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

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

D. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding so that there is no longer a quorum, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by the remaining commissioners in accordance with the political party affiliation requirements and the qualifications of Sections 3 and 4 of the State Ethics .213798.2
Commission Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The chair of the commission shall sign a complaint initiated by the commission, and the complaint shall set forth in detail the specific charges against the public
official, public employee, government contractor or lobbyist
and the factual allegations that support the charges.

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

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

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

G. As part of an investigation, the director may
administer oaths, interview witnesses and examine books,
records, documents and other evidence reasonably related to the
complaint. If the director determines that a subpoena is
necessary to obtain the testimony of any person or the
production of books, records, documents or other evidence, the
director shall ask the commission to petition a district court
to issue a subpoena under seal. The commission may petition a
district court, under seal, to subpoena witnesses, compel their
attendance and examine them under oath or affirmation and to
require the production of any books, records, documents or
other evidence that it deems relevant or material to an
investigation. Any challenge to a subpoena shall be heard by
the district court in a confidential proceeding. If a person
refuses to comply with a subpoena, the district court shall
compel compliance.

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

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

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

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

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

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

B. The commission may appoint a retired judge to preside over and conduct the hearing. The retired judge shall have no vote at the hearing. The retired judge shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation,
perquisite or allowance.

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

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

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

(2) house of representatives if the respondent is a public official elected to an office of the executive branch of the state;

(3) respondent's appointing authority if the respondent is an appointed public official;

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

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

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

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

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

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

SECTION 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--
All complaints, reports, files, records and communications
collected or generated by the commission or its director that pertain to alleged ethics violations are confidential and not subject to the provisions of the Inspection of Public Records Act. Such complaints, reports, files, records or communications shall not be disclosed unless:

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

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

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

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

SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--REFERRAL.--If the commission finds at any time that the respondent's conduct may amount to a criminal violation, the commission shall immediately refer the matter to the attorney general or an appropriate district attorney. The commission shall provide the attorney general or district attorney with all evidence collected during its investigation that may be used in a criminal proceeding. Nothing in this section prevents the commission from taking any action otherwise authorized by the State Ethics Commission Act or deciding to hold a matter in abeyance pending resolution of any criminal charges.
SECTION 14. [NEW MATERIAL] LIMITATIONS ON JURISDICTION.--

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

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

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

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

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

(1) files a complaint with the commission alleging an ethics violation against a public official, public
employee, government contractor or lobbyist; or

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

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

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

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

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

C. The provisions of this section apply to a commission member, the director and commission employees or agents and also apply to a complainant from the time the complaint is filed until it is resolved and a final determination is made.
SECTION 17. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority.
of any board, commission or other policymaking body, are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

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

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That
notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

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

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's [website] website, if one is maintained. A public body that ordinarily meets more frequently than once per week shall post a draft agenda at least seventy-two hours prior to the meeting and a final agenda.
at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

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

H. The provisions of Subsections A, B and G of this section do not apply to:
(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

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

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is
offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

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

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

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

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

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

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

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

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

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

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

(2) if a closure is called for when the
policymaking body is not in an open meeting, the closed meeting
shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

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

SECTION 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By January 1, 2022, the state ethics commission shall submit a report to the legislature and the governor regarding the extension of commission jurisdiction to elected and appointed officials and employees of political subdivisions of the state. The report shall include and make recommendations on:

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

B. the estimated number of additional employees and the amount and type of resources needed by the commission to
carry out its powers and duties if its jurisdiction were extended;

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

D. any changes needed to existing law.

SECTION 19. APPROPRIATION.--Two hundred thousand dollars ($200,000) is appropriated from the general fund to the state ethics commission for expenditure in fiscal year 2020 to carry out the provisions of the State Ethics Commission Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2020 shall revert to the general fund.

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

SECTION 21. APPLICABILITY.--The provisions of the State Ethics Commission Act apply to conduct that occurs on or after July 1, 2019.

SECTION 22. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 7 and 12 through 21 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 8 through 11 of this act is January 1, 2020.