

HOUSE BILL 466

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ETHICS; HGEIC → ~~CLARIFYING STATE ETHICS COMMISSION~~  
~~JURISDICTION;~~ ← HGEIC PROVIDING PROCEDURES FOR DETERMINING  
PROBABLE CAUSE.

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

SECTION 1. Section 10-16G-1 NMSA 1978 (being Laws 2019, Chapter 86, Section 1) is amended to read:

"10-16G-1. SHORT TITLE.--~~[Sections 1 through 16 of this~~

.224683.2AIC February 27, 2023 (1:56pm)

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act] Chapter 10, Article 16G NMSA 1978 may be cited as the  
"State Ethics Commission Act".

HGEIC → ~~SECTION 2. A new section of the State Ethics  
Commission Act is enacted to read:~~

~~"[NEW MATERIAL] COMMISSION JURISDICTION.--The commission  
has jurisdiction to enforce the applicable civil compliance  
provisions for public agencies, public officials, public  
employees, candidates for public office, other persons subject  
to the Campaign Reporting Act, government contractors, other  
agents of the state, lobbyists and lobbyist employers,  
including:~~

~~A. Article 4, Sections 27 and 28 of the  
constitution of New Mexico;~~

~~B. Article 5, Section 12 of the constitution of New  
Mexico;~~

~~C. Article 9, Section 14 of the constitution of New  
Mexico;~~

~~D. Article 20, Section 9 of the constitution of New  
Mexico;~~

~~E. the Campaign Reporting Act;~~

~~F. the Voter Action Act;~~

~~G. the Lobbyist Regulation Act;~~

~~H. the Governmental Conduct Act;~~

~~I. the Financial Disclosure Act;~~

~~J. the Gift Act;~~

~~K. the State Ethics Commission Act;~~

~~L. the Procurement Code; and~~

~~M. the Revised Uniform Law on Notarial Acts."~~←HGEIC

SECTION HGEIC→3.←HGEIC HGEIC→2.←HGEIC Section 10-16G-10  
NMSA 1978 (being Laws 2019, Chapter 86, Section 10, as amended)  
is amended to read:

"10-16G-10. COMPLAINTS--INVESTIGATIONS--SUBPOENAS.--

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent 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 be signed under oath by the complainant.

C. Except as provided in Subsection H of this

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section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

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

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

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G. If [~~the general counsel determines~~]

HGEIC→~~a~~←HGEIC HGEIC→**an independant**←HGEIC hearing officer  
HGEIC→~~and two commissioners chosen on a rotating basis~~  
**determine**←HGEIC HGEIC→**determines**←HGEIC that there is  
probable cause, the director shall promptly notify the  
respondent of the finding of probable cause and of the specific  
allegations in the complaint that are being investigated and  
that a public hearing will be set. If the finding of probable  
cause involves a discriminatory practice or actions by the  
respondent against the complainant, no settlement agreement  
shall be reached without prior consultation with the  
complainant. In any case, the notification, complaint,  
specific allegations being investigated and any response to the  
complaint shall be made public thirty days following notice to  
the respondent. The hearing officer HGEIC→~~and~~  
~~commissioners~~←HGEIC chosen to consider probable cause shall not  
participate in the adjudication of the complaint.

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

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specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance

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and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department."

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