

HOUSE BILL 466

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

INTRODUCED BY

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AN ACT

RELATING TO ETHICS; CLARIFYING STATE ETHICS COMMISSION  
JURISDICTION; 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  
act]~~ Chapter 10, Article 16G NMSA 1978 may be cited as the  
"State Ethics Commission Act"."

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

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1 employees, candidates for public office, other persons subject  
2 to the Campaign Reporting Act, government contractors, other  
3 agents of the state, lobbyists and lobbyist employers,  
4 including:

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

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

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

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

13 E. the Campaign Reporting Act;

14 F. the Voter Action Act;

15 G. the Lobbyist Regulation Act;

16 H. the Governmental Conduct Act;

17 I. the Financial Disclosure Act;

18 J. the Gift Act;

19 K. the State Ethics Commission Act;

20 L. the Procurement Code; and

21 M. the Revised Uniform Law on Notarial Acts."

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

24 "10-16G-10. COMPLAINTS--INVESTIGATIONS--SUBPOENAS.--

25 A. A complaint of an alleged ethics violation

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

7 B. The complainant shall set forth in detail the  
8 specific charges against the respondent and the factual  
9 allegations that support the charges and shall sign the  
10 complaint under penalty of false statement. The complainant  
11 shall submit any evidence the complainant has that supports the  
12 complaint. Evidence may include documents, records and names  
13 of witnesses. The commission shall prescribe the forms on  
14 which complaints are to be filed. The complaint form shall be  
15 signed under oath by the complainant.

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

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

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1 counsel initiate an investigation.

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

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

17 G. If ~~[the general counsel determines]~~ a hearing  
18 officer and two commissioners chosen on a rotating basis  
19 determine that there is probable cause, the director shall  
20 promptly notify the respondent of the finding of probable cause  
21 and of the specific allegations in the complaint that are being  
22 investigated and that a public hearing will be set. If the  
23 finding of probable cause involves a discriminatory practice or  
24 actions by the respondent against the complainant, no  
25 settlement agreement shall be reached without prior

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1 consultation with the complainant. In any case, the  
2 notification, complaint, specific allegations being  
3 investigated and any response to the complaint shall be made  
4 public thirty days following notice to the respondent. The  
5 hearing officer and commissioners chosen to consider probable  
6 cause shall not participate in the adjudication of the  
7 complaint.

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

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

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1 a subpoena.

2 J. The commission may petition the court for a  
3 subpoena for the attendance and examination of witnesses or for  
4 the production of books, records, documents or other evidence  
5 reasonably related to an investigation. If a person neglects  
6 or refuses to comply with a subpoena, the commission may apply  
7 to a district court for an order enforcing the subpoena and  
8 compelling compliance. All proceedings in the district court  
9 prior to the complaint being made public pursuant to Subsection  
10 G of this section, or upon entry of a settlement agreement,  
11 shall be sealed. A case is automatically unsealed upon notice  
12 by the commission to the court that the commission has made the  
13 complaint public. No later than July 1 of each even-numbered  
14 year, the chief justice of the supreme court shall appoint an  
15 active or pro tempore district judge to consider the issuance  
16 and enforcement of subpoenas provided for in this section. The  
17 appointment shall end on June 30 of the next even-numbered year  
18 after appointment.

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