

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 614

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;  
CREATING THE STATE ETHICS COMMISSION; PROVIDING POWERS AND  
DUTIES; GRANTING SUBPOENA POWER; ALLOWING ISSUANCE OF ADVISORY  
OPINIONS RELATED TO CERTAIN ETHICS VIOLATIONS; ESTABLISHING  
INVESTIGATIONS OF COMPLAINTS OF CERTAIN ETHICS VIOLATIONS BY  
STATE OFFICIALS, STATE EMPLOYEES AND LOBBYISTS; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"State Ethics Commission Act".

Section 2. DEFINITIONS.--As used in the State Ethics  
Commission Act:

A. "campaign contribution" means a gift,  
subscription, loan, advance or deposit of money or other thing

underscored material = new  
[bracketed material] = delete

1 of value, including the estimated value of an in-kind  
2 contribution, that is made to or received by a candidate for  
3 state office pursuant to the Campaign Reporting Act, including  
4 payment of a debt incurred in an election campaign. "Campaign  
5 contribution" includes the value of services provided without  
6 compensation or unreimbursed travel or other personal expenses  
7 of persons who volunteer a portion or all of their time on  
8 behalf of a candidate or political committee;

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

10 C. "ethics violation" means any action that amounts  
11 to a violation of the Governmental Conduct Act, Procurement  
12 Code, Lobbyist Regulation Act, Financial Disclosure Act or  
13 Chapter 1, Article 19 NMSA 1978;

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

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

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

.175651.2

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

9 (4) a designated member of the staff of an  
10 elected state official; provided that the elected state  
11 official keeps the designation for public inspection and files  
12 it with the secretary of state;

13 (5) a legislator or legislative staff member;

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

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

22 (8) a publisher, owner or employee of the  
23 print media, radio or television, while gathering or  
24 disseminating news or editorial comment to the general public  
25 in the ordinary course of business;

.175651.2

underscored material = new  
[bracketed material] = delete

1           E. "official action" means the action or nonaction  
2 of a state official or state agency, board or commission acting  
3 in a rulemaking proceeding;

4           F. "respondent" means a state official, state  
5 employee or lobbyist who is the subject of a complaint filed  
6 with the commission;

7           G. "state agency" means a department, commission,  
8 council, board, committee, institution, legislative body,  
9 agency, government corporation, educational institution  
10 or instrumentality of the state;

11           H. "state employee" means an employee of the  
12 executive, legislative or judicial branches of the state.  
13 "State employee" includes a person who has a contract with a  
14 state agency pursuant to the Procurement Code, but does not  
15 include a judge or justice, whether elected or appointed, of  
16 any court; and

17           I. "state official" means a person elected or  
18 appointed to an office of the executive or legislative branch  
19 of the state.

20           Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--  
21 TERMS--REMOVAL.--

22           A. The "state ethics commission" is created as an  
23 adjunct agency. The commission consists of the following nine  
24 members:

25                   (1) four members appointed by the governor, no

.175651.2

underscored material = new  
[bracketed material] = delete

1 more than two of whom shall be of the same political party;

2 (2) two members appointed by the speaker of  
3 the house of representatives from a list submitted by the  
4 majority and minority floor leaders of the house of  
5 representatives;

6 (3) two members appointed by the president pro  
7 tempore of the senate from a list submitted by the majority and  
8 minority floor leaders of the senate; and

9 (4) one member appointed by the attorney  
10 general.

11 B. Members of the commission shall be appointed for  
12 staggered terms of four years. Upon initial appointment of the  
13 commission, the members shall draw lots to determine which  
14 three members shall serve an initial term of two years, which  
15 three members shall serve an initial term of three years and  
16 which three members shall serve an initial term of four years;  
17 thereafter, all members shall serve four-year terms. A person  
18 shall not serve as a commission member for more than two  
19 consecutive terms.

20 C. Appointments shall be made in a manner that  
21 meets the following requirements:

22 (1) at least five members shall be appointed  
23 from and reside in each of the five public regulation  
24 commission districts;

25 (2) no more than five members shall be members

.175651.2

1 of the same political party;

2 (3) a member appointed to the commission shall  
3 not have been a state official, state employee or lobbyist for  
4 a period of two years preceding the member's appointment;

5 (4) at least three members shall not have been  
6 state officials; and

7 (5) at least one member shall be from an  
8 Indian nation, tribe or pueblo in New Mexico.

9 D. The commission shall select a chair, vice chair  
10 and other officers it deems necessary. Five members of the  
11 commission constitute a quorum for the transaction of business.

12 E. A vacancy on the commission shall be filled by  
13 appointment of the appointing authority for that member's  
14 position for the remainder of the unexpired term. A commission  
15 member may only be removed for incompetence, neglect of duty or  
16 malfeasance in office. The supreme court of the state of New  
17 Mexico has exclusive jurisdiction over proceedings to remove  
18 commission members and its decision shall be final. A member  
19 shall be given notice of hearing and an opportunity to be heard  
20 before the member is removed.

21 F. During a member's service, a member shall not:

22 (1) hold or seek an elective public office, an  
23 appointed public position or an office in a political party;

24 (2) be a state employee or a lobbyist; or

25 (3) make a campaign contribution.

underscored material = new  
[bracketed material] = delete

1           G. Members shall recuse themselves from a  
2 commission proceeding that involves the appointing authority  
3 who appointed the member to the commission.

4           H. For a period of one calendar year following the  
5 expiration of a member's term, the former member of the  
6 commission shall not:

7                   (1) hold or seek an elective public office, an  
8 appointed public position or public employment;

9                   (2) represent a person or entity who appears  
10 before the commission, unless appearing on the former member's  
11 own behalf; or

12                   (3) accept employment or otherwise provide  
13 services to a person or entity who appears before the  
14 commission during the year.

15           I. Members are entitled to receive per diem and  
16 mileage as provided in the Per Diem and Mileage Act and shall  
17 receive no other compensation, perquisite or allowance.

18           J. The commission shall meet as necessary to carry  
19 out its duties pursuant to the State Ethics Commission Act.

20           Section 4. COMMISSION--POWERS--DUTIES.--

21           A. The commission shall:

22                   (1) receive and investigate complaints  
23 alleging ethics violations against state officials, state  
24 employees and lobbyists as required by the State Ethics  
25 Commission Act;

.175651.2

underscoring material = new  
[bracketed material] = delete

1 (2) create and maintain a toll-free telephone  
2 number to receive comments, complaints and questions concerning  
3 matters within the commission's jurisdiction;

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

8 (4) compile, adopt, publish and provide to all  
9 state officials, state employees and lobbyists an ethics guide  
10 that clearly and plainly explains the ethics requirements set  
11 forth in state law;

12 (5) compile, adopt, publish and provide to all  
13 state officials, state employees and lobbyists a business  
14 ethics guide that clearly and plainly explains the ethics  
15 requirements set forth in state law as they relate to  
16 conducting business with the state;

17 (6) provide annual ethics training to all  
18 state officials, state employees and lobbyists;

19 (7) communicate periodically with the state  
20 auditor, state treasurer, secretary of state, attorney general,  
21 the co-chairs of the New Mexico legislative council and the  
22 chief justice of the supreme court;

23 (8) develop, adopt and promulgate all rules  
24 necessary to implement and administer the provisions of the  
25 State Ethics Commission Act, including rules of procedure for

.175651.2

underscored material = new  
[bracketed material] = delete

1 investigations conducted by the commission;

2 (9) employ an executive director; and

3 (10) submit an annual report of its  
4 activities, including any recommendations regarding state  
5 ethics laws, in December of each year to the governor, the  
6 legislature and the chief justice of the supreme court.

7 B. The commission may:

8 (1) initiate complaints alleging ethics  
9 violations against state officials, state employees and  
10 lobbyists;

11 (2) recommend disciplinary actions in  
12 accordance with the provisions of the State Ethics Commission  
13 Act for ethics violations;

14 (3) subpoena and require the attendance of  
15 witnesses and the production of accounts, books, papers,  
16 records and other documents pursuant to an investigation  
17 conducted by the commission;

18 (4) issue advisory opinions in accordance with  
19 the provisions of the State Ethics Commission Act; and

20 (5) contract for the provisions of goods and  
21 services.

22 Section 5. EXECUTIVE DIRECTOR--DUTIES--EMPLOYMENT.--

23 A. The executive director of the commission shall:

24 (1) be employed by, report directly to and  
25 serve at the pleasure of the commission;

.175651.2

underscored material = new  
[bracketed material] = delete

1 (2) hire a general counsel for the commission  
2 and all other personnel as may be necessary to carry out the  
3 responsibilities of the commission;

4 (3) perform all investigations on behalf of  
5 the commission;

6 (4) bring complaints and investigation results  
7 before the commission;

8 (5) prepare an annual budget for the  
9 commission and submit it to the commission for approval; and

10 (6) make recommendations to the commission of  
11 proposed rules or legislative changes needed to provide better  
12 administration of the State Ethics Commission Act.

13 B. The executive director may administer oaths  
14 during investigations conducted pursuant to the State Ethics  
15 Commission Act.

16 Section 6. COMMISSION--ADVISORY OPINIONS.--

17 A. Upon a majority vote, the commission may issue  
18 advisory opinions as to whether a given set of facts and  
19 circumstances would, in its opinion, constitute an ethics  
20 violation. Unless amended or revoked, an advisory opinion  
21 issued by the commission shall be binding on the commission in  
22 any subsequent commission proceedings concerning the person who  
23 requested the opinion; provided that the person acted in good  
24 faith and in reliance upon the opinion.

25 B. The commission shall promulgate rules for

.175651.2

underscored material = new  
[bracketed material] = delete

1 issuing advisory opinions; provided that:

2 (1) advisory opinions shall be requested in  
3 writing and identify a specific set of facts and circumstances;

4 (2) all requests to the commission for  
5 advisory opinions are confidential; and

6 (3) the commission may publish an advisory  
7 opinion after omitting the name of the person who requested the  
8 opinion.

9 Section 7. COMMISSION--COMPLAINTS--DISMISSALS AND  
10 INVESTIGATIONS--FINDINGS AND RECOMMENDATIONS--REPORTS  
11 REQUIRED--CRIMINAL REFERRAL REQUIRED.--

12 A. The commission shall receive and investigate  
13 complaints regarding alleged ethics violations by a state  
14 official, state employee or lobbyist. Governmental agencies  
15 may refer complaints of alleged ethics violations to the  
16 commission, and the commission may also initiate complaints  
17 upon a majority vote of commission members.

18 B. Upon receipt of a complaint, the executive  
19 director of the commission shall review the complaint and make  
20 an initial determination whether the conduct alleged in the  
21 complaint is within the jurisdiction of the commission. If the  
22 alleged conduct is not within the commission's jurisdiction,  
23 the executive director shall dismiss the complaint. If the  
24 alleged conduct is within the commission's jurisdiction, the  
25 executive director shall initiate an investigation to determine

.175651.2

underscoring material = new  
[bracketed material] = delete

1 whether the complaint is frivolous or if reasonable cause may  
2 exist to believe the respondent's alleged conduct constituted  
3 an ethics violation.

4 C. Within thirty days of receiving the complaint,  
5 the executive director shall notify the person who made the  
6 complaint and the respondent of the disposition of the  
7 complaint. The executive director shall also notify the  
8 respondent of the general nature of the complaint.

9 D. As part of the investigation, the executive  
10 director may interview witnesses and examine books, documents,  
11 records and papers reasonably related to the complaint. All  
12 testimony in an investigation shall be under oath and the  
13 respondent shall have the right to be represented by legal  
14 counsel. If the executive director determines that the  
15 testimony of any person or the production of books, documents,  
16 records or papers is required in the investigation, the  
17 director shall request that the commission issue the  
18 appropriate subpoena.

19 E. The commission may, upon a majority vote of  
20 commission members, issue subpoenas for the attendance and  
21 testimony of witnesses or the production of books, documents,  
22 records and papers reasonably related to the complaint.  
23 Subpoenas may be signed by any member of the commission and  
24 shall state with reasonable certainty the nature of the  
25 investigation, the nature of the information to be produced,

.175651.2

underscoring material = new  
[bracketed material] = delete

1 the time and place where the information shall be produced and  
2 the consequences of failure to obey the subpoena. After  
3 service of the subpoena upon the person, if the person neglects  
4 or refuses to comply with the subpoena, the commission may  
5 apply to a district court for an order compelling compliance.

6 F. The executive director shall present a written  
7 report of the investigation to the commission. The respondent  
8 and the respondent's legal counsel may attend the meeting and  
9 the executive director shall provide reasonable notice to the  
10 respondent in writing of the date, time and place of the  
11 meeting. Notwithstanding the provisions of the Open Meetings  
12 Act, meetings of the commission held for the purpose of an  
13 investigation conducted pursuant to this section are closed to  
14 the public. Except as otherwise provided in this section, all  
15 complaints, communications, records or other information  
16 related to a preliminary investigation shall be confidential.

17 G. If the commission finds upon a majority vote of  
18 commission members that there is reasonable cause to believe,  
19 based on the facts in the investigation report and the facts  
20 alleged in the complaint, that the respondent's alleged conduct  
21 constituted an ethics violation, the commission shall report  
22 its finding in writing to the respondent's appointing  
23 authority, employer or appropriate state agency. The written  
24 finding may include recommendations for disciplinary action or  
25 further proceedings against the respondent. A commission

.175651.2

1 finding reported pursuant to this subsection shall be public,  
2 except that the finding shall not disclose any confidential  
3 communications, records or other information collected during  
4 the investigation.

5 H. If the commission also finds upon a majority  
6 vote of a quorum of commission members that the respondent's  
7 conduct may amount to a criminal violation of state law, the  
8 commission shall immediately refer the matter to the attorney  
9 general or the appropriate district attorney. The executive  
10 director shall provide the attorney general or district  
11 attorney with any evidence it collected during its  
12 investigation that may be used in a criminal proceeding.

13 I. If the commission finds upon a majority vote of  
14 commission members that, based on the facts in the  
15 investigation report and the facts alleged in the complaint,  
16 reasonable cause does not exist to believe that the  
17 respondent's alleged conduct constituted an ethics violation or  
18 that the complaint is frivolous, the commission shall dismiss  
19 the complaint and notify the respondent in writing of the  
20 dismissal no later than five days after the finding is made.  
21 Following a dismissal and upon the request of the respondent,  
22 the commission shall provide a report of its finding in writing  
23 to the respondent. A commission finding issued pursuant to  
24 this subsection shall not be public except upon the request of  
25 the respondent; provided that the finding shall not disclose

underscored material = new  
[bracketed material] = delete

1 any confidential communications, records or other information  
2 collected during the investigation.

3 J. No complaint may be filed pursuant to this  
4 section later than two years after an alleged ethics violation  
5 was committed.

6 Section 8. COMPLAINTS AND INVESTIGATIONS--TIME  
7 LIMITATIONS.--If the commission has not scheduled a meeting  
8 concerning the disposition of a complaint within ninety days  
9 after the complaint is received by the commission or has not  
10 disposed of the complaint within six months after the complaint  
11 was received, the commission shall dismiss the complaint and  
12 notify the respondent in writing of the dismissal. A dismissal  
13 of a complaint pursuant to this subsection shall not be public  
14 except upon the request of the respondent; provided that the  
15 finding shall not disclose any confidential communications,  
16 records or other information collected during the investigation  
17 of the complaint.

18 Section 9. PROHIBITED ACTIONS.--A person shall not take  
19 or threaten to take any adverse action against another person  
20 who:

21 A. files a complaint with the commission alleging  
22 an ethics violation against a state official, state employee or  
23 lobbyist; or

24 B. provides testimony, records, reports or other  
25 information to the executive director or the commission during

.175651.2

underscoring material = new  
[bracketed material] = delete

1 an investigation conducted pursuant to the State Ethics  
2 Commission Act.

3 Section 10. APPROPRIATION.--Five hundred thousand dollars  
4 (\$500,000) is appropriated from the general fund to the state  
5 ethics commission for expenditure in fiscal years 2009 and 2010  
6 to carry out the provisions of the State Ethics Commission Act.  
7 Any unexpended or unencumbered balance remaining at the end of  
8 fiscal year 2010 shall revert to the general fund.

9 Section 11. APPLICABILITY.--The provisions of the State  
10 Ethics Commission Act apply to a state official, state employee  
11 or lobbyist who commits an ethics violation on or after July 1,  
12 2009.

13 Section 12. EMERGENCY.--It is necessary for the public  
14 peace, health and safety that this act take effect immediately.