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SENATE BILL 268

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO ETHICS; ENACTING THE GOVERNMENTAL STANDARDS
COMMISSION ACT; CREATING THE GOVERNMENTAL STANDARDS COMMISSION;
PROVIDING POWERS AND DUTIES; PROVIDING FOR ANNUAL ETHICS
TRAINING AND THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE
DEVELOPMENT OF A PROPOSED ETHICS CODE FOR THE EXECUTIVE BRANCH;
PROVIDING FOR THE ISSUANCE OF ADVISORY OPINIONS; TRANSFERRING
THE ADMINISTRATION OF CERTAIN ACTS TO THE GOVERNMENTAL
STANDARDS COMMISSION; PROVIDING FOR THE FILING OF COMPLAINTS
AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT
CONTRACTORS, LOBBYISTS AND OTHERS FOR ETHICS VIOLATIONS;
PROVIDING FOR INVESTIGATIONS OF COMPLAINTS; GRANTING SUBPOENA
POWERS; PROVIDING PENALTIES; MAKING AN APPROPRIATION;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION IN LAWS
2009 BY REPEALING LAWS 2009, CHAPTER 68, SECTION 2.

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

2 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
3 through 14 of this act may be cited as the "Governmental
4 Standards Commission Act".

5 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
6 Governmental Standards Commission Act:

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

13 B. "commission" means the governmental standards
14 commission;

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

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

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

20 F. "ethics violation" means an action that is a
21 violation of the Gift Act; the Governmental Conduct Act; the
22 Procurement Code; the Lobbyist Regulation Act; the Financial
23 Disclosure Act; Chapter 1, Article 19 NMSA 1978; the Voter
24 Action Act; or any code of ethics adopted pursuant to those
25 laws or Section 4 of the Governmental Standards Commission Act;

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1 G. "government contractor" means a person who has a
2 contract with a state agency or who has submitted a competitive
3 sealed proposal or competitive sealed bid for a contract with a
4 state agency;

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

7 I. "lobbyist" means a person who is required to
8 register as a lobbyist pursuant to the Lobbyist Regulation Act;

9 J. "political party" means a political party, any
10 of whose candidates received at least five percent of the total
11 number of votes cast at the last preceding general election for
12 the office of governor or of president of the United States, as
13 the case may be, and whose membership totals not less than one-
14 third of one percent of the statewide registered voter file on
15 the day of the governor's primary election proclamation;

16 K. "respondent" means a state official, state
17 employee, government contractor, lobbyist or other person
18 subject to an act administered by the commission who is the
19 subject of a complaint filed with or by the commission;

20 L. "state agency" means any department, commission,
21 council, board, committee, agency or institution of the
22 executive or legislative branch of government of the state or
23 any instrumentality of the state, including the New Mexico
24 mortgage finance authority, the New Mexico finance authority,
25 the New Mexico exposition center authority, the New Mexico

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1 hospital equipment loan council and the New Mexico renewable
2 energy transmission authority;

3 M. "state employee" means an employee of a state
4 agency; and

5 N. "state official" means a person elected or
6 appointed to an elective office, or a person appointed to an
7 appointive office, in the executive or legislative branch of
8 the state.

9 Section 3. [NEW MATERIAL] GOVERNMENTAL STANDARDS
10 COMMISSION CREATED--MEMBERSHIP--TERMS--REMOVAL--LIMITATIONS.--

11 A. The "governmental standards commission" is
12 created as an adjunct agency of the executive branch under the
13 direction of six commissioners, appointed as provided in this
14 section.

15 B. For the initial appointments, the New Mexico
16 supreme court, with the assistance of the appellate judges
17 nominating commission, shall nominate to the governor and the
18 leadership of the house of representatives and the senate a
19 list of at least twenty-one nominees who are qualified by
20 knowledge, interest and temperament to serve as commissioners.
21 The supreme court shall give due regard to geographic
22 representation, including providing at least three names from
23 each congressional district, and cultural diversity of the
24 state. From the list of nominees provided by the supreme
25 court, commissioners shall be appointed as follows:

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1 (1) two commissioners who are not members of
2 the same political party and who are from different
3 congressional districts, appointed by the governor;

4 (2) one commissioner appointed by the
5 president pro tempore of the senate;

6 (3) one commissioner appointed by the minority
7 floor leader of the senate;

8 (4) one commissioner appointed by the speaker
9 of the house of representatives; and

10 (5) one commissioner appointed by the minority
11 floor leader of the house of representatives.

12 C. Appointments shall be made in a manner that
13 meets the following requirements:

14 (1) all commissioners shall be residents of
15 New Mexico; and

16 (2) no more than three commissioners shall be
17 registered members of the same political party, and no person
18 whose party registration changed in the year prior to
19 appointment shall be appointed to the commission.

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

22 E. Commissioners shall be appointed for staggered
23 terms of four years beginning July 1, 2010. The initial
24 commissioners shall draw lots to determine which two
25 commissioners serve an initial term of two years, which two

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1 commissioners serve an initial term of three years and which
2 two commissioners serve an initial term of four years;
3 thereafter, all commissioners shall serve four-year terms. A
4 person shall not serve as a commissioner for more than two
5 consecutive terms. Members shall serve until their successors
6 are appointed and qualified. A vacancy on the commission shall
7 be filled by appointment by the original appointing authority
8 for the remainder of the unexpired term.

9 F. The New Mexico supreme court shall provide to
10 the original appointing authority a list of at least three
11 qualified nominees to fill vacancies and for the appointment of
12 commissioners to new terms.

13 G. Before entering upon the duties of the office of
14 commissioner, each commissioner shall review the Governmental
15 Standards Commission Act and other laws and rules pertaining to
16 ethics and governmental conduct in New Mexico and the
17 commission's responsibilities, including the consequences of
18 failure to comply with the provisions of the Governmental
19 Standards Commission Act, and shall take the oath of office as
20 provided in Article 20, Section 1 of the constitution of New
21 Mexico.

22 H. During the commissioner's term of office, a
23 commissioner shall not:

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

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1 (2) be a state employee, government contractor
2 or lobbyist.

3 I. The commission shall meet as necessary to carry
4 out its duties pursuant to the Governmental Standards
5 Commission Act. Commissioners are entitled to receive per diem
6 and mileage as provided in the Per Diem and Mileage Act and
7 shall receive no other compensation, perquisite or allowance.

8 J. The commission shall elect annually a
9 chairperson, vice chairperson and other officers it deems
10 necessary.

11 K. Four commissioners constitute a quorum for the
12 transaction of business. No action shall be taken by the
13 commission unless at least four members concur, including at
14 least two members from each of the two largest major political
15 parties.

16 L. For a period of one calendar year following the
17 expiration of a commissioner's term or following the
18 resignation or removal of a commissioner, that commissioner
19 shall not:

20 (1) seek or hold an elective public office,
21 appointed public position or public employment;

22 (2) represent a respondent, unless appearing
23 on the commissioner's own behalf; or

24 (3) accept employment or otherwise provide
25 services to a respondent, unless the commissioner accepted

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1 employment or provided services prior to the filing of a
2 complaint against the respondent.

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

12 Section 4. [NEW MATERIAL] COMMISSION--DUTIES AND
13 POWERS.--

14 A. The commission shall:

15 (1) receive and investigate complaints
16 alleging violations of an act administered by the commission or
17 alleging ethics violations against state officials, state
18 employees, government contractors and lobbyists;

19 (2) hold hearings in appropriate cases to
20 determine whether there has been an ethics violation;

21 (3) beginning on January 1, 2011, administer
22 the provisions of the following acts:

23 (a) the Campaign Reporting Act;

24 (b) the Voter Action Act;

25 (c) the Lobbyist Regulation Act;

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- 1 (d) the Governmental Conduct Act;
- 2 (e) the Financial Disclosure Act; and
- 3 (f) the Gift Act;

4 (4) develop, adopt and promulgate the rules
5 necessary to implement and administer the provisions of the
6 Governmental Standards Commission Act;

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

11 (6) draft a proposed code of ethics for state
12 officials and state employees and submit the proposed code to
13 each elected state official and state agency for adoption;

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

19 (8) offer annual ethics training to state
20 officials, state employees, government contractors, lobbyists
21 and other interested persons;

22 (9) employ an executive director, who shall be
23 an attorney; and

24 (10) submit an annual report of its
25 activities, including any recommendations regarding state

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1 ethics laws or the scope of its powers and duties, in December
2 of each year to the legislature and the governor.

3 B. The commission may:

4 (1) initiate complaints alleging violations of
5 an act administered by the commission or alleging ethics
6 violations against state officials, state employees, government
7 contractors and lobbyists;

8 (2) issue subpoenas requiring the attendance
9 of witnesses or the production of books, records, documents or
10 other evidence relevant to an investigation; and

11 (3) issue advisory opinions to state
12 officials, state employees, government contractors and
13 lobbyists in accordance with the provisions of the Governmental
14 Standards Commission Act.

15 Section 5. [NEW MATERIAL] EXECUTIVE DIRECTOR--
16 APPOINTMENT--DUTIES AND POWERS.--

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

24 B. The director shall:

25 (1) take the oath of office required by

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1 Article 20, Section 1 of the constitution of New Mexico;

2 (2) perform investigations on behalf of the
3 commission;

4 (3) bring complaints and investigation results
5 before the commission for consideration;

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

8 (5) make recommendations to the commission of
9 proposed rules or legislative changes needed to provide better
10 administration of the Governmental Standards Commission Act;
11 and

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

14 C. The director may:

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

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

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

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

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

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

5 (3) accept employment or otherwise provide
6 services to a respondent, unless the director accepted
7 employment or provided services prior to the filing of a
8 complaint.

9 Section 6. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

10 A. A commissioner shall recuse from and not
11 participate in a commission proceeding in which the
12 commissioner has a conflict of interest. The commissioner
13 shall state the reason for the recusal.

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

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

24 D. If four or more commissioners have recused
25 themselves or are disqualified from participating in a

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1 proceeding, the remaining commissioners shall appoint temporary
2 commissioners to participate in that proceeding. Appointments
3 of temporary commissioners shall be made by a majority vote of
4 the remaining commissioners in accordance with the political
5 party affiliation and geographical representation requirements
6 and the qualifications of Section 3 of the Governmental
7 Standards Commission Act.

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

11 Section 7. [NEW MATERIAL] ADVISORY OPINIONS.--

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

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

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

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

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

24 B. A request for an advisory opinion is
25 confidential and not subject to the provisions of the

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1 Inspection of Public Records Act.

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

6 Section 8. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--
7 SUBPOENAS.--

8 A. A complaint of an alleged violation of any act
9 administered by the commission or alleged ethics violation
10 committed by a state official, state employee, government
11 contractor or lobbyist may be:

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

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

16 B. The complainant shall set forth in detail the
17 specific charges against the respondent and the factual
18 allegations that support the charges and shall sign the
19 complaint under penalty of false statement. The complainant
20 shall submit any evidence the complainant has that supports the
21 complaint. Evidence may include documents, records and names
22 of witnesses. The commission shall prescribe the forms on
23 which complaints are to be filed.

24 C. The chairperson of the commission shall sign a
25 complaint initiated by the commission, and the complaint shall

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1 set forth in detail the specific charges against the respondent
2 and the factual allegations that support the charges.

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

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

12 F. If the commission determines that there is
13 sufficient cause to proceed with an investigation, the director
14 shall investigate the complaint. The director shall promptly
15 notify the respondent that a complaint has been filed and is
16 being investigated and shall notify the respondent of the
17 specific allegations in the complaint and the specific ethics
18 violations implicated by the complaint.

19 G. As part of an investigation, the director may
20 administer oaths, interview witnesses and examine books,
21 records, documents and other evidence reasonably related to the
22 complaint. All testimony in an investigation shall be under
23 oath, and the respondent shall have the right to be represented
24 by legal counsel. If the director determines that a subpoena
25 is necessary to obtain the testimony of any person or the

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1 production of books, records, documents or other evidence, the
2 director shall request that the commission issue an appropriate
3 subpoena.

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

20 I. A state official or state employee who is a
21 respondent shall be entitled to representation by the risk
22 management division of the general services department;
23 provided, however, that if the respondent is found to have
24 committed an ethics violation, the respondent shall reimburse
25 the division for the respondent's equitable share of reasonable

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1 attorney fees and costs. If the respondent was represented by
2 an attorney employee of the risk management division, the
3 division shall be reimbursed at the full cost incurred by the
4 division, including benefits and taxes, for employing the
5 attorney for the hours the attorney provided on the case.

6 Section 9. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
7 LIMITATIONS.--

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

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

24 Section 10. [NEW MATERIAL] REPORT--HEARING--FINDINGS AND
25 CONCLUSIONS--DISCLOSURE OF ETHICS VIOLATION.--

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

5 B. At the hearing, the commission has the power to
6 administer oaths. The chair of the commission shall preside
7 over the hearing. The respondent has the right to be
8 represented by counsel and to present evidence and testimony
9 and examine and cross-examine witnesses.

10 C. After the hearing, if the commission finds by
11 clear and convincing evidence that the respondent's conduct
12 constituted an ethics violation, the commission shall issue a
13 written report that shall include findings of fact and
14 conclusions of law. If the respondent is a state official or
15 state employee, the written report may include a public
16 reprimand or censure regarding the respondent's behavior or
17 recommendations for disciplinary action against the respondent.

18 D. The commission shall publicly disclose a report
19 issued pursuant to Subsection C of this section and provide it,
20 along with all evidence collected during its investigation, to
21 the respondent, the attorney general and the:

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

24 (2) house of representatives if the respondent
25 is a state official elected to an office of the executive

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1 branch;

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

4 (4) appropriate state agency if the respondent
5 is a state employee;

6 (5) state agency with which the respondent has
7 a government contract if the respondent is a government
8 contractor; or

9 (6) respondent's employer and clients if the
10 respondent is a lobbyist.

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

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

23 Section 11. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--
24 All complaints, reports, files, records and communications
25 collected or generated by the commission or its director that

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1 pertain to alleged ethics violations are confidential and not
2 subject to the provisions of the Inspection of Public Records
3 Act. Such complaints, reports, files, records or
4 communications shall not be disclosed unless:

5 A. disclosure is required pursuant to the
6 provisions of the Governmental Standards Commission Act;

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

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

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

13 Section 12. [NEW MATERIAL] CRIMINAL VIOLATIONS--
14 REFERRAL.--If the commission finds at any time that the
15 respondent's conduct may amount to a criminal violation, the
16 commission shall immediately refer the matter to the attorney
17 general or an appropriate district attorney. The commission
18 shall provide the attorney general or district attorney with
19 all evidence collected during its investigation that may be
20 used in a criminal proceeding. Nothing in this section
21 prevents the commission from taking any action otherwise
22 authorized by the Governmental Standards Commission Act or
23 deciding to hold a matter in abeyance pending resolution of any
24 criminal charges.

25 Section 13. [NEW MATERIAL] STATUTE OF LIMITATIONS.--The

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

4 Section 14. [NEW MATERIAL] PROHIBITED ACTIONS.--

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

8 (1) files a complaint with the commission
9 alleging an ethics violation against a state official, state
10 employee, government contractor, lobbyist or other respondent;
11 or

12 (2) provides testimony, records, documents or
13 other information to the commission during an investigation or
14 at a hearing conducted pursuant to the Governmental Standards
15 Commission Act.

16 B. Nothing in the Governmental Standards Commission
17 Act precludes civil actions or criminal sanctions for libel,
18 slander or other civil or criminal claims against a person who
19 files a false claim under that act.

20 Section 15. Section 1-19-26 NMSA 1978 (being Laws 1979,
21 Chapter 360, Section 2, as amended) is amended to read:

22 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
23 Act:

24 A. "advertising campaign" means an advertisement or
25 series of advertisements used for a political purpose and

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1 disseminated to the public either in print, by radio or
2 television broadcast or by any other electronic means,
3 including telephonic communications, and may include direct or
4 bulk mailings of printed materials;

5 B. "anonymous contribution" means a contribution
6 the contributor of which is unknown to the candidate or the
7 candidate's agent or the political committee or its agent who
8 accepts the contribution;

9 C. "bank account" means an account in a financial
10 institution located in New Mexico;

11 D. "campaign committee" means two or more persons
12 authorized by a candidate to raise, collect or expend
13 contributions on the candidate's behalf for the purpose of
14 electing the candidate to office;

15 E. "candidate" means an individual who seeks or
16 considers an office in an election covered by the Campaign
17 Reporting Act, including a public official, who either has
18 filed a declaration of candidacy or nominating petition or:

19 (1) for a non-statewide office, has received
20 contributions or made expenditures of one thousand dollars
21 (\$1,000) or more or authorized another person or campaign
22 committee to receive contributions or make expenditures of one
23 thousand dollars (\$1,000) or more for the purpose of seeking
24 election to the office; or

25 (2) for a statewide office, has received

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1 contributions or made expenditures of two thousand five hundred
2 dollars (\$2,500) or more or authorized another person or
3 campaign committee to receive contributions or make
4 expenditures of two thousand five hundred dollars (\$2,500) or
5 more for the purpose of seeking election to the office or for
6 candidacy exploration purposes in the years prior to the year
7 of the election;

8 F. "contribution" means a gift, subscription, loan,
9 advance or deposit of money or other thing of value, including
10 the estimated value of an in-kind contribution, that is made or
11 received for a political purpose, including payment of a debt
12 incurred in an election campaign, but "contribution" does not
13 include the value of services provided without compensation or
14 unreimbursed travel or other personal expenses of individuals
15 who volunteer a portion or all of their time on behalf of a
16 candidate or political committee, nor does it include the
17 administrative or solicitation expenses of a political
18 committee that are paid by an organization that sponsors the
19 committee;

20 G. "deliver" or "delivery" means to deliver by
21 certified or registered mail, telecopier, electronic
22 transmission or facsimile or by personal service;

23 H. "election" means any primary, general or
24 statewide special election in New Mexico and includes county
25 and judicial retention elections but excludes municipal, school

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1 board and special district elections;

2 I. "election year" means an even-numbered year in
3 which an election covered by the Campaign Reporting Act is
4 held;

5 J. "expenditure" means a payment, transfer or
6 distribution or obligation or promise to pay, transfer or
7 distribute any money or other thing of value for a political
8 purpose, including payment of a debt incurred in an election
9 campaign or pre-primary convention, but does not include the
10 administrative or solicitation expenses of a political
11 committee that are paid by an organization that sponsors the
12 committee;

13 K. "person" means an individual or entity;

14 L. "political committee" means two or more persons,
15 other than members of a candidate's immediate family or
16 campaign committee or a husband and wife who make a
17 contribution out of a joint account, who are selected,
18 appointed, chosen, associated, organized or operated primarily
19 for a political purpose; and "political committee" includes:

20 (1) political parties, political action
21 committees or similar organizations composed of employees or
22 members of any corporation, labor organization, trade or
23 professional association or any other similar group that
24 raises, collects, expends or contributes money or any other
25 thing of value for a political purpose;

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1 (2) a single individual whose actions
2 represent that the individual is a political committee; and

3 (3) a person or an organization of two or more
4 persons that within one calendar year expends funds in excess
5 of five hundred dollars (\$500) to conduct an advertising
6 campaign for a political purpose;

7 M. "political purpose" means influencing or
8 attempting to influence an election or pre-primary convention,
9 including a constitutional amendment or other question
10 submitted to the voters;

11 N. "prescribed form" means a form or electronic
12 format prepared and prescribed by the [~~secretary of state~~]
13 governmental standards commission;

14 O. "proper filing officer" means [~~either the~~
15 ~~secretary of state or the county clerk~~] the governmental
16 standards commission as provided in Section 1-19-27 NMSA 1978;

17 P. "public official" means a person elected to an
18 office in an election covered by the Campaign Reporting Act or
19 a person appointed to an office that is subject to an election
20 covered by that act; and

21 Q. "reporting individual" means every public
22 official, candidate or treasurer of a campaign committee and
23 every treasurer of a political committee."

24 Section 16. Section 1-19-26.1 NMSA 1978 (being Laws 1993,
25 Chapter 46, Section 2, as amended) is amended to read:

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1 "1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--
2 DISCLOSURES.--

3 A. It is unlawful for [~~any~~] a political committee
4 that receives, contributes or expends in excess of five hundred
5 dollars (\$500) in any calendar year to continue to receive or
6 make [~~any~~] a contribution or expenditure for a political
7 purpose unless that political committee appoints and maintains
8 a treasurer and registers with the [~~secretary of state~~]
9 governmental standards commission.

10 B. A political committee shall register with the
11 [~~secretary of state~~] governmental standards commission within
12 ten days of receiving, contributing or expending in excess of
13 five hundred dollars (\$500) by paying a filing fee of fifty
14 dollars (\$50.00) and filing a statement of organization under
15 oath on a prescribed form showing:

16 (1) the full name of the political committee,
17 which shall fairly and accurately reflect the identity of the
18 committee, including any sponsoring organization, and its
19 address;

20 (2) a statement of the purpose for which the
21 political committee was organized;

22 (3) the name, address and relationship of any
23 connected or associated organization or entity;

24 (4) the names and addresses of the officers of
25 the committee; and

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1 (5) an identification of the bank used by the
2 committee for all expenditures or contributions made or
3 received.

4 C. The provisions of this section do not apply to a
5 political committee that is located in another state and is
6 registered with the federal election commission if the
7 political committee reports on federal reporting forms filed
8 with the federal election commission all expenditures for and
9 contributions made to reporting individuals in New Mexico and
10 files with the [~~secretary of state~~] governmental standards
11 commission, according to the schedule required for the filing
12 of forms with the federal election commission, a copy of either
13 the full report or the cover sheet and the portions of the
14 federal reporting forms that contain the information on
15 expenditures for and contributions made to reporting
16 individuals in New Mexico."

17 Section 17. Section 1-19-26.2 NMSA 1978 (being Laws 1997,
18 Chapter 112, Section 1) is amended to read:

19 "1-19-26.2. RULES AND REGULATIONS.--The [~~secretary of~~
20 ~~state~~] governmental standards commission may adopt and
21 promulgate rules and regulations to implement the provisions of
22 the Campaign Reporting Act. In adopting and promulgating these
23 rules and regulations, the [~~secretary of state~~] governmental
24 standards commission shall comply with the provisions of the
25 Administrative Procedures Act. In addition to any other

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1 notification required pursuant to the provisions of Paragraph
2 (2) of Subsection A of Section 12-8-4 NMSA 1978, the [~~secretary~~
3 ~~of state~~] governmental standards commission shall notify all
4 qualified political parties in the state and the New Mexico
5 legislative council prior to adopting, amending or repealing
6 any rule or regulation."

7 Section 18. Section 1-19-27 NMSA 1978 (being Laws 1979,
8 Chapter 360, Section 3, as amended) is amended to read:

9 "1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

10 A. Except for those candidates and public
11 [~~officials~~] officials who file a statement of no activity, all
12 reporting individuals shall file with the proper filing officer
13 a report of expenditures and contributions on a prescribed
14 form.

15 B. The proper filing officer for filing reports of
16 expenditures and contributions by a political committee is the
17 [~~secretary of state~~] governmental standards commission.

18 C. The proper filing officer for filing reports of
19 expenditures and contributions or statements of no activity is
20 the [~~secretary of state~~] governmental standards commission for
21 all candidates and public officials.

22 D. The [~~secretary of state~~] governmental standards
23 commission shall develop or contract for services to develop an
24 electronic reporting system for receiving and for public
25 inspection of reports of expenditures and contributions and

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1 statements of no activity to the Campaign Reporting Act. The
2 electronic reporting system shall:

3 (1) enable a person to file reports online by
4 filling out forms on the [~~secretary of state's~~] commission's
5 web site; and

6 (2) provide for encrypted transmissions."

7 Section 19. Section 1-19-28 NMSA 1978 (being Laws 1979,
8 Chapter 360, Section 4, as amended) is amended to read:

9 "1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--
10 CANDIDATES.--

11 A. The [~~secretary of state~~] governmental standards
12 commission annually shall furnish to all reporting individuals
13 the prescribed forms for the reporting of expenditures and
14 contributions, supplemental reports and a statement of no
15 activity and the specific dates the reports and statement are
16 due.

17 B. In addition to the provisions of Subsection A of
18 this section, at the time of filing a declaration of candidacy
19 or a nominating petition, the [~~proper filing officer~~] secretary
20 of state or the county clerk shall give the candidate the
21 prescribed reporting forms and the schedule of specific dates
22 for filing the required reports or a statement of no activity.
23 The prescribed forms shall also be made available to all
24 reporting individuals at the office of the secretary of state,
25 the governmental standards commission and in each county at the

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1 office of the county clerk."

2 Section 20. Section 1-19-29 NMSA 1978 (being Laws 1993,
3 Chapter 46, Section 5, as amended) is amended to read:

4 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

5 A. Except as otherwise provided in this section,
6 all reporting individuals shall file with the proper filing
7 officer by 5:00 p.m. on the second Monday in April and October
8 a report of all expenditures made and contributions received on
9 or before the first Monday in those months and not previously
10 reported. The report shall be filed biannually until the
11 reporting individual's bank account has been closed and the
12 other provisions specified in Subsection F of this section have
13 been satisfied.

14 B. In an election year, instead of the biannual
15 reports provided for in Subsection A of this section, all
16 reporting individuals, except for public officials who are not
17 candidates in an election that year, shall file reports of all
18 expenditures made and contributions received or, if applicable,
19 statements of no activity, according to the following schedule:

20 (1) by 5:00 p.m. on the second Monday in
21 April, a report of all expenditures made and contributions
22 received on or before the first Monday in April and not
23 previously reported;

24 (2) by 5:00 p.m. on the second Monday in May,
25 a report of all expenditures made and contributions received on

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1 or before the first Monday in May and not previously reported;

2 (3) by 5:00 p.m. on the second Monday in
3 September, a report of all expenditures made and contributions
4 received on or before the first Monday in September and not
5 previously reported;

6 (4) by 5:00 p.m. on the second Monday in
7 October, a report of all expenditures made and contributions
8 received on or before the first Monday in October and not
9 previously reported;

10 (5) by 5:00 p.m. on the Thursday before a
11 primary, general or statewide special election, a report of all
12 expenditures made and contributions received by 5:00 p.m. on
13 the Tuesday before the election. Any contribution or pledge to
14 contribute that is received after 5:00 p.m. on the Tuesday
15 before the election and that is for five hundred dollars (\$500)
16 or more in a legislative or non-statewide judicial election, or
17 two thousand five hundred dollars (\$2,500) or more in a
18 statewide election, shall be reported to the proper filing
19 officer either in a supplemental report on a prescribed form
20 within twenty-four hours of receipt or in the report to be
21 filed by 5:00 p.m. on the Thursday before a primary, general or
22 statewide special election, except that any such contribution
23 or pledge to contribute that is received after 5:00 p.m. on the
24 Friday before the election may be reported by 12:00 noon on the
25 Monday before the election; and

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1 (6) by 5:00 p.m. on the thirtieth day after a
2 primary, general or statewide special election, a report of all
3 expenditures made and contributions received on or before the
4 twenty-fifth day after the election and not previously
5 reported.

6 C. If a candidate or public official has not
7 received any contributions and has not made any expenditures
8 since the candidate's or official's last report was filed with
9 the proper filing officer, the candidate or official shall only
10 be required to file a statement of no activity, which shall not
11 be required to be notarized, in lieu of a full report when that
12 report would otherwise be due and shall not be required to file
13 a full report until the next required filing date occurring
14 after an expenditure is made or a contribution is received.

15 D. In an election year, a public official who is
16 not a candidate shall file biannual reports of expenditures
17 made and contributions received or statements of no activity in
18 accordance with the schedule provided for in Subsection A of
19 this section.

20 E. A report of expenditures and contributions filed
21 after a deadline set forth in this section shall not be deemed
22 to have been timely filed.

23 F. Except for candidates and public officials who
24 file a statement of no activity, each reporting individual
25 shall file a report of expenditures and contributions pursuant

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1 to the filing schedules set forth in this section, regardless
2 of whether any expenditures were made or contributions were
3 received during the reporting period. Reports shall be
4 required until the reporting individual delivers a report to
5 the proper filing officer stating that:

- 6 (1) there are no outstanding campaign debts;
- 7 (2) all money has been expended in accordance
8 with the provisions of Section 1-19-29.1 NMSA 1978; and
- 9 (3) the bank account has been closed.

10 G. Each treasurer of a political committee shall
11 file a report of expenditures and contributions pursuant to the
12 filing schedules set forth in this section until the treasurer
13 files a report that affirms that the committee has dissolved or
14 no longer exists and that its bank account has been closed.

15 H. A reporting individual who is a candidate within
16 the meaning of the Campaign Reporting Act because of the amount
17 of contributions the candidate receives or expenditures the
18 candidate makes and who does not ultimately file a declaration
19 of candidacy or a nominating petition with the proper filing
20 officer and does not file a statement of no activity shall file
21 biannual reports in accordance with Subsection A of this
22 section.

23 I. Reports required by this section shall be
24 subscribed and sworn to by the candidate or the treasurer of
25 the political committee. A report filed electronically shall

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1 be electronically authenticated by the candidate or the
2 treasurer of the political committee using an electronic
3 signature in conformance with the Electronic Authentication of
4 Documents Act and the Uniform Electronic Transactions Act. For
5 the purposes of the Campaign Reporting Act, a report that is
6 electronically authenticated in accordance with the provisions
7 of this subsection shall be deemed to have been subscribed and
8 sworn to by the candidate or the treasurer
9 of the political committee who was required to file the report.

10 J. Reports required by this section shall be filed
11 electronically by all reporting individuals.

12 K. Reporting individuals may apply to the
13 [~~secretary of state~~] governmental standards commission for
14 exemption from electronic filing in case of hardship, which
15 shall be defined by the [~~secretary of state~~] commission."

16 Section 21. Section 1-19-31 NMSA 1978 (being Laws 1979,
17 Chapter 360, Section 7, as amended) is amended to read:

18 "1-19-31. CONTENTS OF REPORT.--

19 A. Each required report of expenditures and
20 contributions shall be typed or printed legibly, or on a
21 computer disc or format approved by the [~~secretary of state~~]
22 governmental standards commission, and shall include:

23 (1) the name and address of the person or
24 entity to whom an expenditure was made or from whom a
25 contribution was received, except as provided for anonymous

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1 contributions or contributions received from special events as
2 provided in Section 1-19-34 NMSA 1978; provided that for
3 contributors, the name of the entity or the first and last
4 names of any individual shall be the full name of the entity or
5 individual, and initials only shall not constitute a full name
6 unless that is the complete legal name;

7 (2) the occupation or type of business of any
8 person or entity making contributions of two hundred fifty
9 dollars (\$250) or more in the aggregate per election;

10 (3) the amount of the expenditure or
11 contribution or value thereof;

12 (4) the purpose of the expenditure; and

13 (5) the date the expenditure was made or the
14 contribution was received.

15 B. Each report shall contain an opening and
16 closing cash balance for the bank account maintained by the
17 reporting individual during the reporting period and the name
18 of the financial institution.

19 C. Each report shall specify the amount of each
20 unpaid debt and the identity of the person to whom the debt is
21 owed."

22 Section 22. Section 1-19-32 NMSA 1978 (being Laws 1979,
23 Chapter 360, Section 8, as amended) is amended to read:

24 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

25 A. Each of the following documents is a public

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1 record open to public inspection during regular office hours in
2 the office in which the document was filed or from which the
3 document was issued:

- 4 (1) a statement of [~~exception~~] no activity;
- 5 (2) a report of expenditures and
6 contributions;
- 7 (3) an advisory opinion issued by the
8 [~~secretary of state~~] governmental standards commission;
- 9 (4) a document specified as a public record in
10 the Campaign Reporting Act; and
- 11 (5) an arbitration decision issued by an
12 arbitration panel and filed with the [~~secretary of state~~]
13 governmental standards commission.

14 B. Each public record described in Subsection A of
15 this section shall be retained by the state for five years and
16 may be destroyed five years after the date of filing unless a
17 legal action or prosecution is pending that requires the
18 preservation of the public record.

19 C. The [~~secretary of state~~] governmental standards
20 commission shall provide for electronic access to reports of
21 expenditures and contributions and statements of [~~exception~~] no
22 activity submitted electronically by reporting individuals.
23 Electronic access shall include access via the internet and
24 shall be in an easily searchable format."

25 Section 23. Section 1-19-32.1 NMSA 1978 (being Laws 1981,
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1 Chapter 331, Section 9, as amended) is amended to read:

2 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
3 REPORTS.--

4 A. The [~~secretary of state~~] governmental standards
5 commission shall conduct a thorough examination of at least ten
6 percent of all reports filed during a year by reporting
7 individuals, selected at random at least forty days after the
8 general election and ten days after the April reports are filed
9 in a nonelection year, to determine compliance with the
10 provisions of the Campaign Reporting Act. The examination may
11 include an investigation of any discrepancies, including a
12 cross-reference to reports filed by any other reporting
13 individual. A reporting individual shall be notified in
14 writing if a discrepancy is found in the report filed and shall
15 be permitted to file a written explanation for the discrepancy
16 within ten working days of the date of the notice. The notice,
17 penalty and arbitration provisions set forth in Section
18 1-19-34.4 NMSA 1978 shall apply to examinations conducted under
19 this section.

20 B. After the date stated in the notice of final
21 action for submission of a written explanation, the [~~secretary~~
22 ~~of state~~] governmental standards commission shall prepare an
23 annual report of any unresolved discrepancies found after
24 examination of the random sample provided for in Subsection A
25 of this section. A copy of this report shall be transmitted to

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1 the attorney general for enforcement pursuant to the provisions
2 of Section 1-19-36 NMSA 1978. This report is a public record
3 open to public inspection and subject to the retention and
4 destruction provisions set forth in Section 1-19-32 NMSA 1978."

5 Section 24. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
6 Chapter 46, Section 15, as amended) is amended to read:

7 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
8 INVESTIGATIONS--BINDING ARBITRATION--REFERRALS FOR
9 ENFORCEMENT.--

10 A. The [~~secretary of state~~] governmental standards
11 commission shall advise and seek to educate all persons
12 required to perform duties under the Campaign Reporting Act of
13 those duties. This includes advising all known reporting
14 individuals at least annually of that act's deadlines for
15 submitting required reports and statements of exception. The
16 [~~secretary of state~~] commission, in consultation with the
17 attorney general, shall issue advisory opinions, when requested
18 in writing to do so, on matters concerning that act. All
19 prescribed forms prepared shall be clear and easy to complete.

20 B. The [~~secretary of state~~] governmental standards
21 commission may initiate investigations to determine whether any
22 provision of the Campaign Reporting Act has been violated.
23 Additionally, any person who believes that a provision of that
24 act has been violated may file a written complaint with the
25 [~~secretary of state~~] commission any time prior to ninety days

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1 after an election, except that no complaints from the public
2 may be filed within eight days prior to an election. The
3 [~~secretary of state~~] commission shall adopt procedures for
4 issuing advisory opinions and processing complaints and
5 notifications of violations.

6 C. The [~~secretary of state~~] governmental standards
7 commission shall at all times seek to ensure voluntary
8 compliance with the provisions of the Campaign Reporting Act.
9 If the [~~secretary of state~~] commission determines that a
10 provision of that act for which a penalty may be imposed has
11 been violated, the [~~secretary of state~~] commission shall by
12 written notice set forth the violation and the fine imposed and
13 inform the reporting individual that [~~he~~] the individual has
14 ten working days from the date of the letter to correct the
15 matter and to provide a written explanation, under penalty of
16 perjury, stating any reason why the violation occurred. If a
17 timely explanation is filed and the [~~secretary of state~~]
18 commission determines that good cause exists to waive the fine
19 imposed, the [~~secretary of state~~] commission may by a written
20 notice of final action partially or fully waive any fine
21 imposed for any late, incomplete or false report or statement
22 of [~~exception~~] no activity. A written notice of final action
23 shall be sent by certified mail.

24 D. Upon receipt of the notice of final action, the
25 person against whom the penalty has been imposed may protest

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1 the ~~[secretary of state's]~~ governmental standards commission's
2 determination, including an advisory opinion, by submitting on
3 a prescribed form a written request for binding arbitration to
4 the ~~[secretary of state]~~ commission within ten working days of
5 the date of the notice of final action. Any fine imposed shall
6 be due and payable within ten working days of the date of
7 notice of final action. No additional fine shall accrue
8 pending the issuance of the arbitration decision. Fines paid
9 pursuant to a notice of final action that are subsequently
10 reduced or dismissed shall be reimbursed with interest within
11 ten working days after the filing of the arbitration decision
12 with the ~~[secretary of state]~~ commission. Interest on the
13 reduced or dismissed portion of the fine shall be the same as
14 the rate of interest earned by the ~~[secretary of state's]~~
15 commission's escrow account to be established by the department
16 of finance and administration.

17 E. An arbitration hearing shall be conducted by a
18 single arbitrator selected within ten days by the person
19 against whom the penalty has been imposed from a list of five
20 arbitrators provided by the ~~[secretary of state. Neither the~~
21 ~~secretary of state nor]~~ governmental standards commission. A
22 person subject to the Campaign Reporting Act, Lobbyist
23 Regulation Act or Financial Disclosure Act ~~[may]~~ shall not
24 serve as an arbitrator. Arbitrators shall be considered to be
25 independent contractors, not public officers or employees, and

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1 shall not be paid per diem and mileage.

2 F. The arbitrator shall conduct the hearing within
3 thirty days of the request for arbitration. The arbitrator may
4 impose any penalty the [~~secretary of state~~] governmental
5 standards commission is authorized to impose. The arbitrator
6 shall state the reasons for [~~his~~] the arbitrator's decision in
7 a written document that shall be a public record. The decision
8 shall be final and binding. The decision shall be issued and
9 filed with the [~~secretary of state~~] commission within thirty
10 days of the conclusion of the hearing. Unless otherwise
11 provided for in this section or by rule or regulation adopted
12 by the [~~secretary of state~~] commission, the procedures for the
13 arbitration shall be governed by the Uniform Arbitration Act.
14 No arbitrator shall be subject to liability for actions taken
15 pursuant to this section.

16 G. The [~~secretary of state~~] governmental standards
17 commission may refer a matter to the attorney general or a
18 district attorney for a civil injunctive or other appropriate
19 order or for criminal enforcement."

20 Section 25. Section 1-19-34.6 NMSA 1978 (being Laws 1995,
21 Chapter 153, Section 19) is amended to read:

22 "1-19-34.6. CIVIL PENALTIES.--

23 A. If the [~~secretary of state~~] governmental
24 standards commission reasonably believes that a person
25 committed, or is about to commit, a violation of the Campaign

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1 Reporting Act, the [~~secretary of state~~] commission shall refer
2 the matter to the attorney general or a district attorney for
3 enforcement.

4 B. The attorney general or district attorney may
5 institute a civil action in district court for any violation of
6 the Campaign Reporting Act or to prevent a violation of that
7 act that involves an unlawful solicitation or the making or
8 acceptance of an unlawful contribution. An action for relief
9 may include a permanent or temporary injunction, a restraining
10 order or any other appropriate order, including a civil penalty
11 of two hundred fifty dollars (\$250) for each violation not to
12 exceed five thousand dollars (\$5,000), and forfeiture of any
13 contribution received as a result of an unlawful solicitation
14 or unlawful contribution. Each unlawful solicitation and each
15 unlawful contribution made or accepted shall be deemed a
16 separate violation of the Campaign Reporting Act.

17 C. The attorney general or district attorney may
18 institute a civil action in district court if a violation has
19 occurred or to prevent a violation of any provision of the
20 Campaign Reporting Act other than that specified in Subsection
21 B of this section. Relief may include a permanent or temporary
22 injunction, a restraining order or any other appropriate order,
23 including an order for a civil penalty of fifty dollars
24 (\$50.00) for each violation not to exceed five thousand dollars
25 (\$5,000)."

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1 Section 26. Section 1-19-34.7 NMSA 1978 (being Laws 2009,
2 Chapter 68, Section 1) is amended to read:

3 "1-19-34.7. CONTRIBUTION LIMITATIONS--CANDIDATES--
4 POLITICAL COMMITTEES.--

5 A. The following contributions by the following
6 persons are prohibited:

7 (1) from a person, not including a political
8 committee, to a:

9 (a) candidate for nonstatewide office,
10 including the candidate's campaign committee, in an amount that
11 will cause that person's total contributions to the candidate
12 to exceed two thousand three hundred dollars (\$2,300) during
13 the primary election or two thousand three hundred dollars
14 (\$2,300) during the general election;

15 (b) candidate for statewide office,
16 including the candidate's campaign committee, in an amount that
17 will cause that person's total contributions to the candidate
18 to exceed five thousand dollars (\$5,000) during the primary
19 election or five thousand dollars (\$5,000) during the general
20 election; or

21 (c) political committee in an amount
22 that will cause that person's total contributions to the
23 political committee to exceed five thousand dollars (\$5,000)
24 during a primary election or five thousand dollars (\$5,000)
25 during a general election; and

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(2) from a political committee to:

(a) a candidate for office, including the candidate's campaign committee, in an amount that will cause the political committee's total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or

(b) another political committee in an amount that will cause that political committee's total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election.

B. All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.

C. A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.

D. On the day after each general election, the contribution amounts provided in Subsection A of this section

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1 shall be increased by the percentage of the preceding two
2 calendar year's increase of the consumer price index for all
3 urban consumers, United States city average for all items,
4 published by the United States department of labor. The amount
5 of the increase shall be rounded to the nearest multiple of one
6 hundred dollars (\$100). The ~~[secretary of state]~~ governmental
7 standards commission shall publish by October 1 before each
8 general election the adjusted contribution limits that shall
9 take effect the day after the following general election.

10 E. All contributions in excess of the limits
11 imposed by the provisions of this section shall be deposited in
12 the public election fund upon a finding by the ~~[secretary of~~
13 ~~state]~~ governmental standards commission that the contribution
14 limits have been exceeded.

15 F. The limitation on contributions to a candidate
16 provided for in Subsection A of this section shall not apply to
17 a candidate's own contribution from the candidate's personal
18 funds to the candidate's own campaign.

19 G. For the purposes of this section:

20 (1) "primary election" means the period
21 beginning on the day after the general election for the
22 applicable office and ending on the day of the primary for that
23 office; and

24 (2) "general election" means the period
25 beginning on the day after the primary for the applicable

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1 office and ending on the day of the general election for that
2 office."

3 Section 27. Section 1-19-35 NMSA 1978 (being Laws 1979,
4 Chapter 360, Section 11, as amended) is amended to read:

5 "1-19-35. REPORTS AND STATEMENTS--LATE FILING
6 PENALTY--FAILURE TO FILE.--

7 A. Except for the report required to be filed and
8 delivered the Thursday prior to the election and any
9 supplemental report, as required in Paragraph (5) of Subsection
10 B of Section 1-19-29 NMSA 1978, that is due prior to the
11 election, and subject to the provisions of Section 1-19-34.4
12 NMSA 1978, if a statement of no activity or a report of
13 expenditures and contributions contains false or incomplete
14 information or is filed after any deadline imposed by the
15 Campaign Reporting Act, the responsible reporting individual or
16 political committee, in addition to any other penalties or
17 remedies prescribed by the Election Code, shall be liable for
18 and shall pay to the [~~secretary of state~~] governmental
19 standards commission fifty dollars (\$50.00) per day for each
20 regular working day after the time required by the Campaign
21 Reporting Act for the filing of statements of no activity or
22 reports of expenditures and contributions until the complete or
23 true statement or report is filed, up to a maximum of five
24 thousand dollars (\$5,000).

25 B. If any reporting individual files a false,

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1 intentionally incomplete or late report of expenditures and
2 contributions due on the Thursday prior to the election, the
3 reporting individual or political committee shall be liable
4 and pay to the [~~secretary of state~~] governmental standards
5 commission five hundred dollars (\$500) for the first working
6 day and fifty dollars (\$50.00) for each subsequent working day
7 after the time required for the filing of the report until the
8 true and complete report is filed, up to a maximum of five
9 thousand dollars (\$5,000).

10 C. If a reporting individual fails to file or files
11 a late supplemental report of expenditures and contributions as
12 required in Paragraph (5) of Subsection B of Section 1-19-29
13 NMSA 1978, the reporting individual or political committee
14 shall be liable for and pay to the [~~secretary of state~~]
15 governmental standards commission a penalty equal to the amount
16 of each contribution received or pledged after the Tuesday
17 before the election that was not timely filed.

18 D. All sums collected for the penalty shall be
19 deposited in the state general fund. A report or statement of
20 [~~exception~~] no activity shall be deemed timely filed only if it
21 is received by the proper filing officer by the date and time
22 prescribed by law.

23 E. Any candidate who fails or refuses to file a
24 report of expenditures and contributions or statement of no
25 activity or to pay a penalty imposed by the [~~secretary of~~

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1 ~~state]~~ governmental standards commission as required by the
2 Campaign Reporting Act shall not, in addition to any other
3 penalties provided by law:

4 (1) have the candidate's name printed upon the
5 ballot if the violation occurs before and through the final
6 date for the withdrawal of candidates; or

7 (2) be issued a certificate of nomination or
8 election, if the violation occurs after the final date for
9 withdrawal of candidates or after the election, until the
10 candidate satisfies all reporting requirements of the Campaign
11 Reporting Act and pays all penalties owed.

12 F. Any candidate who loses an election and who
13 failed or refused to file a report of expenditures and
14 contributions or a statement of no activity or to pay a penalty
15 imposed by the ~~[secretary of state]~~ governmental standards
16 commission as required by the Campaign Reporting Act shall not
17 be, in addition to any other penalties provided by law,
18 permitted to file a declaration of candidacy or nominating
19 petition for any future election until the candidate satisfies
20 all reporting requirements of that act and pays all penalties
21 owed."

22 Section 28. Section 1-19A-2 NMSA 1978 (being Laws 2003,
23 Chapter 14, Section 2, as amended) is amended to read:

24 "1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

25 A. "applicant candidate" means a candidate who is

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1 running for a covered office and who is seeking to be a
2 certified candidate in a primary or general election;

3 B. "certified candidate" means a candidate running
4 for a covered office who chooses to obtain financing pursuant
5 to the Voter Action Act and is certified as a Voter Action Act
6 candidate;

7 C. "commission" means the governmental standards
8 commission;

9 ~~[D.]~~ D. "contested election" means an election in
10 which there are more candidates for a position than the number
11 to be elected to that position;

12 ~~[D.]~~ E. "covered office" means any office of the
13 judicial department subject to statewide elections and the
14 office of public regulation commissioner;

15 ~~[E.]~~ F. "election cycle" means the primary and
16 general elections for the same term of the same covered office,
17 beginning on the day after the last general election for the
18 office and ending with the general election; the primary
19 election cycle begins on the first day of the election cycle
20 and ends on the day of the primary election; the general
21 election begins on the day after the primary election and ends
22 on the day of the general election;

23 ~~[F.]~~ G. "fund" means the public election fund;

24 ~~[G.]~~ H. "noncertified candidate" means either a
25 candidate running for a covered office who does not choose to

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1 participate in the Voter Action Act and who is not seeking to
2 be a certified candidate or a candidate who files a declaration
3 of intent to participate but who fails to qualify;

4 [H.] I. "qualifying contribution" means a donation
5 of five dollars (\$5.00) in the form of cash or a check or money
6 order payable to the fund in support of an applicant candidate
7 that is:

8 (1) made by a registered voter who is eligible
9 to vote for the covered office that the applicant candidate is
10 seeking;

11 (2) made during the designated qualifying
12 period and obtained through efforts made with the knowledge and
13 approval of the applicant candidate; and

14 (3) acknowledged by a receipt that identifies
15 the contributor's name and residential address on forms
16 provided by the [~~bureau of elections~~] commission and that is
17 signed by the contributor, one copy of which is attached to the
18 list of contributors and sent to the [~~bureau of elections~~]
19 commission;

20 [H.] J. "qualifying period" means:

21 (1) for major party applicant candidates for
22 covered offices, the period beginning October 1 immediately
23 preceding the election year and ending at 5:00 p.m. on the
24 third Tuesday of March of the election year; and

25 (2) for independent and minor party

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1 candidates, the period beginning February 1 of the election
2 year and ending that year at 5:00 p.m. on the filing date for
3 independent or minor party candidates for the office for which
4 the candidate is running;

5 [J. ~~"secretary" means the secretary of state or the~~
6 ~~office of the secretary of state~~] and

7 K. "seed money" means a contribution raised for the
8 primary purpose of enabling applicant candidates to collect
9 qualifying contributions and petition signatures."

10 Section 29. Section 1-19A-3 NMSA 1978 (being Laws 2003,
11 Chapter 14, Section 3) is amended to read:

12 "1-19A-3. TERMS OF PARTICIPATION--DECLARATION OF
13 INTENT.--

14 A. A candidate choosing to obtain financing
15 pursuant to the Voter Action Act shall first file with the
16 [~~secretary~~] commission a declaration of intent to participate
17 in that act as an applicant candidate for a stated covered
18 office. The declaration of intent shall be filed with the
19 [~~secretary~~] commission prior to or during the qualifying period
20 according to forms and procedures developed by the [~~secretary~~]
21 commission.

22 B. An applicant candidate choosing to participate
23 in the Voter Action Act shall submit a declaration of intent
24 prior to collecting any qualifying contributions and make
25 explicit in the declaration that the candidate has complied

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1 with and will continue to comply with that act's contribution
2 and expenditure limits and all other requirements set forth in
3 that act and rules issued by the [~~secretary~~] commission.

4 C. A candidate shall not be eligible to become an
5 applicant candidate if the candidate has accepted contributions
6 totaling five hundred dollars (\$500) or more or made
7 expenditures totaling five hundred dollars (\$500) or more
8 between the beginning of the qualifying period and filing a
9 declaration of intent."

10 Section 30. Section 1-19A-6 NMSA 1978 (being Laws 2003,
11 Chapter 14, Section 6) is amended to read:

12 "1-19A-6. CERTIFICATION.--

13 A. Upon receipt of a final submittal of qualifying
14 contributions by an applicant candidate, the [~~secretary~~]
15 commission shall determine whether the applicant candidate has:

16 (1) signed and filed a declaration of intent
17 to obtain financing pursuant to the Voter Action Act in
18 accordance with the requirements of that act;

19 (2) submitted the appropriate number of
20 qualifying contributions;

21 (3) qualified as a candidate pursuant to other
22 applicable state election law;

23 (4) complied with seed money contribution and
24 expenditure restrictions; and

25 (5) otherwise met the requirements for

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1 obtaining financing pursuant to the Voter Action Act.

2 B. The [~~secretary~~] commission shall certify
3 applicant candidates complying with the requirements of this
4 section as certified candidates as soon as possible and no
5 later than ten days after final submittal of qualifying
6 contributions and certification as a candidate pursuant to
7 other applicable state election law.

8 C. A certified candidate shall comply with all
9 requirements of the Voter Action Act after certification and
10 throughout the primary election and general election cycles. A
11 certified candidate who accepts public campaign finance funds
12 for the primary election shall comply with all the requirements
13 of the Voter Action Act for the remainder of the election cycle
14 in question, even if [~~he~~] the certified candidate decides not
15 to accept such funds for the general election."

16 Section 31. Section 1-19A-7 NMSA 1978 (being Laws 2003,
17 Chapter 14, Section 7, as amended) is amended to read:

18 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
19 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

20 A. All money distributed to a certified candidate
21 shall be used for that candidate's campaign-related purposes in
22 the election cycle in which the money was distributed.

23 B. A certified candidate shall return to the fund
24 any amount that is unspent or unencumbered at the time that
25 person ceases to be a candidate before a primary or general

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1 election for which the fund money was distributed.

2 C. A certified candidate shall limit total campaign
3 expenditures and debts to the amount of money distributed to
4 that candidate from the fund. A certified candidate shall not
5 accept contributions or loans from any other source except the
6 certified candidate's political party, as specified in Section
7 1-19A-8 NMSA 1978.

8 D. A certified candidate shall return to the
9 [~~secretary~~] commission, within thirty days after the primary
10 election, any amount that is unspent or unencumbered by the
11 date of the primary election for direct deposit into the fund.

12 E. A certified candidate shall return to the
13 [~~secretary~~] commission, within thirty days after the general
14 election, any amount that is unspent or unencumbered by the
15 date of the general election for direct deposit into the fund."

16 Section 32. Section 1-19A-9 NMSA 1978 (being Laws 2003,
17 Chapter 14, Section 9) is amended to read:

18 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

19 A. The [~~secretary~~] commission shall publish
20 guidelines outlining permissible campaign-related expenditures.

21 B. Applicant candidates shall file a report listing
22 seed money contributions and expenditures with their
23 application for certification.

24 C. Applicant candidates shall file qualifying
25 contributions with the [~~secretary~~] commission during the

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1 qualifying period according to procedures developed by the
2 [~~secretary~~] commission. In developing these procedures, the
3 [~~secretary~~] commission shall use existing campaign reporting
4 procedures and deadlines whenever practical.

5 D. Certified candidates shall report expenditures
6 according to the campaign reporting requirements specified in
7 the Election Code.

8 E. In addition to the campaign contribution and
9 expenditure reports specified in the Election Code, all
10 noncertified candidates who have as an opponent a certified
11 candidate shall report to the [~~secretary~~] commission ten days
12 before the primary and general elections the amount of money
13 spent by that noncertified candidate. This report shall
14 include all previously unreported transactions through 5:00
15 p.m. two days before the report is due.

16 F. A person or political committee that makes
17 expenditures to influence a race involving a certified
18 candidate shall report to the [~~secretary~~] commission the amount
19 that person or political committee has spent. These reports
20 shall include all previously unreported transactions through
21 5:00 p.m. two days before the report is due, and shall be
22 submitted as follows:

23 (1) for the primary election, by 5:00 p.m. on
24 the second Monday in May, by 5:00 p.m. on the eleventh day
25 before the election and by 5:00 p.m. on the Thursday before the

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1 election; and

2 (2) for the general election, by 5:00 p.m. the
3 first Tuesday in October, by 5:00 p.m. on the eleventh day
4 before the election and by 5:00 p.m. on the Thursday before the
5 election."

6 Section 33. Section 1-19A-10 NMSA 1978 (being Laws 2003,
7 Chapter 14, Section 10, as amended) is amended to read:

8 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

9 A. There is created in the state treasury the
10 "public election fund" solely for the purposes of:

11 (1) financing the election campaigns of
12 certified candidates for covered offices;

13 (2) paying administrative and enforcement
14 costs of the Voter Action Act; and

15 (3) carrying out all other specified
16 provisions of the Voter Action Act.

17 B. The state treasurer shall invest the funds as
18 other state funds are invested, and all income derived from the
19 fund shall be credited directly to the fund. Remaining
20 balances at the end of a fiscal year shall remain in the
21 election fund and not revert to the general fund.

22 C. Money received from the following sources shall
23 be deposited directly into the fund:

24 (1) qualifying contributions that have been
25 submitted to the [~~secretary~~] commission;

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1 (2) any recurring balance of unspent fund
2 money distributed to a certified candidate who does not remain
3 a candidate through the primary or general election period for
4 which the money was distributed;

5 (3) money that remains unspent or unencumbered
6 by a certified candidate following the date of the primary
7 election;

8 (4) money that remains unspent or unencumbered
9 by a certified candidate following the date of the general
10 election;

11 (5) unspent seed money that cannot be used for
12 any other purpose;

13 (6) money distributed to the fund from funds
14 received pursuant to the Uniform Unclaimed Property Act (1995);
15 and

16 (7) money appropriated by the legislature.

17 D. A subaccount shall be established in the fund,
18 and money in the subaccount shall only be used to pay the costs
19 of carrying out the provisions of the Voter Action Act related
20 to public regulation commission elections.

21 E. Three hundred thousand dollars (\$300,000) per
22 year shall be collected and deposited in the subaccount for
23 public regulation commission elections as follows:

24 (1) one hundred thousand dollars (\$100,000)
25 from inspection and supervision fees collected pursuant to

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1 Section 62-8-8 NMSA 1978;

2 (2) one hundred thousand dollars (\$100,000)
3 from utility and carrier inspection fees collected pursuant to
4 Section 63-7-20 NMSA 1978; and

5 (3) one hundred thousand dollars (\$100,000)
6 from the insurance premium tax collected pursuant to Section
7 59A-6-2 NMSA 1978."

8 Section 34. Section 1-19A-11 NMSA 1978 (being Laws 2003,
9 Chapter 14, Section 11) is amended to read:

10 "1-19A-11. DETERMINATION OF FUND AMOUNT.--

11 A. By January 1, 2007, and every two years
12 thereafter, the [secretary] commission shall prepare and
13 provide to the legislature a report documenting, evaluating and
14 making recommendations relating to the administration,
15 implementation and enforcement of the Voter Action Act.

16 B. In the report, the [secretary] commission shall
17 set out the revenues received to date, the expected costs to
18 the fund for the next election cycle and the amount of the
19 annual appropriation from the legislature that will be required
20 to meet this need."

21 Section 35. Section 1-19A-12 NMSA 1978 (being Laws 2003,
22 Chapter 14, Section 12) is amended to read:

23 "1-19A-12. TIMING OF FUND DISTRIBUTION.--

24 A. [~~Beginning with the election cycle that ends~~
25 ~~with the general election in 2006]~~ The [secretary] commission

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1 shall distribute money from the fund to certified candidates in
2 accordance with the provisions of Subsections B and C of this
3 section.

4 B. For a primary election certified candidate, the
5 [~~secretary~~] commission shall distribute the amount due to that
6 certified candidate for that covered office within one week of
7 certification.

8 C. For a candidate certified for the general
9 election, the [~~secretary~~] commission shall distribute the
10 amount due to that certified candidate for that covered office
11 within one week after the primary election or, for a minor
12 party or independent candidate, within one week after
13 certification of the candidate."

14 Section 36. Section 1-19A-13 NMSA 1978 (being Laws 2003,
15 Chapter 14, Section 13, as amended) is amended to read:

16 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

17 A. By August 1 [~~2007~~] of each odd-numbered year,
18 the [~~secretary~~] commission shall determine the amount of money
19 to be distributed to each certified candidate for the election
20 cycle ending with the general election in 2008, based on the
21 type of election and the provisions of Subsections B through F
22 of this section.

23 B. For contested primary elections, the amount of
24 money to be distributed to a certified candidate is equal to
25 the following:

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1 (1) for the office of public regulation
2 commissioner, twenty-five cents (\$.25) for each voter of the
3 candidate's party in the district of the office for which the
4 candidate is running; and

5 (2) for the office of justice of the supreme
6 court and judge of the court of appeals, fifteen cents (\$.15)
7 for each voter of the candidate's party in the state.

8 C. For uncontested primary elections, the amount of
9 money to be distributed to a certified candidate is equal to
10 fifty percent of the amount specified in Subsection B of this
11 section.

12 D. For contested general elections, the amount of
13 money to be distributed to a certified candidate is equal to
14 the following:

15 (1) for the office of public regulation
16 commissioner, twenty-five cents (\$.25) for each voter in the
17 district of the office for which the candidate is running; and

18 (2) for the office of justice of the supreme
19 court and judge of the court of appeals, fifteen cents (\$.15)
20 for each voter in the state.

21 E. For uncontested general elections, except as
22 provided in Subsection I of this section, the amount of money
23 to be distributed to a certified candidate is equal to fifty
24 percent of the amount specified in Subsection D of this
25 section. If a general election race that is initially

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1 uncontested later becomes contested because of the
2 qualification of an independent or minor party candidate to
3 appear on the ballot for that race, an additional amount of
4 money shall be distributed to the certified candidate to make
5 that candidate's total distribution amount equal to the amount
6 distributed pursuant to Subsection D of this section.

7 F. Once the certification for candidates for the
8 primary election has been completed, the [~~secretary~~] commission
9 shall calculate the total amount of money to be distributed in
10 the primary election cycle, based on the number of certified
11 candidates and the allocations specified in this section. The
12 [~~secretary~~] commission shall increase the total amount by
13 twenty percent to provide funds for additional matching funds
14 in the primary election. The [~~secretary~~] commission shall also
15 prepare an estimate of the total amount of money that might be
16 distributed in the general election cycle. This estimate shall
17 be increased by twenty percent to provide funds for additional
18 matching funds in the general election. If the total amount to
19 be distributed in the primary election cycle, plus the added
20 twenty percent and the estimated total amount to be distributed
21 in the general election cycle, plus the added twenty percent,
22 all taken together, exceed the amount expected to be available
23 in the fund, the [~~secretary~~] commission shall allocate the
24 amount available between the primary and general election
25 cycles. This allocation shall be based on the ratio of the two

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1 total amounts.

2 G. If the allocation specified in Subsection F of
3 this section is greater than the total amount available for
4 distribution, then the amounts to be distributed to individual
5 candidates, specified in Subsections B through E of this
6 section, shall each be reduced by the same percentage as the
7 reduction by which the total amount needed has been reduced
8 relative to the total amount available.

9 H. At least every two years after January 1, 2007,
10 the [~~secretary~~] commission shall evaluate and modify as
11 necessary the dollar values originally determined by
12 Subsections B through E of this section and shall consider and
13 account for inflation in the evaluations.

14 I. No money shall be distributed to candidates in
15 judicial retention elections. No money shall be distributed to
16 judicial candidates in uncontested general elections, provided
17 that if a general election race that is initially uncontested
18 later becomes contested, the certified judicial candidate shall
19 receive a distribution in accordance with Subsection D of this
20 section."

21 Section 37. Section 1-19A-14 NMSA 1978 (being Laws 2003,
22 Chapter 14, Section 14, as amended) is amended to read:

23 "1-19A-14. MATCHING FUNDS.--When a certified or
24 noncertified candidate has one or more opponents who are
25 certified candidates and the candidate's campaign finance

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1 report or group of reports shows that the sum of the
2 candidate's expenditures and obligations made, or funds raised
3 or borrowed, whichever is greater, alone or in conjunction with
4 expenditures made independently of the candidate to influence
5 the election on behalf of the candidate, exceeds the amount
6 distributed to an opposing certified candidate, the [~~secretary~~]
7 commission shall issue immediately to any opposing certified
8 candidate an additional amount equivalent to the excess amount
9 reported by the opposing candidate. Total matching funds to a
10 certified candidate in an election are limited to twice the
11 amount originally distributed to that candidate pursuant to
12 Section 1-19A-13 NMSA 1978."

13 Section 38. Section 1-19A-15 NMSA 1978 (being Laws 2003,
14 Chapter 14, Section 15) is amended to read:

15 "1-19A-15. ADMINISTRATION--~~[SECRETARY OF STATE]~~
16 COMMISSION--DUTIES.--

17 A. The [~~secretary~~] commission shall adopt rules to
18 ensure effective administration of the Voter Action Act.

19 B. The rules shall include procedures for:

- 20 (1) qualifications, certification and
21 disbursement of revenues and return of unspent fund revenues;
22 (2) obtaining qualifying contributions;
23 (3) certification of candidates;
24 (4) collection of revenues; and
25 (5) return of fund disbursements and other

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1 money to the fund."

2 Section 39. Section 1-19A-16 NMSA 1978 (being Laws 2003,
3 Chapter 14, Section 16) is amended to read:

4 "1-19A-16. APPEALS.--The procedure for challenging a
5 certification decision by the [~~secretary~~] commission is as
6 follows:

7 A. a person aggrieved by a certification decision
8 or a decision regarding the distribution of matching funds may
9 appeal to the [~~secretary~~] commission within three days of the
10 decision. The appeal shall be in writing and shall set forth
11 the reasons for appeal;

12 B. within five days after an appeal is properly
13 made, and after due notice is given to the parties in dispute,
14 the [~~secretary~~] commission shall hold a hearing [~~whereby~~] in
15 which:

16 (1) the appellant has the burden of providing
17 evidence to demonstrate that the [~~secretary's~~] commission's
18 decision was improper; and

19 (2) the [~~secretary~~] commission shall rule on
20 the appeal within three days after the completion of the
21 hearing;

22 C. the parties in dispute may appeal the decision
23 of the [~~secretary~~] commission by commencing an action in
24 district court; and

25 D. certified candidates whose certification is

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1 revoked on appeal shall return to the [~~secretary~~] commission
2 any unspent money distributed from the fund. If the
3 [~~secretary~~] commission or court finds that an appeal was made
4 frivolously or to result in delay or hardship, the [~~secretary~~]
5 commission or court may sanction the moving party by requiring
6 the party to pay costs of the administrative hearing, the court
7 hearing and the opposing parties."

8 Section 40. Section 1-19A-17 NMSA 1978 (being Laws 2003,
9 Chapter 14, Section 17) is amended to read:

10 "1-19A-17. PENALTIES.--

11 A. In addition to other penalties that may be
12 applicable, a person who violates a provision of the Voter
13 Action Act is subject to a civil penalty of up to ten thousand
14 dollars (\$10,000) per violation. In addition to a fine, a
15 certified candidate found in violation of that act may be
16 required to return to the fund all amounts distributed to the
17 candidate from the fund. If the [~~secretary~~] commission makes a
18 determination that a violation of that act has occurred, the
19 [~~secretary~~] commission shall impose a fine or transmit the
20 finding to the attorney general for prosecution. In
21 determining whether a certified candidate is in violation of
22 the expenditure limits of that act, the [~~secretary~~] commission
23 may consider as a mitigating factor any circumstances out of
24 the candidate's control.

25 B. A person who willfully or knowingly violates the

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1 provisions of the Voter Action Act or rules of the [~~secretary~~]
2 commission or knowingly makes a false statement in a report
3 required by that act is guilty of a fourth degree felony and,
4 if [~~he~~] the person is a certified candidate, shall return to
5 the fund all money distributed to that candidate."

6 Section 41. Section 2-11-2 NMSA 1978 (being Laws 1977,
7 Chapter 261, Section 2, as amended) is amended to read:

8 "2-11-2. DEFINITIONS.--As used in the Lobbyist Regulation
9 Act:

10 A. "compensation" means any money, per diem,
11 salary, fee or portion thereof or the equivalent in services
12 rendered or in-kind contributions received or to be received in
13 return for lobbying services performed or to be performed;

14 B. "expenditure" means a payment, transfer or
15 distribution or obligation or promise to pay, transfer or
16 distribute any money or other thing of value, but does not
17 include a lobbyist's own personal living expenses and the
18 expenses incidental to establishing and maintaining an office
19 in connection with lobbying activities or compensation paid to
20 a lobbyist by a lobbyist's employer;

21 C. "legislative committee" means a committee
22 created by the legislature, including interim and standing
23 committees of the legislature;

24 D. "lobbying" means attempting to influence:

25 (1) a decision related to any matter to be

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1 considered or being considered by the legislative branch of
2 state government or any legislative committee or any
3 legislative matter requiring action by the governor or awaiting
4 action by the governor; or

5 (2) an official action;

6 E. "lobbyist" means any individual who is
7 compensated for the specific purpose of lobbying; is designated
8 by an interest group or organization to represent it on a
9 substantial or regular basis for the purpose of lobbying; or in
10 the course of [~~his~~] employment, is engaged in lobbying on a
11 substantial or regular basis. "Lobbyist" does not include:

12 (1) an individual who appears on [~~his~~] the
13 individual's own behalf in connection with legislation or an
14 official action;

15 (2) [~~any~~] an elected or appointed officer of
16 the state or its political subdivisions or an Indian nation,
17 tribe or pueblo acting in [~~his~~] the officer's official
18 capacity;

19 (3) an employee of the state or its political
20 subdivisions, specifically designated by an elected or
21 appointed officer of the state or its political subdivision,
22 who appears before a legislative committee or in a rulemaking
23 proceeding only to explain the effect of legislation or a rule
24 on [~~his~~] the designated employee's agency or political
25 subdivision, provided the elected or appointed officer of the

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1 state or its political subdivision keeps for public inspection
2 and files with the [~~secretary of state~~] governmental standards
3 commission such designation;

4 (4) [~~any~~] a designated member of the staff of
5 an elected state official, provided the elected state official
6 keeps for public inspection and files with the [~~secretary of~~
7 ~~state~~] governmental standards commission such designation;

8 (5) a member of the legislature, the staff of
9 [~~any~~] a member of the legislature or the staff of [~~any~~] a
10 legislative committee when addressing legislation;

11 (6) [~~any~~] a witness called by a legislative
12 committee or administrative agency to appear before that
13 legislative committee or agency in connection with legislation
14 or an official action;

15 (7) an individual who provides only oral or
16 written public testimony in connection with a legislative
17 committee or in a rulemaking proceeding and whose name and the
18 interest on behalf of which [~~he~~] the individual testifies have
19 been clearly and publicly identified; or

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

24 F. "lobbyist's employer" means the person whose
25 interests are being represented and by whom a lobbyist is

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1 directly or indirectly retained, compensated or employed;

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

5 H. "person" means an individual, partnership,
6 association, committee, federal, state or local governmental
7 entity or agency, however constituted, public or private
8 corporation or any other organization or group of persons who
9 are voluntarily acting in concert;

10 I. "political contribution" means a gift,
11 subscription, loan, advance or deposit of [~~any~~] money or other
12 thing of value, including the estimated value of an in-kind
13 contribution, that is made or received for the purpose of
14 influencing a primary, general or statewide election, including
15 a constitutional or other question submitted to the voters, or
16 for the purpose of paying a debt incurred in any such election;

17 J. "prescribed form" means a form prepared and
18 prescribed by the [~~secretary of state~~] governmental standards
19 commission;

20 K. "rulemaking proceeding" means a formal process
21 conducted by a state agency, board or commission for the
22 purpose of adopting a rule, regulation, standard, policy or
23 other requirement of general applicability and does not include
24 adjudicatory proceedings; and

25 L. "state public officer" means a person holding a

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1 statewide office provided for in the constitution of New
2 Mexico."

3 Section 42. Section 2-11-3 NMSA 1978 (being Laws 1977,
4 Chapter 261, Section 3, as amended) is amended to read:

5 "2-11-3. REGISTRATION STATEMENT TO BE FILED--CONTENTS--
6 MODIFICATION TO STATEMENT.--

7 A. In the month of January prior to each regular
8 session or before any service covered by the Lobbyist
9 Regulation Act commences, any individual who is initially
10 employed or retained as a lobbyist shall register with the
11 [~~secretary of state~~] governmental standards commission by
12 paying an annual filing fee of twenty-five dollars (\$25.00) for
13 each of the lobbyist's employers and by filing a single
14 registration statement under oath on a prescribed form showing:

15 (1) the lobbyist's full name, permanent
16 business address and business address while lobbying; and

17 (2) the name and address of each of the
18 lobbyist's employers.

19 B. No registration fee shall be required of
20 individuals receiving only reimbursement of personal expenses
21 and no other compensation or salary for lobbying. No
22 expenditure statement required by Section 2-11-6 NMSA 1978
23 shall be required if the lobbyist anticipates making or
24 incurring and makes or incurs no expenditures or political
25 contributions under Section 2-11-6 NMSA 1978. The lobbyist

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1 shall indicate in [~~his~~] the lobbyist's registration statement
2 whether those circumstances apply to [~~him~~] the lobbyist.

3 C. For each employer listed in Paragraph (2) of
4 Subsection A of this section, the lobbyist shall file the
5 following information:

6 (1) a full disclosure of the sources of funds
7 used for lobbying;

8 (2) a written statement from each of the
9 lobbyist's employers authorizing [~~him~~] the lobbyist to lobby on
10 the employer's behalf;

11 (3) a brief description of the matters in
12 reference to which the service is to be rendered; and

13 (4) the name and address of the person, if
14 other than the lobbyist or [~~his~~] the lobbyist's employer, who
15 will have custody of the accounts, bills, receipts, books,
16 papers and documents required to be kept under the provisions
17 of the Lobbyist Regulation Act.

18 D. For each succeeding year that an individual is
19 employed or retained as a lobbyist by the same employer, and
20 for whom all the information disclosed in the initial
21 registration statement remains substantially the same, the
22 lobbyist shall file a simple annual registration renewal in
23 January and pay the twenty-five-dollar (\$25.00) filing fee for
24 each of the lobbyist's employers together with a short,
25 abbreviated prescribed form for renewal.

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1 E. Whenever there is a modification of the facts
2 required to be set forth by this section or there is a
3 termination of the lobbyist's employment as a lobbyist before
4 the end of the calendar year, the lobbyist shall notify the
5 [~~secretary of state~~] governmental standards commission within
6 one month of such occurrence and shall furnish full information
7 concerning the modification or termination. If the lobbyist's
8 employment terminates at the end of a calendar year, no
9 separate termination report need be filed."

10 Section 43. Section 2-11-6 NMSA 1978 (being Laws 1977,
11 Chapter 261, Section 6, as amended) is amended to read:

12 "2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--
13 REPORTING PERIODS.--

14 A. Each lobbyist or lobbyist's employer who makes
15 or incurs expenditures or political contributions for the
16 benefit of or in opposition to a state legislator or candidate
17 for the state legislature, a state public officer or candidate
18 for state public office, a board or commission member or state
19 employee who is involved in an official action affecting the
20 lobbyist's employer or in support of or in opposition to a
21 ballot issue or pending legislation or official action shall
22 file an expenditure report with the [~~secretary of state~~]
23 governmental standards commission on a prescribed form or in an
24 electronic format approved by the [~~secretary of state~~]
25 commission. The expenditure report shall include a sworn

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1 statement that sets forth:

2 (1) the cumulative total of the expenditures
3 made or incurred, separated into categories that identify the
4 total separate amounts spent on:

5 (a) meals and beverages;

6 (b) other entertainment expenditures;

7 (c) gifts; and

8 (d) other expenditures;

9 (2) each political contribution made,
10 identified by amount, date and name of the candidate or ballot
11 issue supported or opposed; and

12 (3) the names, addresses and occupations of
13 other contributors and the amounts of their separate political
14 contributions if the lobbyist or lobbyist's employer delivers
15 directly or indirectly separate contributions from those
16 contributors in excess of five hundred dollars (\$500) in the
17 aggregate for each election to a candidate, a campaign
18 committee or anyone authorized by a candidate to receive funds
19 on the candidate's behalf.

20 B. If the expenditure report is filed
21 electronically, the report shall be electronically
22 authenticated by the lobbyist or the lobbyist's employer using
23 an electronic signature as prescribed by the ~~[secretary of~~
24 ~~state]~~ governmental standards commission in conformance with
25 the Electronic Authentication of Documents Act and the Uniform

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1 Electronic Transactions Act. For the purposes of the Lobbyist
2 Regulation Act, a report that is electronically authenticated
3 in accordance with the provisions of this subsection shall be
4 deemed to have been subscribed and sworn to by the lobbyist or
5 the lobbyist's employer that is required to file the report.

6 C. In identifying expenditures pursuant to the
7 provisions of Paragraph (1) of Subsection A of this section,
8 any individual expenditure that is more than the threshold
9 level established in the Internal Revenue Code of 1986, as
10 amended, that must be reported separately to claim a business
11 expense deduction, as published by the [~~secretary of state~~]
12 governmental standards commission, shall be identified by
13 amount, date, purpose, type of expenditure and name of the
14 person who received or was benefited by the expenditure;
15 provided, in the case of special events, including parties,
16 dinners, athletic events, entertainment and other functions, to
17 which all members of the legislature, to which all members of
18 either house or any legislative committee or to which all
19 members of a board or commission are invited, expenses need not
20 be allocated to each individual who attended, but the date,
21 location, name of the body invited and total expenses incurred
22 shall be reported.

23 D. The reports required pursuant to the provisions
24 of the Lobbyist Regulation Act shall be filed:

25 (1) by January 15 for all expenditures and

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1 political contributions made or incurred during the preceding
2 year and not previously reported;

3 (2) within forty-eight hours for each separate
4 expenditure made or incurred during a legislative session that
5 was for five hundred dollars (\$500) or more; and

6 (3) by May 1 for all expenditures and
7 political contributions made or incurred through April 25 of
8 the current year and not previously reported.

9 E. A lobbyist's personal living expenses and the
10 expenses incidental to establishing and maintaining an office
11 in connection with lobbying activities or compensation paid to
12 a lobbyist by a lobbyist's employer need not be reported.

13 F. A lobbyist or lobbyist's employer shall obtain
14 and preserve all records, accounts, bills, receipts, books,
15 papers and documents necessary to substantiate the financial
16 statements required to be made under the Lobbyist Regulation
17 Act for a period of two years from the date of filing of the
18 report containing such items. When the lobbyist is required
19 under the terms of the lobbyist's employment to turn over any
20 such records to the lobbyist's employer, responsibility for the
21 preservation of them as required by this section and the filing
22 of reports required by this section shall rest with the
23 employer. Such records shall be made available to the
24 [~~secretary of state~~] governmental standards commission or
25 attorney general upon written request.

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1 G. ~~[Any]~~ A lobbyist's employer who also engages in
2 lobbying shall comply with the provisions of the Lobbyist
3 Regulation Act.

4 H. An organization of two or more persons,
5 including an individual who ~~[holds himself out]~~ makes any
6 representation as being an organization, that within one
7 calendar year expends funds in excess of two thousand five
8 hundred dollars (\$2,500) not otherwise reported under the
9 Lobbyist Regulation Act to conduct an advertising campaign for
10 the purpose of lobbying shall register with the ~~[secretary of~~
11 ~~state]~~ governmental standards commission within forty-eight
12 hours after expending two thousand five hundred dollars
13 (\$2,500). Such registration shall indicate the name of the
14 organization and the names, addresses and occupations of any of
15 its principals, organizers or officers and shall include the
16 name of any lobbyist or lobbyist's employer who is a member of
17 the organization. Within fifteen days after a legislative
18 session, the organization shall report the contributions,
19 pledges to contribute, expenditures and commitments to expend
20 for the advertising campaign for the purpose of lobbying,
21 including the names, addresses and occupations of the
22 contributors, to the ~~[secretary of state]~~ commission on a
23 prescribed form."

24 Section 44. Section 2-11-7 NMSA 1978 (being Laws 1977,
25 Chapter 261, Section 7, as amended) is amended to read:

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1 "2-11-7. REGISTRATION AND EXPENDITURE STATEMENT--
2 PRESERVATION AS PUBLIC RECORD.--Each registration and
3 expenditure statement as required by the Lobbyist Regulation
4 Act shall be preserved by the [~~secretary of state~~] governmental
5 standards commission for a period of two years from the date of
6 filing as a public record, open to public inspection at any
7 reasonable time. Unless an action or prosecution is pending
8 that requires preserving the report, it may be destroyed two
9 years after the date of filing."

10 Section 45. Section 2-11-8.2 NMSA 1978 (being Laws 1977,
11 Chapter 261, Section 4, as amended) is amended to read:

12 "2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
13 BINDING ARBITRATION--CIVIL PENALTIES.--

14 A. The [~~secretary of state~~] governmental standards
15 commission shall advise and seek to educate all persons
16 required to perform duties pursuant to the Lobbyist Regulation
17 Act of those duties. This includes advising all registered
18 lobbyists at least annually of the Lobbyist Regulation Act's
19 deadlines for submitting required reports. The [~~secretary of~~
20 ~~state~~] commission, in consultation with the attorney general,
21 shall issue advisory opinions, when requested to do so in
22 writing, on matters concerning the Lobbyist Regulation Act.
23 All prescribed forms prepared shall be clear and easy to
24 complete.

25 B. The [~~secretary of state~~] governmental standards

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1 commission may conduct thorough examinations of reports and
2 initiate investigations to determine whether the Lobbyist
3 Regulation Act has been violated. Additionally, any person who
4 believes that a provision of that act has been violated may
5 file a written complaint with the [~~secretary of state~~]
6 commission. The [~~secretary of state~~] commission shall adopt
7 procedures for issuing advisory opinions, processing complaints
8 and notifications of violations.

9 C. The [~~secretary of state~~] governmental standards
10 commission shall at all times seek to ensure voluntary
11 compliance with the provisions of the Lobbyist Regulation Act.
12 If the [~~secretary of state~~] commission determines that a
13 provision of that act for which a penalty may be imposed has
14 been violated, the [~~secretary of state~~] commission shall by
15 written notice set forth the violation and the fine imposed and
16 inform the person that [~~he~~] the person has ten working days to
17 provide a written explanation, under penalty of perjury,
18 stating any reason the violation occurred. If a timely
19 explanation is filed and the [~~secretary of state~~] commission
20 determines that good cause exists, the [~~secretary of state~~]
21 commission may by a written notice of final action partially or
22 fully waive any fine imposed. A written notice of final action
23 shall be sent by certified mail.

24 D. If the person charged disputes the [~~secretary of~~
25 ~~state's~~] governmental standards commission's determination,

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1 including an advisory opinion, the person charged may request
2 binding arbitration within ten working days of the date of the
3 final action. Any penalty imposed shall be due and payable
4 within ten working days of the notice of final action. No
5 additional penalty shall accrue pending issuance of the
6 arbitration decision. Fines paid pursuant to a notice of final
7 action that are subsequently reduced or dismissed shall be
8 reimbursed with interest within ten working days after the
9 filing of the arbitration decision with the [~~secretary of~~
10 ~~state~~] commission. Interest on the reduced or dismissed
11 portion of the fine shall be the same as the rate of interest
12 earned by the [~~secretary of state's~~] commission's escrow
13 account to be established by the department of finance and
14 administration.

15 E. An arbitration hearing shall be conducted by a
16 single arbitrator selected within ten days by the person
17 against whom the penalty has been imposed from a list of five
18 arbitrators provided by the [~~secretary of state. Neither the~~
19 ~~secretary of state nor~~] governmental standards commission. A
20 person subject to the Lobbyist Regulation Act, Campaign
21 Reporting Act or Financial Disclosure Act [~~may~~] shall not serve
22 as an arbitrator. Arbitrators shall be considered to be
23 independent contractors, not public officers or employees, and
24 shall not be paid per diem and mileage.

25 F. The arbitrator may impose any penalty and take

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1 any action the [~~secretary of state~~] governmental standards
2 commission is authorized to take. The arbitrator shall state
3 the reasons for [~~his~~] the arbitrator's decision in a written
4 document that shall be a public record. The decision shall be
5 final and binding. The decision shall be issued and filed with
6 the [~~secretary of state~~] commission within thirty days of the
7 conclusion of the hearing. Unless otherwise provided for in
8 this section, or by rule or regulation adopted by the
9 [~~secretary of state~~] commission, the procedures for the
10 arbitration shall be governed by the Uniform Arbitration Act.
11 No arbitrator shall be subject to liability for actions taken
12 pursuant to this section.

13 G. Any person who files a report after the deadline
14 imposed by the Lobbyist Regulation Act, or any person who files
15 a false or incomplete report, shall be liable for and shall pay
16 to the [~~secretary of state~~] governmental standards commission
17 fifty dollars (\$50.00) per day for each regular working day
18 after the time required for the filing of the report until the
19 complete report is filed, up to a maximum of five thousand
20 dollars (\$5,000).

21 H. The [~~secretary of state~~] governmental standards
22 commission may refer a matter to the attorney general or a
23 district attorney for a civil injunctive or other appropriate
24 order or enforcement."

25 Section 46. Section 10-15-1 NMSA 1978 (being Laws 1974,

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1 Chapter 91, Section 1, as amended) is amended to read:

2 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
3 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

17 B. All meetings of a quorum of members of any
18 board, commission, administrative adjudicatory body or other
19 policymaking body of any state agency, any agency or authority
20 of any county, municipality, district or ~~[any]~~ political
21 subdivision, held for the purpose of formulating public policy,
22 including the development of personnel policy, rules,
23 regulations or ordinances, discussing public business or ~~[for~~
24 ~~the purpose of]~~ taking any action within the authority of or
25 the delegated authority of any board, commission or other

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1 policymaking body are declared to be public meetings open to
2 the public at all times, except as otherwise provided in the
3 constitution of New Mexico or the Open Meetings Act. No public
4 meeting once convened that is otherwise required to be open
5 pursuant to the Open Meetings Act shall be closed or dissolved
6 into small groups or committees for the purpose of permitting
7 the closing of the meeting.

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

18 D. Any meetings at which the discussion or adoption
19 of any proposed resolution, rule, regulation or formal action
20 occurs and at which a majority or quorum of the body is in
21 attendance, and any closed meetings, shall be held only after
22 reasonable notice to the public. The affected body shall
23 determine at least annually in a public meeting what notice for
24 a public meeting is reasonable when applied to that body. That
25 notice shall include broadcast stations licensed by the federal

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1 communications commission and newspapers of general circulation
2 that have provided a written request for such notice.

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

14 F. Meeting notices shall include an agenda
15 containing a list of specific items of business to be discussed
16 or transacted at the meeting or information on how the public
17 may obtain a copy of such an agenda. Except in the case of an
18 emergency, the agenda shall be available to the public at least
19 twenty-four hours prior to the meeting. Except for emergency
20 matters, a public body shall take action only on items
21 appearing on the agenda. For purposes of this subsection, [an]
22 "emergency" refers to unforeseen circumstances that, if not
23 addressed immediately by the public body, will likely result in
24 injury or damage to persons or property or substantial
25 financial loss to the public body.

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

12 H. The provisions of Subsections A, B and G of this
13 section do not apply to:

14 (1) meetings pertaining to issuance,
15 suspension, renewal or revocation of a license, except that a
16 hearing at which evidence is offered or rebutted shall be open.
17 All final actions on the issuance, suspension, renewal or
18 revocation of a license shall be taken at an open meeting;

19 (2) limited personnel matters; provided that
20 for purposes of the Open Meetings Act, "limited personnel
21 matters" means the discussion of hiring, promotion, demotion,
22 dismissal, assignment or resignation of or the investigation or
23 consideration of complaints or charges against any individual
24 public employee; provided further that this ~~[subsection]~~
25 paragraph is not to be construed as to exempt final actions on

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1 personnel from being taken at open public meetings, nor does it
2 preclude an aggrieved public employee from demanding a public
3 hearing. Judicial candidates interviewed by any commission
4 shall have the right to demand an open interview;

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

16 (4) the discussion of personally identifiable
17 information about any individual student, unless the student
18 ~~[his]~~ or the student's parent or guardian requests otherwise;

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

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

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

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

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

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

22 (11) meetings of the governmental standards
23 commission relating to complaints or investigations of alleged
24 ethics violations.

25 I. If any meeting is closed pursuant to the

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1 exclusions contained in Subsection H of this section [~~the~~
2 ~~closure~~]:

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

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

20 J. Following completion of any closed meeting, the
21 minutes of the open meeting that was closed or the minutes of
22 the next open meeting if the closed meeting was separately
23 scheduled shall state that the matters discussed in the closed
24 meeting were limited only to those specified in the motion for
25 closure or in the notice of the separate closed meeting. This

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1 statement shall be approved by the public body under Subsection
2 G of this section as part of the minutes."

3 Section 47. Section 10-16-4.2 NMSA 1978 (being Laws
4 2007, Chapter 362, Section 10) is amended to read:

5 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public
6 officer or employee shall disclose in writing to the supervisor
7 of the officer or employee, or in the event there is no
8 supervisor, to the [~~secretary of state~~] governmental standards
9 commission, all employment engaged in by the officer or
10 employee other than the employment with the state."

11 Section 48. Section 10-16-11 NMSA 1978 (being Laws 1967,
12 Chapter 306, Section 11, as amended) is amended to read:

13 "10-16-11. CODES OF CONDUCT.--

14 A. By January 1, 1994, each elected statewide
15 executive branch public officer shall adopt a general code of
16 conduct for employees subject to [~~his~~] the officer's control.
17 The New Mexico legislative council shall adopt a general code
18 of conduct for all legislative branch employees. The general
19 codes of conduct shall be based on the principles set forth in
20 the Governmental Conduct Act.

21 B. Within thirty days after the general codes of
22 conduct are adopted, they shall be given to and reviewed with
23 all executive and legislative branch officers and employees.
24 All new public officers and employees of the executive and
25 legislative branches shall review the employees' general code

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1 of conduct prior to or at the time of being hired.

2 C. The head of every executive and legislative
3 agency and institution of the state may draft a separate code
4 of conduct for all public officers and employees in that agency
5 or institution. The separate agency code of conduct shall
6 prescribe standards, in addition to those set forth in the
7 Governmental Conduct Act and the general codes of conduct for
8 all executive and legislative branch public officers and
9 employees, that are peculiar and appropriate to the function
10 and purpose for which the agency or institution was created or
11 exists. The separate codes, upon approval of the responsible
12 executive branch public officer for executive branch public
13 officers and employees or the New Mexico legislative council
14 for legislative branch employees, govern the conduct of the
15 public officers and employees of that agency or institution
16 and, except for those public officers and employees removable
17 only by impeachment, shall, if violated, constitute cause for
18 dismissal, demotion or suspension. The head of each executive
19 and legislative branch agency shall adopt ongoing education
20 programs to advise public officers and employees about the
21 codes of conduct. All codes shall be filed with the [~~secretary~~
22 ~~of state~~] governmental standards commission and are open to
23 public inspection.

24 D. Codes of conduct shall be reviewed at least once
25 every four years. An amended code shall be filed as provided

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1 in Subsection C of this section.

2 E. All legislators shall attend a minimum of two
3 hours of ethics continuing education and training biennially."

4 Section 49. Section 10-16-13.1 NMSA 1978 (being Laws
5 1993, Chapter 46, Section 35) is amended to read:

6 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

7 A. The [~~secretary of state~~] governmental standards
8 commission shall advise and seek to educate all persons
9 required to perform duties under the Governmental Conduct Act
10 of those duties. This includes advising all those persons at
11 least annually of that act's ethical principles.

12 B. The [~~secretary of state~~] governmental standards
13 commission shall seek first to ensure voluntary compliance with
14 the provisions of the Governmental Conduct Act. A person who
15 violates that act unintentionally or for good cause shall be
16 given ten days' notice to correct the matter. Referrals for
17 civil enforcement of that act shall be pursued only after
18 efforts to secure voluntary compliance with that act have
19 failed."

20 Section 50. Section 10-16-14 NMSA 1978 (being Laws 1967,
21 Chapter 306, Section 14, as amended) is amended to read:

22 "10-16-14. ENFORCEMENT PROCEDURES.--

23 A. The [~~secretary of state~~] governmental standards
24 commission may refer suspected violations of the Governmental
25 Conduct Act to the attorney general, district attorney or

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1 appropriate state agency or legislative body for enforcement.
2 If a suspected violation involves the office of the [~~secretary~~
3 ~~of state~~] governmental standards commission, the attorney
4 general may enforce that act. If a suspected violation
5 involves the office of the attorney general, a district
6 attorney may enforce that act.

7 B. Violation of the provisions of the Governmental
8 Conduct Act by any legislator is grounds for discipline by the
9 appropriate legislative body.

10 C. If the attorney general determines that there is
11 sufficient cause to file a complaint against a public officer
12 removable only by impeachment, [~~he~~] the attorney general shall
13 refer the matter to the house of representatives of the
14 legislature. If within thirty days after the referral the
15 house of representatives has neither formally declared that the
16 charges contained in the complaint are not substantial nor
17 instituted hearings on the complaint, the attorney general
18 shall make public the nature of the charges, but [~~he~~] the
19 attorney general shall make clear that the merits of the
20 charges have never been determined. Days during which the
21 legislature is not in session shall not be included in
22 determining the thirty-day period.

23 D. Violation of the provisions of the Governmental
24 Conduct Act by any public officer or employee, other than those
25 covered by Subsection C of this section, is grounds for

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1 discipline, including dismissal, demotion or suspension.
2 Complaints against executive branch employees may be filed with
3 the agency head and reviewed pursuant to the procedures
4 provided in the Personnel Act. Complaints against legislative
5 branch employees may be filed with and reviewed pursuant to
6 procedures adopted by the New Mexico legislative council.
7 Complaints against judicial branch employees may be filed and
8 reviewed pursuant to the procedures provided in the judicial
9 personnel rules.

10 E. Subject to the provisions of this section, the
11 provisions of the Governmental Conduct Act may be enforced by
12 the attorney general. Except as regards legislators or
13 statewide elected officials, a district attorney in the county
14 where a person who allegedly violated the provisions resides or
15 where [a] an alleged violation occurred may also enforce that
16 act. Enforcement actions may include seeking civil injunctive
17 or other appropriate orders."

18 Section 51. Section 10-16-18 NMSA 1978 (being Laws 1995,
19 Chapter 153, Section 23) is amended to read:

20 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

21 A. If the [~~secretary of state~~] governmental
22 standards commission reasonably believes that a person
23 committed, or is about to commit, a violation of the
24 Governmental Conduct Act, the [~~secretary of state~~] commission
25 shall refer the matter to the attorney general or a district

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1 attorney for enforcement.

2 B. The attorney general or a district attorney may
3 institute a civil action in district court if a violation has
4 occurred or to prevent a violation of any provision of the
5 Governmental Conduct Act. Relief may include a permanent or
6 temporary injunction, a restraining order or any other
7 appropriate order, including an order for a civil penalty of
8 two hundred fifty dollars (\$250) for each violation not to
9 exceed five thousand dollars (\$5,000)."

10 Section 52. Section 10-16A-3 NMSA 1978 (being Laws 1993,
11 Chapter 46, Section 41, as amended) is amended to read:

12 "10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES
13 AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON
14 BALLOT OR APPOINTMENT.--

15 A. At the time of filing a declaration of candidacy
16 or nominating petition, a candidate for legislative or
17 statewide office shall file with the proper filing officer, as
18 defined in Section 1-8-25 NMSA 1978, a financial disclosure
19 statement on a prescribed form. In addition, each year
20 thereafter during the month of January, a legislator and a
21 person holding a statewide office shall file with the proper
22 filing officer a financial disclosure statement. [~~If the~~
23 ~~proper filing officer is not the secretary of state~~] The proper
24 filing officer shall forward a copy of [~~the~~] each financial
25 disclosure statement to the [~~secretary of state~~] governmental

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1 standards commission within seventy-two hours of its filing.

2 B. A state agency head or official whose
3 appointment to a board or commission is subject to confirmation
4 by the senate shall file with the [~~secretary of state~~]
5 governmental standards commission a financial disclosure
6 statement within thirty days of appointment and during the
7 month of January every year thereafter that [~~he~~] the state
8 agency head or official holds public office.

9 C. The financial disclosure statement shall include
10 for any person identified in Subsection A or B of this section
11 and the person's spouse the following information for the prior
12 calendar year:

13 (1) the full name, mailing address and
14 residence address of each person covered in the disclosure
15 statement, except the address of the spouse need not be
16 disclosed; the name and address of the person's and spouse's
17 employer and the title or position held; and a brief
18 description of the nature of the business or occupation;

19 (2) all sources of gross income of more than
20 five thousand dollars (\$5,000) to each person covered in the
21 disclosure statement, identified by general category
22 descriptions that disclose the nature of the income source, in
23 the following broad categories: law practice or consulting
24 operation or similar business, finance and banking, farming and
25 ranching, medicine and health care, insurance (as a business

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1 and not as payment on an insurance claim), oil and gas,
2 transportation, utilities, general stock market holdings,
3 bonds, government, education, manufacturing, real estate,
4 consumer goods sales with a general description of the consumer
5 goods and the category "other", with direction that the income
6 source be similarly described. In describing a law practice,
7 consulting operation or similar business of the person or
8 spouse, the major areas of specialization or income sources
9 shall be described, and if the spouse or a person in the
10 reporting person's or spouse's law firm, consulting operation
11 or similar business is or was during the reporting calendar
12 year or the prior calendar year a registered lobbyist under the
13 Lobbyist Regulation Act, the names and addresses of all clients
14 represented for lobbying purposes during those two years shall
15 be disclosed;

16 (3) a general description of the type of real
17 estate owned in New Mexico, other than a personal residence,
18 and the county where it is located;

19 (4) all other New Mexico business interests
20 not otherwise listed of ten thousand dollars (\$10,000) or more
21 in a New Mexico business or entity, including any position held
22 and a general statement of purpose of the business or entity;

23 (5) all memberships held by the reporting
24 individual and ~~[his]~~ the reporting individual's spouse on
25 boards of for-profit businesses in New Mexico;

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1 (6) all New Mexico professional licenses held;

2 (7) each state agency that was sold goods or
3 services in excess of five thousand dollars (\$5,000) during the
4 prior calendar year by a person covered in the disclosure
5 statement;

6 (8) each state agency, other than a court,
7 before which a person covered in the disclosure statement
8 represented or assisted clients in the course of [~~his~~] the
9 person's employment during the prior calendar year; and

10 (9) a general category that allows the person
11 filing the disclosure statement to provide whatever other
12 financial interest or additional information the person
13 believes should be noted to describe potential areas of
14 interest that should be disclosed.

15 D. A complete financial disclosure statement shall
16 be filed every year. The [~~secretary of state~~] governmental
17 standards commission shall mail each elected official required
18 to file a financial disclosure statement a copy of any
19 statement the person filed the previous year.

20 E. The financial disclosure statements filed
21 pursuant to this section are public records open to public
22 inspection during regular office hours and shall be retained by
23 the state for five years from the date of filing.

24 F. A person who files a financial disclosure
25 statement may file an amended statement at any time to reflect

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1 significant changed circumstances that occurred since the last
2 statement was filed.

3 G. ~~Any~~ A candidate for a legislative or statewide
4 office who fails or refuses to file a financial disclosure
5 statement required by this section before the final date for
6 the withdrawal of candidates provided for in the Election Code
7 shall not have ~~his~~ the candidate's name printed on the
8 election ballot.

9 H. For a state agency head or an official whose
10 appointment to a board or commission is subject to confirmation
11 by the senate, the filing of the financial disclosure statement
12 required by this section is a condition of entering upon and
13 continuing in state employment or holding an appointed
14 position."

15 Section 53. Section 10-16A-4 NMSA 1978 (being Laws 1993,
16 Chapter 46, Section 42) is amended to read:

17 "10-16A-4. DISCLOSURES BY CERTAIN PUBLIC OFFICERS OR
18 EMPLOYEES OF STATE AGENCIES--CONDITION OF EMPLOYMENT.--

19 A. Every employee who is not otherwise required to
20 file a financial disclosure statement under the Financial
21 Disclosure Act and who has a financial interest that ~~he~~ the
22 employee believes or has reason to believe may be affected by
23 ~~his~~ the employee's official act or actions of the state
24 agency by which ~~he~~ the employee is employed shall disclose
25 the nature and extent of that interest. The disclosures shall

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1 be made in writing to the [~~secretary of state~~] governmental
2 standards commission before entering state employment and
3 during the month of January every year thereafter.

4 B. Every public officer who is not otherwise
5 required to file a financial disclosure statement under the
6 Financial Disclosure Act and who has a financial interest that
7 [~~he~~] the public officer believes or has reason to believe may
8 be affected by [~~his~~] the public officer's official act or
9 actions of the board or commission to which [~~he~~] the public
10 officer is appointed shall disclose the nature and extent of
11 that interest. The disclosures shall be made in writing to the
12 [~~secretary of state~~] governmental standards commission before
13 taking office and during the month of January every year
14 thereafter.

15 C. The information on the disclosures shall be made
16 available by the [~~secretary of state~~] governmental standards
17 commission for inspection to any [~~citizen of this~~] resident of
18 the state.

19 D. The filing of disclosures pursuant to this
20 section is a condition of entering upon and continuing in state
21 employment or, for persons subject to Subsection B of this
22 section, of holding public office."

23 Section 54. Section 10-16A-5 NMSA 1978 (being Laws 1993,
24 Chapter 46, Section 43) is amended to read:

25 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

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1 A. The [~~secretary of state~~] governmental standards
2 commission shall advise and seek to educate all persons
3 required to perform duties under the Financial Disclosure Act
4 of those duties. This includes providing timely advance notice
5 of the required financial disclosure statement and preparing
6 forms that are clear and easy to complete.

7 B. The [~~secretary of state~~] governmental standards
8 commission shall seek first to ensure voluntary compliance with
9 the provisions of the Financial Disclosure Act. A person who
10 violates that act unintentionally or for good cause shall be
11 given ten days' notice to correct the matter before fines are
12 imposed. Referrals for civil enforcement of the Financial
13 Disclosure Act shall be pursued only after efforts to secure
14 voluntary compliance with that act have failed."

15 Section 55. Section 10-16A-6 NMSA 1978 (being Laws 1993,
16 Chapter 46, Section 44, as amended) is amended to read:

17 "10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--FINES--
18 ENFORCEMENT.--

19 A. The [~~secretary of state~~] governmental standards
20 commission may conduct thorough examinations of statements and
21 initiate investigations to determine whether the Financial
22 Disclosure Act has been violated. Any person who believes that
23 act has been violated may file a written complaint with the
24 [~~secretary of state~~] commission. The [~~secretary of state~~]
25 commission shall adopt procedures for processing complaints and

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1 notifications of violations.

2 B. If the [~~secretary of state~~] governmental
3 standards commission determines that a violation has occurred
4 for which a penalty should be imposed, the [~~secretary of state~~]
5 commission shall so notify the person charged and impose the
6 penalty. If the person charged disputes the [~~secretary of~~
7 ~~state's~~] commission's determination, the person charged may
8 request binding arbitration.

9 C. The arbitration decision shall be decided by a
10 single arbitrator selected within ten days by the person
11 against whom the penalty has been imposed from a list of five
12 arbitrators provided by the [~~secretary of state~~] governmental
13 standards commission. No arbitrator may be a person subject to
14 the Financial Disclosure Act, Campaign Reporting Act or
15 Lobbyist Regulation Act. Arbitrators shall be considered to be
16 independent contractors, not public officers or employees, and
17 shall not be paid per diem and mileage.

18 D. The arbitrator may take any action the
19 [~~secretary of state~~] governmental standards commission is
20 authorized to take. The arbitrator shall state the reasons for
21 [~~his~~] the decision in a written document that shall be a public
22 record. The decision shall be final and binding. The decision
23 shall be issued within thirty days of the conclusion of the
24 hearing. Unless otherwise provided for in this section, or by
25 rule or regulation adopted by the [~~secretary of state~~]

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1 commission, the procedures for the arbitration shall be
2 governed by the Uniform Arbitration Act. No arbitrator shall
3 be subject to liability for actions taken pursuant to this
4 section.

5 E. Any person who files a statement or report after
6 the deadline imposed by the Financial Disclosure Act or any
7 person who files a false or incomplete statement or report is
8 liable for and shall pay to the [~~secretary of state~~]
9 governmental standards commission, at or from the time
10 initially required for the filing, fifty dollars (\$50.00) per
11 day for each regular working day after the time required for
12 the filing of the statement or report until the complete report
13 is filed, up to a maximum of five thousand dollars (\$5,000).

14 F. The [~~secretary of state~~] governmental standards
15 commission may refer a matter to the attorney general or a
16 district attorney for a civil injunctive or other appropriate
17 order or enforcement."

18 Section 56. Section 10-16A-8 NMSA 1978 (being Laws 1995,
19 Chapter 153, Section 25) is amended to read:

20 "10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--

21 A. If the [~~secretary of state~~] governmental
22 standards commission reasonably believes that a person
23 committed, or is about to commit, a violation of the Financial
24 Disclosure Act, the [~~secretary of state~~] commission shall refer
25 the matter to the attorney general or a district attorney for

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1 enforcement.

2 B. The attorney general or a district attorney may
3 institute a civil action in district court if a violation has
4 occurred or to prevent a violation of any provision of the
5 Financial Disclosure Act. Relief may include a permanent or
6 temporary injunction, a restraining order or any other
7 appropriate order, including an order for a civil penalty of
8 two hundred fifty dollars (\$250) for each violation not to
9 exceed five thousand dollars (\$5,000)."

10 Section 57. Section 10-16B-3 NMSA 1978 (being Laws 2007,
11 Chapter 226, Section 3) is amended to read:

12 "10-16B-3. LIMITATION ON GIFTS.--

13 A. A state officer or employee or a candidate for
14 state office, or that person's family, shall not knowingly
15 accept from a restricted donor, and a restricted donor shall
16 not knowingly donate to a state officer or employee or a
17 candidate for state office, or that person's family, a gift of
18 a market value greater than two hundred fifty dollars (\$250).

19 B. A lobbyist registered with the [~~secretary of~~
20 ~~state~~] governmental standards commission, the lobbyist's
21 employer or a government contractor shall not donate gifts of
22 an aggregate market value greater than one thousand dollars
23 (\$1,000) in a calendar year to any one state officer or
24 employee or to any one candidate for state office.

25 C. A state officer or employee shall not solicit

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1 gifts for a charity from a business or corporation regulated
2 by the state agency for which the state officer or employee
3 works and shall not otherwise solicit donations for a charity
4 in such a manner that it appears that the purpose of the donor
5 in making the gift is to influence the state officer or
6 employee in the performance of an official duty."

7 Section 58. TEMPORARY PROVISION--REPORT ON EXTENSION OF
8 GOVERNMENTAL STANDARDS COMMISSION JURISDICTION TO LOCAL
9 GOVERNMENTS.--By January 1, 2012, the governmental standards
10 commission shall submit a report to the legislature and the
11 governor regarding the extension of commission jurisdiction to
12 elected and appointed officials and employees of political
13 subdivisions of the state. The report shall include and make
14 recommendations on:

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

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

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

25 D. any changes needed to existing law.

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1 Section 59. TEMPORARY PROVISION--TRANSFER OF PROPERTY,
2 CONTRACTS AND REFERENCES IN LAW AND RULES.--On January 1, 2011:

3 A. all functions, appropriations, money, records,
4 property, equipment and supplies of the office of the secretary
5 of state used in the administration of the following acts are
6 transferred to the governmental standards commission:

- 7 (1) the Campaign Reporting Act;
- 8 (2) the Voter Action Act;
- 9 (3) the Lobbyist Regulation Act;
- 10 (4) the Governmental Conduct Act;
- 11 (5) the Financial Disclosure Act; and
- 12 (6) the Gift Act;

13 B. all contracts, grants, agreements and other
14 obligations of the secretary of state relating to
15 administration of the acts listed in Subsection A of this
16 section are transferred to and binding on the governmental
17 standards commission;

18 C. all references in law to the secretary of
19 state relating to administration of the acts listed in
20 Subsection A of this section shall be deemed to be references
21 to the governmental standards commission; and

22 D. all rules of the secretary of state pertaining
23 to administration of the acts listed in Subsection A of this
24 section shall be considered rules of the governmental standards
25 commission.

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