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SENATE BILL 420

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Eric G. Griego

AN ACT

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 15 of this act may be cited as the "State Ethics
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1 Commission Act".

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

4 A. "adjunct agency" means a state agency that is
5 not assigned to a particular constitutional officer, that is
6 excluded from any direct or administrative attachment to a
7 department and that retains policymaking and administrative
8 autonomy separate from any other agency of state government;

9 B. "candidate" means a person who seeks election to
10 an office of the executive or legislative branch of the state
11 government and who either has filed a declaration of candidacy
12 or nominating petition or:

13 (1) for a non-statewide office, has received
14 contributions or made expenditures of one thousand dollars
15 (\$1,000) or more or authorized another person or campaign
16 committee to receive contributions or make expenditures of one
17 thousand dollars (\$1,000) or more for the purpose of seeking
18 election to the office; or

19 (2) for a statewide office, has received
20 contributions or made expenditures of two thousand five hundred
21 dollars (\$2,500) or more or authorized another person or
22 campaign committee to receive contributions or make
23 expenditures of two thousand five hundred dollars (\$2,500) or
24 more for the purpose of seeking election to the office or for
25 candidacy exploration purposes in the years prior to the year

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1 of the election;

2 C. "commission" means the state ethics commission;

3 D. "commissioner" means a member of the commission;

4 E. "complainant" means a person who files a
5 complaint with the commission;

6 F. "director" means the executive director of the
7 commission;

8 G. "ethics violation" means a violation of the Gift
9 Act; the Governmental Conduct Act; the Procurement Code; the
10 Lobbyist Regulation Act; the Financial Disclosure Act; the
11 Voter Action Act; Chapter 1, Article 19 NMSA 1978, including
12 the Campaign Reporting Act; or any code of ethics adopted
13 pursuant to those laws or Paragraph (7) of Subsection A of
14 Section 5 of the State Ethics Commission Act;

15 H. "government contractor" means a person who has a
16 contract with a state agency or who has submitted a competitive
17 sealed proposal or competitive sealed bid for a contract with a
18 state agency;

19 I. "legislative body" means the house of
20 representatives or the senate;

21 J. "lobbying" means attempting to influence:

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

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1 action by the governor; or

2 (2) an official action;

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

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

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

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

23 (4) a designated member of the staff of an
24 elected state official; provided that the elected state
25 official files the designation with the secretary of state and

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1 makes it available for public inspection;

2 (5) a legislator or legislative staff member;

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

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

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

15 L. "official action" means an official decision,
16 recommendation, approval, disapproval, vote or other action by
17 a state official that involves the use of discretionary
18 authority;

19 M. "political party" means an entity that has
20 complied with the provisions of Section 1-7-2 NMSA 1978;

21 N. "respondent" means a state official, candidate,
22 government contractor or lobbyist who is the subject of a
23 complaint filed with or by the commission;

24 O. "state agency" means any department, commission,
25 council, board, committee, agency or instrumentality of the

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1 executive or legislative branch of the state or any adjunct
2 agency of the state; and

3 P. "state official" means a person elected to an
4 office of the executive or legislative branch of the state or a
5 person holding one of the exempt positions in state government
6 that are listed in Subsection A of Section 10-9-5 NMSA 1978.

7 SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION
8 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

9 A. The "state ethics commission" is created as an
10 adjunct agency of the executive branch under the direction of
11 five commissioners, who shall be appointed by the governor as
12 follows:

13 (1) one commissioner to be appointed from a
14 list of three nominees submitted by the speaker of the house of
15 representatives;

16 (2) one commissioner to be appointed from a
17 list of three nominees submitted by the minority floor leader
18 of the house of representatives;

19 (3) one commissioner to be appointed from a
20 list of three nominees submitted by the majority floor leader
21 of the senate;

22 (4) one commissioner to be appointed from a
23 list of three nominees submitted by the minority floor leader
24 of the senate; and

25 (5) the chair of the commission to be

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1 appointed from a list of three retired judges submitted by the
2 chief justice of the supreme court.

3 B. The nominating and appointing authorities shall
4 give due regard to geographic representation and to the
5 cultural diversity of the state.

6 C. The governor shall file letters of appointment
7 with the secretary of state.

8 D. Commissioners shall be appointed for staggered
9 terms of four years beginning July 1, 2011. The initial
10 commissioners shall draw lots to determine which two
11 commissioners serve an initial term of four years, which two
12 commissioners serve an initial term of three years and which
13 commissioner serves an initial term of one year; thereafter,
14 all commissioners shall serve terms of four years. Members
15 shall serve until their successors are appointed and qualified.
16 A person shall not serve as a commissioner for more than two
17 consecutive terms.

18 E. A vacancy on the commission shall be filled by
19 appointment by the governor from a list of three nominees
20 submitted from the nominating authority who originally
21 nominated the commissioner who created the vacancy.

22 F. The commission shall meet as necessary to carry
23 out its duties pursuant to the State Ethics Commission Act.
24 Commissioners are entitled to receive per diem and mileage as
25 provided in the Per Diem and Mileage Act and shall receive no

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1 other compensation, perquisite or allowance.

2 G. Three commissioners constitute a quorum for the
3 transaction of business. No action shall be taken by the
4 commission unless at least three members concur.

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

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

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

- 18 (1) be a resident of New Mexico; and
19 (2) have been a member of the same political
20 party for at least three years prior to appointment or shall
21 not have been a member of any political party for at least
22 three years prior to appointment.

23 B. Before entering upon the duties of the office of
24 commissioner, each commissioner shall review the State Ethics
25 Commission Act and other laws and rules pertaining to the

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1 commission's responsibilities and to ethics and governmental
2 conduct in New Mexico. Each commissioner shall take the oath
3 of office as provided in Article 20, Section 1 of the
4 constitution of New Mexico.

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

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

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

11 D. A commissioner who violates the provisions of
12 Subsection C of this section is deemed to have resigned from
13 the commission.

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

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

19 (2) accept employment or otherwise provide
20 services to a respondent unless the commissioner accepted
21 employment or provided services prior to the filing of the
22 complaint against the respondent.

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

25 A. The commission shall:

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1 (1) employ an executive director, who shall be
2 an attorney;

3 (2) receive and investigate complaints
4 alleging ethics violations against state officials, candidates,
5 government contractors and lobbyists;

6 (3) hold hearings in appropriate cases to
7 determine whether there has been an ethics violation;

8 (4) develop, adopt and promulgate the rules
9 necessary to implement and administer the provisions of the
10 State Ethics Commission Act;

11 (5) compile, index, maintain and provide
12 public access to all advisory opinions and reports made public
13 pursuant to the State Ethics Commission Act;

14 (6) conduct a review of the laws listed in
15 Subsection G of Section 2 of the State Ethics Commission Act
16 and submit to the legislature and the governor, on or before
17 July 1, 2013, any recommendations the commission may have for
18 amendment or revision of those laws;

19 (7) draft a proposed code of ethics for state
20 officials and state employees and submit the proposed code to
21 each elected state official and state agency for adoption;

22 (8) submit to the legislature and the
23 governor, in December of each year, an annual report of the
24 commission's activities, including any recommendations it may
25 have regarding the State Ethics Commission Act or any of the

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1 laws listed in Subsection G of Section 2 of that act;

2 (9) compile, adopt, publish and make available
3 to all state officials, candidates, government contractors and
4 lobbyists an ethics guide that clearly and plainly explains the
5 requirements of the laws listed in Subsection G of Section 2 of
6 the State Ethics Commission Act; and

7 (10) offer annual ethics training to state
8 officials, candidates, government contractors, lobbyists and
9 other interested persons.

10 B. The commission may issue:

11 (1) subpoenas requiring the attendance of
12 witnesses and the production of books, records, documents or
13 other evidence relevant or material to an investigation; and

14 (2) advisory opinions to state officials,
15 candidates, government contractors and lobbyists in accordance
16 with the provisions of the State Ethics Commission Act.

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

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

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B. The director shall:

- (1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;
- (2) perform investigations on behalf of the commission;
- (3) bring complaints and investigation results before the commission for consideration;
- (4) prepare an annual budget for the commission and submit it to the commission for approval;
- (5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act; and
- (6) perform other tasks as are required by the State Ethics Commission Act or as directed by the commission.

C. The director may:

- (1) hire a general counsel for the commission and additional personnel as may be necessary to carry out the duties of the commission;
- (2) enter into contracts and agreements on behalf of the commission;
- (3) administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts; and
- (4) initiate complaints alleging ethics violations against state officials, candidates, government

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1 contractors and lobbyists.

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

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

7 (2) accept employment or otherwise provide
8 services to a respondent.

9 SECTION 7. [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 may
13 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 the matter.

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 two or more commissioners have recused
25 themselves or are disqualified from participating in a

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1 proceeding so that there is no longer a quorum, the remaining
2 commissioners shall appoint temporary commissioners to
3 participate in that proceeding. Appointments of temporary
4 commissioners shall be made by the remaining commissioners in
5 accordance with the qualifications required pursuant to Section
6 4 of the State Ethics Commission Act.

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

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

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

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

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

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

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

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

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

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

7 A. A complaint of an alleged ethics violation
8 committed by a state official, candidate, government contractor
9 or lobbyist may be:

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

12 (2) initiated by the director upon receipt of
13 evidence establishing sufficient cause to warrant an
14 investigation of whether the respondent's conduct constitutes
15 an ethics violation.

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

25 C. The director shall promptly bring all complaints

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1 before the commission and make recommendations to the
2 commission as to whether the conduct alleged in the complaint
3 is within the jurisdiction of the commission and warrants
4 investigation.

5 D. The commission shall promptly dismiss complaints
6 that are frivolous or outside the jurisdiction of the
7 commission. If the commission dismisses a complaint pursuant
8 to this subsection, the director shall promptly notify the
9 complainant and the respondent.

10 E. If the complaint is not dismissed pursuant to
11 Subsection D of this section, the director shall proceed to
12 investigate the complaint. The director shall promptly notify
13 the respondent that a complaint has been filed and is being
14 investigated and shall notify the respondent of the specific
15 allegations in the complaint and the specific ethics violations
16 implicated by the complaint.

17 F. As part of an investigation, the director may
18 administer oaths, interview witnesses and examine books,
19 records, documents and other evidence reasonably related to the
20 complaint. If the director determines that a subpoena is
21 necessary to obtain the testimony of any person or the
22 production of books, records, documents or other evidence, the
23 director shall ask the commission to issue a subpoena. The
24 commission may issue a subpoena to compel the attendance of
25 witnesses and to require the production of any books, records,

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1 documents or other evidence that it deems relevant or material
2 to an investigation. Any challenge to a subpoena shall be
3 heard and resolved by a district court. If a person refuses to
4 comply with a subpoena, the commission may petition a district
5 court to compel compliance.

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

8 A. A complaint shall be investigated as promptly as
9 practicable. If an investigation has not been concluded and a
10 report issued within ninety days after the complaint is
11 received or initiated, the director shall render a written
12 report to the commission on the progress and status of the
13 investigation. The commission may at that time dismiss the
14 complaint or instruct the director to continue investigating
15 the complaint. Unless the commission dismisses the complaint,
16 the director shall report to the commission every ninety days
17 thereafter on the progress 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 complainant and respondent in writing of its action.

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

23 A. The director shall provide a written report of
24 the investigation to the commission and to the complainant and
25 respondent. As soon as practicable after receiving the report,

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1 the commission shall decide whether there is sufficient cause
2 to proceed with a hearing on the complaint. If the commission
3 does not find sufficient cause, it shall dismiss the complaint.
4 If the commission finds sufficient cause, it shall schedule a
5 public hearing on the complaint. The director shall notify the
6 complainant and the respondent of the commission's decision and
7 of the date, time and place of any hearing scheduled.

8 B. At the public hearing, the commission has the
9 power to administer oaths. The complainant and the respondent
10 have the right to be represented by counsel and to present
11 evidence and examine and cross-examine witnesses. The
12 respondent shall be afforded due process at the hearing.

13 C. After hearing and consideration of all the
14 evidence, if the commission finds by a preponderance of the
15 evidence for a civil violation or beyond a reasonable doubt for
16 a criminal violation that the respondent's conduct constituted
17 an ethics violation, the commission shall issue a written
18 report that shall include findings of fact and conclusions of
19 law. The report may include a public reprimand or censure or
20 recommendations for disciplinary action against the respondent.
21 The commission shall publish the report and provide it, along
22 with all evidence collected during its investigation, to the
23 complainant, the respondent, the attorney general and the:

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

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

4 (3) respondent's appointing authority if the
5 respondent is a person holding one of the exempt positions in
6 state government that are listed in Subsection A of Section
7 10-9-5 NMSA 1978;

8 (4) secretary of state if the respondent is a
9 candidate;

10 (5) state agency with which the respondent has
11 a government contract if the respondent is a government
12 contractor; or

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

15 D. If, after consideration of all the evidence, the
16 commission does not find by a preponderance of the evidence
17 that the respondent's conduct constituted an ethics violation,
18 the commission shall dismiss the complaint and provide notice
19 of the dismissal to the respondent and complainant. A notice
20 issued pursuant to this subsection shall be made public.

21 E. The commission shall promulgate rules
22 establishing procedures for hearings.

23 SECTION 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

24 A. Complaints, reports, files, records and
25 communications collected or generated by the commission or its

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1 director that pertain to alleged ethics violations shall not be
2 disclosed by the commission and are not subject to the
3 Inspection of Public Records Act until:

4 (1) the respondent files with the commission a
5 written waiver of confidentiality;

6 (2) the commission decides that there is
7 sufficient cause to proceed with a hearing on the complaint
8 pursuant to Section 11 of the State Ethics Commission Act;

9 (3) the date that a matter is referred to the
10 attorney general pursuant to Section 13 of the State Ethics
11 Commission Act; or

12 (4) sixty days after the commission dismisses
13 a complaint pursuant to Section 9, 10 or 11 of the State Ethics
14 Commission Act.

15 B. No personal or professional financial records of
16 the respondent shall be disclosed when a complaint has been
17 dismissed.

18 C. A member of the commission, the director or a
19 commission employee or agent may disclose information to the
20 extent necessary to pursue an investigation.

21 SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--
22 REFERRAL.--If the commission finds at any time that the
23 respondent's conduct amounts to a criminal violation, the
24 commission may refer the matter to the attorney general or an
25 appropriate district attorney. The commission shall provide

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1 the attorney general or district attorney with all evidence
2 collected during its investigation that may be used in a
3 criminal proceeding. Nothing in this section prevents the
4 commission from taking any action otherwise authorized by the
5 State Ethics Commission Act or deciding to hold a matter in
6 abeyance pending resolution of any criminal charges.

7 SECTION 14. [NEW MATERIAL] LIMITATIONS ON JURISDICTION.--

8 A. The commission shall not accept or consider a
9 complaint unless it is filed or initiated within three years
10 from the date on which the complainant discovered or reasonably
11 should have discovered the facts constituting the alleged
12 ethics violation.

13 B. The commission shall not investigate allegations
14 of misconduct based on the content of campaign advertisements.

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

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

19 (1) files a complaint with the commission
20 alleging an ethics violation against a state official,
21 candidate, government contractor or lobbyist; or

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

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

5 SECTION 16. Section 10-15-1 NMSA 1978 (being Laws 1974,
6 Chapter 91, Section 1, as amended) is amended to read:

7 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
8 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

22 B. All meetings of a quorum of members of any
23 board, commission, administrative adjudicatory body or other
24 policymaking body of any state agency or any agency or
25 authority of any county, municipality, district or [~~any~~]

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1 political subdivision, held for the purpose of formulating
2 public policy, including the development of personnel policy,
3 rules, regulations or ordinances, discussing public business or
4 ~~[for the purpose of]~~ taking any action within the authority of
5 or the delegated authority of any board, commission or other
6 policymaking body, are declared to be public meetings open to
7 the public at all times, except as otherwise provided in the
8 constitution of New Mexico or the Open Meetings Act. No public
9 meeting once convened that is otherwise required to be open
10 pursuant to the Open Meetings Act shall be closed or dissolved
11 into small groups or committees for the purpose of permitting
12 the closing of the meeting.

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

23 D. Any meetings at which the discussion or adoption
24 of any proposed resolution, rule, regulation or formal action
25 occurs and at which a majority or quorum of the body is in

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1 attendance, and any closed meetings, shall be held only after
2 reasonable notice to the public. The affected body shall
3 determine at least annually in a public meeting what notice for
4 a public meeting is reasonable when applied to that body. That
5 notice shall include broadcast stations licensed by the federal
6 communications commission and newspapers of general circulation
7 that have provided a written request for such notice.

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

19 F. Meeting notices shall include an agenda
20 containing a list of specific items of business to be discussed
21 or transacted at the meeting or information on how the public
22 may obtain a copy of such an agenda. Except in the case of an
23 emergency, the agenda shall be available to the public at least
24 twenty-four hours prior to the meeting. Except for emergency
25 matters, a public body shall take action only on items

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1 appearing on the agenda. For purposes of this subsection, ~~[an]~~
2 "emergency" refers to unforeseen circumstances that, if not
3 addressed immediately by the public body, will likely result in
4 injury or damage to persons or property or substantial
5 financial loss to the public body.

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

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

19 (1) meetings pertaining to issuance,
20 suspension, renewal or revocation of a license, except that a
21 hearing at which evidence is offered or rebutted shall be open.
22 All final actions on the issuance, suspension, renewal or
23 revocation of a license shall be taken at an open meeting;

24 (2) limited personnel matters; provided that
25 for purposes of the Open Meetings Act, "limited personnel

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1 matters" means the discussion of hiring, promotion, demotion,
2 dismissal, assignment or resignation of or the investigation or
3 consideration of complaints or charges against any individual
4 public employee; provided further that this ~~[subsection]~~
5 paragraph is not to be construed as to exempt final actions on
6 personnel from being taken at open public meetings, nor does it
7 preclude an aggrieved public employee from demanding a public
8 hearing. Judicial candidates interviewed by any commission
9 shall have the right to demand an open interview;

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

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

24 (5) meetings for the discussion of bargaining
25 strategy preliminary to collective bargaining negotiations

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1 between the policymaking body and a bargaining unit
2 representing the employees of that policymaking body and
3 collective bargaining sessions at which the policymaking body
4 and the representatives of the collective bargaining unit are
5 present;

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

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

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

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

24 (10) that portion of a meeting of the gaming
25 control board dealing with information made confidential

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1 pursuant to the provisions of the Gaming Control Act; and
2 (11) meetings of the state ethics commission
3 relating to complaints or investigations of alleged ethics
4 violations, except that hearings held pursuant to Section 11 of
5 the State Ethics Commission Act are public and are subject to
6 the provisions of Subsections A, B and G of this section.

7 I. If any meeting is closed pursuant to the
8 exclusions contained in Subsection H of this section [~~the~~
9 ~~closure~~]:

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

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

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1 and to the general public.

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

10 SECTION 17. TEMPORARY PROVISION--REPORT ON EXTENSION OF
11 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
12 January 1, 2013, the state ethics commission shall submit a
13 report to the legislature and the governor regarding the
14 extension of commission jurisdiction to elected and appointed
15 officials and employees of political subdivisions of the state.
16 The report shall include and make recommendations on:

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

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

24 C. estimated budget increases and the estimated
25 annual budget for the commission if its jurisdiction were

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1 extended; and

2 D. any changes needed to existing law.

3 SECTION 18. APPROPRIATION.--Three hundred fifty thousand
4 dollars (\$350,000) is appropriated from the general fund to the
5 state ethics commission for expenditure in fiscal year 2012 to
6 carry out the provisions of the State Ethics Commission Act.
7 Any unexpended or unencumbered balance remaining at the end of
8 fiscal year 2012 shall revert to the general fund.

9 SECTION 19. SEVERABILITY.--If any part or application of
10 this act is held invalid, the remainder or its application to
11 other situations or persons shall not be affected.

12 SECTION 20. APPLICABILITY.--The provisions of the State
13 Ethics Commission Act apply to conduct that occurs on or after
14 July 1, 2011.

15 SECTION 21. EFFECTIVE DATE.--

16 A. The effective date of the provisions of Sections
17 1 through 7 and 12 through 20 of this act is July 1, 2011.

18 B. The effective date of the provisions of Sections
19 8 through 11 of this act is January 1, 2012.

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