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SENATE BILL 164

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

INTRODUCED BY

Linda M. Lopez and Bill B. O'Neill

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
CERTAIN PUBLIC OFFICIALS, PUBLIC EMPLOYEES, 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 16 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 an agency, board,
5 commission, office or other instrumentality, not assigned to an
6 elected constitutional officer, that is excluded from any
7 direct or administrative attachment to a department and that
8 retains policymaking and administrative autonomy separate from
9 any other agency of state government;

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

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

12 D. "complainant" means a person who files an ethics
13 complaint with the commission;

14 E. "director" means the executive director of the
15 commission;

16 F. "ethics violation" means an action that is a
17 violation of the Gift Act; the Governmental Conduct Act; the
18 Procurement Code; the Lobbyist Regulation Act; the Financial
19 Disclosure Act; the Voter Action Act; Chapter 1, Article 19
20 NMSA 1978, including the Campaign Reporting Act; or any code of
21 ethics adopted pursuant to those laws or Section 5 of the State
22 Ethics Commission Act;

23 G. "government contractor" means a person who has a
24 contract with a public agency or who has submitted a
25 competitive sealed proposal or competitive sealed bid for a

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1 contract with a public agency;

2 H. "legislative body" means the house of
3 representatives or the senate;

4 I. "lobbying" means attempting to influence:

5 (1) a decision related to any matter to be
6 considered or being considered by the legislative branch of
7 state government or any legislative committee or to any
8 legislative matter requiring action by the governor or awaiting
9 action by the governor; or

10 (2) an official action;

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

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

19 (2) an elected or appointed officer of the
20 state, a political subdivision of the state or an Indian
21 nation, tribe or pueblo who is acting in the officer's official
22 capacity;

23 (3) a state employee or an employee of a
24 political subdivision of the state, specifically designated by
25 an elected or appointed officer, who appears before a

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1 legislative committee or in a rulemaking proceeding only to
2 explain the effect of legislation or a rule on that employee's
3 agency or political subdivision; provided that the elected or
4 appointed officer files the designation with the secretary of
5 state and makes it available for public inspection;

6 (4) a designated member of the staff of an
7 elected public official; provided that the elected official
8 files the designation with the secretary of state and makes it
9 available for public inspection;

10 (5) a legislator or legislative staff member;

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

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

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

23 K. "official action" means a decision, action or
24 nonaction of a public official or public agency in a rulemaking
25 or other matter, except an adjudicatory proceeding;

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1 L. "political party" means a political party that
2 has complied with the provisions of Section 1-7-2 NMSA 1978;

3 M. "public agency" means any department,
4 commission, council, board, committee, agency or institution of
5 the executive or legislative branch of government of the state
6 or any instrumentality of the state, including the New Mexico
7 mortgage finance authority, the New Mexico finance authority,
8 the New Mexico exposition center authority, the New Mexico
9 hospital equipment loan council and the New Mexico renewable
10 energy transmission authority; "public agency" also means a
11 public school district and a charter school;

12 N. "public employee" means an employee of a public
13 agency; provided that, with respect to a public school district
14 or a charter school, "public employee" only includes an
15 employee who works in an administrative capacity;

16 O. "public official" means a person elected to an
17 office of the executive or legislative branch of the state, a
18 person appointed to a public agency, a local school board
19 member, a local superintendent of a school district or a member
20 of the governing authority of a charter school; and

21 P. "respondent" means a public official, public
22 employee, government contractor or lobbyist who is the subject
23 of a complaint filed with or by the commission.

24 SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION

25 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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1 A. The "state ethics commission" is created as an
2 adjunct agency of the executive branch under the direction of
3 seven commissioners, appointed as follows:

4 (1) one commissioner appointed by the speaker
5 of the house of representatives;

6 (2) one commissioner appointed by the minority
7 floor leader of the house of representatives;

8 (3) one commissioner appointed by the majority
9 floor leader of the senate;

10 (4) one commissioner appointed by the minority
11 floor leader of the senate;

12 (5) two commissioners appointed by the
13 governor, one of whom shall be a member of the Democratic party
14 and one of whom shall be a member of the Republican party; and

15 (6) one commissioner appointed by the chief
16 justice of the supreme court, who shall be a retired judge and
17 who shall chair the commission.

18 B. The appointing authorities shall give due regard
19 to geographic representation and to the cultural diversity of
20 the state.

21 C. Each appointing authority shall file letters of
22 appointment with the secretary of state.

23 D. Commissioners shall be appointed for staggered
24 terms of four years beginning July 1, 2011. The initial
25 commissioners shall draw lots to determine which two

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1 commissioners serve an initial term of two years, which two
2 commissioners serve an initial term of three years and which
3 three commissioners serve an initial term of four years;
4 thereafter, all commissioners shall serve four-year terms.
5 Members shall serve until their successors are appointed and
6 qualified.

7 E. A person shall not serve as a commissioner for
8 more than two consecutive terms. A vacancy on the commission
9 shall be filled by appointment by the original appointing
10 authority for the remainder of the unexpired term.

11 F. The commission shall meet as necessary to carry
12 out its duties pursuant to the State Ethics Commission Act.
13 Commissioners are entitled to receive per diem and mileage as
14 provided in the Per Diem and Mileage Act and shall receive no
15 other compensation, perquisite or allowance.

16 G. Four commissioners consisting of two Democrats
17 and two Republicans constitute a quorum for the transaction of
18 business. No action shall be taken by the commission unless at
19 least four members, including at least two Democrats and two
20 Republicans, concur.

21 H. A commissioner may be removed only for
22 incompetence, neglect of duty or malfeasance in office. A
23 proceeding for the removal of a commissioner may be commenced
24 by the commission or by the attorney general upon the request
25 of the commission. The New Mexico supreme court has exclusive

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1 jurisdiction over proceedings to remove commissioners, and its
2 decision shall be final. A commissioner shall be given notice
3 of hearing and an opportunity to be heard before the
4 commissioner is removed.

5 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
6 LIMITATIONS.--

7 A. To qualify for appointment to the commission, a
8 person shall:

9 (1) be a resident of New Mexico; and

10 (2) have been a member of the same political
11 party for at least three years prior to appointment or shall
12 not have been a member of any political party for at least
13 three years prior to appointment.

14 B. Before entering upon the duties of the office of
15 commissioner, each commissioner shall review the State Ethics
16 Commission Act and other laws and rules pertaining to the
17 commission's responsibilities and to ethics and governmental
18 conduct in New Mexico. Each commissioner shall take the oath
19 of office as provided in Article 20, Section 1 of the
20 constitution of New Mexico.

21 C. During a commissioner's tenure, a commissioner
22 shall not:

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

25 (2) be a public employee, government

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1 contractor or lobbyist.

2 D. A commissioner who changes political party
3 affiliation or violates the provisions of Subsection C of this
4 section is deemed to have resigned from the commission.

5 E. For a period of one calendar year following a
6 commissioner's tenure or following the resignation or removal
7 of a commissioner, the commissioner shall not:

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

10 (2) accept employment or otherwise provide
11 services to a respondent unless the commissioner accepted
12 employment or provided services prior to the filing of a
13 complaint against the respondent.

14 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND
15 POWERS.--

16 A. The commission shall:

17 (1) receive and investigate complaints
18 alleging ethics violations against public officials, public
19 employees, government contractors and lobbyists;

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

22 (3) develop, adopt and promulgate the rules
23 necessary for it to implement and administer the provisions of
24 the State Ethics Commission Act;

25 (4) compile, index, maintain and provide

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1 public access to all advisory opinions and reports required to
2 be made public pursuant to the State Ethics Commission Act;

3 (5) draft a proposed code of ethics for public
4 officials and public employees and submit the proposed code to
5 each elected public official and public agency for adoption;

6 (6) employ an executive director, who shall be
7 an attorney; and

8 (7) submit an annual report of its activities,
9 including any recommendations regarding state ethics laws or
10 the scope of its powers and duties, in December of each year to
11 the legislature and the governor.

12 B. The commission may:

13 (1) initiate complaints alleging ethics
14 violations against public officials, public employees,
15 government contractors and lobbyists;

16 (2) petition a district court to issue
17 subpoenas under seal requiring the attendance of witnesses and
18 the production of books, records, documents or other evidence
19 relevant or material to an investigation;

20 (3) issue advisory opinions to public
21 officials, public employees, government contractors and
22 lobbyists in accordance with the provisions of the State Ethics
23 Commission Act;

24 (4) compile, adopt, publish and make available
25 to all public officials, public employees, government

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1 contractors and lobbyists an ethics guide that clearly and
2 plainly explains the ethics requirements set forth in state
3 law, including those that relate to conducting business with
4 the state and public agencies; and

5 (5) offer annual ethics training to public
6 officials, public employees, government contractors, lobbyists
7 and other interested persons.

8 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--
9 APPOINTMENT--DUTIES AND POWERS.--

10 A. The commission shall appoint an executive
11 director who shall be knowledgeable about state ethics laws and
12 who shall be appointed without reference to party affiliation
13 and solely on the grounds of fitness to perform the duties of
14 the office. The director shall hold office from the date of
15 appointment until such time as the director is removed by the
16 commission.

17 B. The director shall:

18 (1) take the oath of office required by
19 Article 20, Section 1 of the constitution of New Mexico;

20 (2) perform investigations on behalf of the
21 commission;

22 (3) bring complaints and investigation results
23 before the commission for consideration;

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

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1 (5) make recommendations to the commission of
2 proposed rules or legislative changes needed to provide better
3 administration of the State Ethics Commission Act; and

4 (6) perform other duties as assigned by the
5 commission.

6 C. The director may:

7 (1) hire a general counsel for the commission
8 and additional personnel as may be necessary to carry out the
9 duties of the commission;

10 (2) enter into contracts and agreements on
11 behalf of the commission; and

12 (3) administer oaths and take depositions
13 subject to the Rules of Civil Procedure for the District
14 Courts.

15 D. For a period of one calendar year immediately
16 following the director's employment with the commission, the
17 director shall not:

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

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

24 SECTION 7. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

25 A. A commissioner shall recuse the commissioner's

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1 self from and not participate in a commission proceeding in
2 which the commissioner has a conflict of interest. The
3 commissioner may state the reason for the recusal.

4 B. If the propriety of a commissioner's
5 participation in a particular matter is questioned on the
6 grounds that the commissioner has a conflict of interest, the
7 commission may disqualify that commissioner from participation
8 in a commission proceeding.

9 C. A recused or disqualified commissioner shall not
10 participate in any proceeding related to the matter from which
11 the commissioner is recused or disqualified, and the
12 commissioner shall be excused from that portion of a meeting at
13 which the matter is discussed.

14 D. If two or more commissioners have recused
15 themselves or are disqualified from participating in a
16 proceeding so that there is no longer a quorum, the remaining
17 commissioners shall appoint temporary commissioners to
18 participate in that proceeding. Appointments of temporary
19 commissioners shall be made by the remaining commissioners in
20 accordance with the political party affiliation requirements
21 and the qualifications of Sections 3 and 4 of the State Ethics
22 Commission Act.

23 E. The commission shall promulgate rules for the
24 recusal and disqualification of members and for the appointment
25 of temporary commissioners.

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

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

4 (1) be requested in writing by a public
5 official, public employee, government contractor or lobbyist;

6 (2) identify a specific set of circumstances
7 involving an ethics issue;

8 (3) be issued within sixty days of receipt of
9 the request unless the commission notifies the requester of a
10 delay in issuance and continues to notify the requester every
11 thirty days until the advisory opinion is issued; and

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

14 B. A request for an advisory opinion shall be
15 confidential and not subject to the provisions of the
16 Inspection of Public Records Act.

17 C. Unless amended or revoked, an advisory opinion
18 shall be binding on the commission in any subsequent commission
19 proceedings concerning a person who acted in good faith and in
20 reasonable reliance on the advisory opinion.

21 SECTION 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--
22 SUBPOENAS.--

23 A. A complaint of an alleged ethics violation
24 committed by a public official, public employee, government
25 contractor or lobbyist may be:

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

3 (2) initiated by the commission upon receipt
4 of evidence deemed sufficient by the commission.

5 B. The complainant shall set forth in detail the
6 specific charges against the public official, public employee,
7 government contractor or lobbyist and the factual allegations
8 that support the charges and shall sign the complaint under
9 penalty of false statement. The complainant shall submit any
10 evidence the complainant has that supports the complaint.
11 Evidence may include documents, records and names of witnesses.
12 The commission shall prescribe the forms on which complaints
13 are to be filed. The complaint form shall include a statement
14 above the signature line that provides the following:

15 "The complainant agrees to be bound by the
16 confidentiality rules of the State Ethics Commission
17 and other provisions of the State Ethics Commission
18 Act."

19 C. The chair of the commission shall sign a
20 complaint initiated by the commission, and the complaint shall
21 set forth in detail the specific charges against the public
22 official, public employee, government contractor or lobbyist
23 and the factual allegations that support the charges.

24 D. The director shall promptly bring all complaints
25 before the commission and make recommendations to the

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

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

9 F. If the commission decides to proceed with an
10 investigation, the director shall investigate the complaint.
11 The director shall promptly notify the respondent that a
12 complaint has been filed and is being investigated and shall
13 notify the respondent of the specific allegations in the
14 complaint and the specific ethics violations implicated by the
15 complaint.

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

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1 require the production of any books, records, documents or
2 other evidence that it deems relevant or material to an
3 investigation. Any challenge to a subpoena shall be heard by
4 the district court in a confidential proceeding. If a person
5 refuses to comply with a subpoena, the district court shall
6 compel compliance.

7 H. A public official or public employee who is a
8 respondent shall be entitled to representation by the risk
9 management division of the general services department;
10 provided, however, that if the respondent is found to have
11 committed an ethics violation, the respondent shall reimburse
12 the division for the respondent's equitable share of reasonable
13 attorney fees and costs. If the respondent was represented by
14 an attorney employee of the risk management division, the
15 division shall be reimbursed at the full cost incurred by the
16 division, including benefits and taxes, for employing the
17 attorney for the hours the attorney provided on the case.

18 SECTION 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
19 LIMITATIONS.--

20 A. If the commission has not scheduled a hearing
21 concerning the disposition of a complaint within ninety days
22 after the complaint is received or initiated by the commission,
23 the director shall, as soon as practicable, report to the
24 commission on the progress and status of the investigation.

25 The commission may dismiss the complaint or instruct the

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1 director to continue investigating the complaint. Unless the
2 commission dismisses the complaint, the director shall report
3 to the commission every ninety days thereafter on the progress
4 and status of the investigation.

5 B. Upon dismissal or a decision to continue an
6 investigation of a complaint, the commission shall notify the
7 complainant and respondent in writing of its action. The
8 commission shall not publicly disclose its action or
9 notification except upon the request of the respondent.

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

12 A. The director shall provide a written report of
13 the investigation to the commission and to the respondent and
14 complainant. The director shall provide the respondent with
15 reasonable written notice of the date, time and place of the
16 commission hearing.

17 B. The commission may appoint a retired judge to
18 preside over and conduct the hearing. The retired judge shall
19 have no vote at the hearing. The retired judge shall be
20 entitled to receive per diem and mileage as provided in the Per
21 Diem and Mileage Act and shall receive no other compensation,
22 perquisite or allowance.

23 C. At the hearing, the commission has the power to
24 administer oaths. The respondent has the right to be
25 represented by counsel and to present evidence and testimony

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1 and examine and cross-examine witnesses. The respondent shall
2 be afforded due process at the hearing.

3 D. After hearing and consideration of all the
4 evidence, if the commission finds by clear and convincing
5 evidence that the respondent's conduct constituted an ethics
6 violation, the commission shall issue a written report that
7 shall include findings of fact and conclusions of law. The
8 written report may include a public reprimand or censure or
9 recommendations for disciplinary action against the respondent.
10 The commission shall publicly disclose the written report and
11 provide it, along with all evidence collected during its
12 investigation, to the respondent, the attorney general and the:

- 13 (1) appropriate legislative body if the
14 respondent is a member of the legislature;
- 15 (2) house of representatives if the respondent
16 is a public official elected to an office of the executive
17 branch of the state;
- 18 (3) respondent's appointing authority if the
19 respondent is an appointed public official;
- 20 (4) appropriate public agency if the
21 respondent is a public employee;
- 22 (5) public education department if the
23 respondent is a member of a local school board or of the
24 governing authority of a state-chartered charter school;
- 25 (6) local school board if the respondent is a

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1 member of the governing authority of a locally chartered
2 charter school;

3 (7) public agency with which the respondent
4 has a government contract if the respondent is a government
5 contractor; or

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

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

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

20 **SECTION 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--**

21 All complaints, reports, files, records and communications
22 collected or generated by the commission or its director that
23 pertain to alleged ethics violations are confidential and not
24 subject to the provisions of the Inspection of Public Records
25 Act. Such complaints, reports, files, records or

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1 communications shall not be disclosed unless:

2 A. disclosure is required pursuant to the
3 provisions of the State Ethics Commission Act;

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

6 C. disclosure is required by law or ordered by a
7 court; or

8 D. the respondent files with the commission a
9 written waiver of confidentiality.

10 SECTION 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--

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

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

23 A. The commission shall not accept or consider a
24 complaint unless the complaint is filed or initiated within
25 three years from the date on which the alleged conduct

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1 occurred.

2 B. The commission shall not take action on a
3 complaint filed or initiated against a candidate for a public
4 office covered by the State Ethics Commission Act on or after
5 the filing date for a primary election through election day of
6 the general election, except that the commission shall dismiss
7 complaints that are frivolous, unfounded or outside the
8 jurisdiction of the commission. A complainant shall be
9 notified of this provision and shall be notified that the
10 complainant may refer any allegations of criminal conduct to
11 the attorney general or appropriate district attorney. The
12 respondent shall be notified that a complaint has been filed
13 and of the specific allegations in the complaint.

14 C. The commission shall not investigate allegations
15 of misconduct involving campaign advertisements.

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

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

20 (1) files a complaint with the commission
21 alleging an ethics violation against a public official, public
22 employee, government contractor or lobbyist; or

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

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1 Act.

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

6 SECTION 16. [NEW MATERIAL] CONFIDENTIALITY--PENALTY.--

7 A. Disclosure of any confidential complaint,
8 report, file, record or communication in violation of the State
9 Ethics Commission Act is a misdemeanor and shall be punished by
10 a fine of not more than one thousand dollars (\$1,000) or by
11 imprisonment for not more than one year or both.

12 B. In addition to a penalty imposed pursuant to
13 Subsection A of this section, a court may impose a civil
14 penalty not to exceed twenty-five thousand dollars (\$25,000)
15 for each violation of Section 12 of the State Ethics Commission
16 Act.

17 C. The provisions of this section apply to a
18 commission member, the director and commission employees or
19 agents and also apply to a complainant from the time the
20 complaint is filed until it is resolved and a final
21 determination is made.

22 SECTION 17. Section 10-15-1 NMSA 1978 (being Laws 1974,
23 Chapter 91, Section 1, as amended) is amended to read:

24 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
25 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

14 B. All meetings of a quorum of members of any
15 board, commission, administrative adjudicatory body or other
16 policymaking body of any state agency, any agency or authority
17 of any county, municipality, district or ~~[any]~~ political
18 subdivision, held for the purpose of formulating public policy,
19 including the development of personnel policy, rules,
20 regulations or ordinances, discussing public business or ~~[for~~
21 ~~the purpose of]~~ taking any action within the authority of or
22 the delegated authority of any board, commission or other
23 policymaking body are declared to be public meetings open to
24 the public at all times, except as otherwise provided in the
25 constitution of New Mexico or the Open Meetings Act. No public

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1 meeting once convened that is otherwise required to be open
2 pursuant to the Open Meetings Act shall be closed or dissolved
3 into small groups or committees for the purpose of permitting
4 the closing of the meeting.

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

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

25 E. A public body may recess and reconvene a meeting

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

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

23 G. The board, commission or other policymaking body
24 shall keep written minutes of all its meetings. The minutes
25 shall include at a minimum the date, time and place of the

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1 meeting, the names of members in attendance and those absent,
2 the substance of the proposals considered and a record of any
3 decisions and votes taken that show how each member voted. All
4 minutes are open to public inspection. Draft minutes shall be
5 prepared within ten working days after the meeting and shall be
6 approved, amended or disapproved at the next meeting where a
7 quorum is present. Minutes shall not become official until
8 approved by the policymaking body.

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

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

16 (2) limited personnel matters; provided that
17 for purposes of the Open Meetings Act, "limited personnel
18 matters" means the discussion of hiring, promotion, demotion,
19 dismissal, assignment or resignation of or the investigation or
20 consideration of complaints or charges against any individual
21 public employee; provided further that this ~~[subsection]~~
22 paragraph is not to be construed as to exempt final actions on
23 personnel from being taken at open public meetings, nor does it
24 preclude an aggrieved public employee from demanding a public
25 hearing. Judicial candidates interviewed by any commission

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1 shall have the right to demand an open interview;

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

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

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

23 (6) that portion of meetings at which a
24 decision is made concerning purchases in an amount exceeding
25 two thousand five hundred dollars (\$2,500) that can be made

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1 only from one source and that portion of meetings at which the
2 contents of competitive sealed proposals solicited pursuant to
3 the Procurement Code are discussed during the contract
4 negotiation process. The actual approval of purchase of the
5 item or final action regarding the selection of a contractor
6 shall be made in an open meeting;

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

10 (8) meetings for the discussion of the
11 purchase, acquisition or disposal of real property or water
12 rights by the public body;

13 (9) those portions of meetings of committees
14 or boards of public hospitals where strategic and long-range
15 business plans or trade secrets are discussed; ~~and~~

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

19 (11) meetings of the state ethics commission
20 relating to complaints or investigations of alleged ethics
21 violations.

22 I. If any meeting is closed pursuant to the
23 exclusions contained in Subsection H of this section [~~the~~
24 ~~closure~~]:

25 (1) the closure, if made in an open meeting,

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

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

17 J. Following completion of any closed meeting, the
18 minutes of the open meeting that was closed or the minutes of
19 the next open meeting if the closed meeting was separately
20 scheduled shall state that the matters discussed in the closed
21 meeting were limited only to those specified in the motion for
22 closure or in the notice of the separate closed meeting. This
23 statement shall be approved by the public body under Subsection
24 G of this section as part of the minutes."

25 SECTION 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF

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1 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
2 January 1, 2014, the state ethics commission shall submit a
3 report to the legislature and the governor regarding the
4 extension of commission jurisdiction to elected and appointed
5 officials and employees of political subdivisions of the state.
6 The report shall include and make recommendations on:

7 A. a detailed plan formulated by the commission for
8 implementation of an extension of its jurisdiction, including a
9 proposed time line;

10 B. the estimated number of additional employees and
11 the amount and type of resources needed by the commission to
12 carry out its powers and duties if its jurisdiction were
13 extended;

14 C. estimated budget increases and the estimated
15 annual budget for the commission if its jurisdiction were
16 extended; and

17 D. any changes needed to existing law.

18 SECTION 19. APPROPRIATION.--Two hundred thousand dollars
19 (\$200,000) is appropriated from the general fund to the state
20 ethics commission for expenditure in fiscal year 2012 to carry
21 out the provisions of the State Ethics Commission Act. Any
22 unexpended or unencumbered balance remaining at the end of
23 fiscal year 2012 shall revert to the general fund.

24 SECTION 20. SEVERABILITY.--If any part or application of
25 this act is held invalid, the remainder or its application to

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1 other situations or persons shall not be affected.

2 SECTION 21. APPLICABILITY.--The provisions of the State
3 Ethics Commission Act apply to conduct that occurs on or after
4 July 1, 2011.

5 SECTION 22. EFFECTIVE DATE.--

6 A. The effective date of the provisions of Sections
7 1 through 7 and 12 through 21 of this act is July 1, 2011.

8 B. The effective date of the provisions of Sections
9 8 through 11 of this act is January 1, 2012.