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HOUSE BILL 462

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Rod Montoya and Cathrynn N. Brown

AN ACT

RELATING TO PUBLIC ACCOUNTABILITY; ENACTING THE PUBLIC  
ACCOUNTABILITY ACT; CREATING THE NEW MEXICO ETHICS COMMISSION;  
PROVIDING FOR AN EXECUTIVE DIRECTOR; PROVIDING FOR THE ISSUANCE  
OF ADVISORY OPINIONS; REQUIRING PUBLICATION OF CERTAIN REPORTS;  
TRANSFERRING CERTAIN ACCOUNTABILITY AND ENFORCEMENT FUNCTIONS  
TO THE COMMISSION; PROVIDING FOR THE FILING, INVESTIGATION AND  
ADJUDICATION OF COMPLAINTS RELATED TO PUBLIC ACCOUNTABILITY;  
PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; PROVIDING FOR  
A PERMANENT LEGISLATIVE ETHICS COMMITTEE; AMENDING, REPEALING  
AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 12 of this act may be cited as the "Public  
Accountability Act".

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1           SECTION 2.   ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the  
2 Public Accountability Act:

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

9           B. "breach" means an action that is a violation of  
10 any of the laws listed in Section 6 of the Public  
11 Accountability Act;

12           C. "commission" means the New Mexico ethics  
13 commission;

14           D. "complainant" means a person who files a  
15 complaint with the commission;

16           E. "complaint" means a formal written assertion of  
17 a breach;

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

20           G. "instrumentality of the state" means the New  
21 Mexico exposition center authority, New Mexico finance  
22 authority, New Mexico industrial and agricultural finance  
23 authority, New Mexico lottery authority, New Mexico mortgage  
24 finance authority, New Mexico renewable energy transmission  
25 authority, New Mexico state fair and water quality control

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1 commission;

2 H. "lobbyist" means a person required to register  
3 as a lobbyist pursuant to the Lobbyist Regulation Act;

4 I. "public body" means a department, commission,  
5 council, committee or agency of the state; a political  
6 subdivision of the state; or an instrumentality of the state;

7 J. "public employee" means a person employed by a  
8 public body;

9 K. "public officer" means a person elected or  
10 appointed to an office of or position with a public body; but  
11 "public officer" excludes judges;

12 L. "qualified political party" means a political  
13 party that has been qualified in accordance with the provisions  
14 of the Election Code; and

15 M. "respondent" means a person whose conduct or  
16 alleged breach is the subject of a complaint.

17 SECTION 3. [NEW MATERIAL] NEW MEXICO ETHICS COMMISSION  
18 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

19 A. The "New Mexico ethics commission" is created as  
20 an adjunct agency under the direction of seven commissioners,  
21 no more than three of whom may be members of the same political  
22 party, appointed as follows:

23 (1) three commissioners appointed by the  
24 governor, none of whom shall be of the same political party,  
25 with one commissioner appointed from each congressional

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1 district; and

2 (2) as certified by the chief clerks of the  
3 respective chambers:

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

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

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

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

12 B. A commissioner shall:

13 (1) be a qualified elector of the state;

14 (2) not change, or within two years prior to  
15 appointment shall not have changed, political party  
16 affiliation; and

17 (3) not be, or within the two years prior to  
18 appointment shall not have been, a state officer or employee in  
19 the executive or legislative branch of government, a registered  
20 lobbyist or a state contractor.

21 C. Commissioners shall be appointed for staggered  
22 terms of four years beginning July 1, 2019. The initial  
23 appointees shall draw lots to determine which two commissioners  
24 will serve an initial term of two years, which two  
25 commissioners shall serve an initial term of three years and

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1 which three commissioners shall serve an initial term of four  
2 years. Thereafter, all commissioners shall be appointed for  
3 four-year terms. Commissioners shall serve until their  
4 successors are appointed and qualified.

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

9 E. No action shall be taken by the commission  
10 unless at least five commissioners concur.

11 F. A commissioner may be removed only for  
12 incompetence, neglect of duty or malfeasance in office. A  
13 proceeding for the removal of a commissioner may be commenced  
14 by the commission or by the attorney general upon the request  
15 of the commission. The supreme court has exclusive  
16 jurisdiction over proceedings to remove commissioners, and its  
17 decision shall be final. A commissioner shall be given notice  
18 of hearing and an opportunity to be heard before the  
19 commissioner is removed.

20 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--  
21 LIMITATIONS.--

22 A. To qualify for appointment to the commission, a  
23 person shall:

24 (1) be a resident of New Mexico for at least  
25 four years; and

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1                   (2) not have changed political party  
2 affiliation as shown on the person's voter registration for at  
3 least two years prior to appointment.

4                   B. Before entering upon the duties of the office of  
5 commissioner, each commissioner shall take the oath of office  
6 as provided in Article 20, Section 1 of the constitution of New  
7 Mexico and shall file that oath of office with the secretary of  
8 state.

9                   C. A commissioner shall not:

10                   (1) seek or hold an office in a political  
11 organization or a qualified political party;

12                   (2) seek or hold an elective public office or  
13 an appointed public position;

14                   (3) be a public employee, government  
15 contractor or lobbyist;

16                   (4) be employed or contracted by a political  
17 committee required to file reports pursuant to the Campaign  
18 Reporting Act or a person in that person's capacity as a  
19 candidate for public office;

20                   (5) publicly endorse or publicly oppose a  
21 candidate for public office;

22                   (6) make speeches on behalf of a political  
23 committee required to file reports pursuant to the Campaign  
24 Reporting Act; or

25                   (7) solicit funds for, pay an assessment to or

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1 make a contribution to a candidate or a political committee  
2 required to file reports pursuant to the Campaign Reporting  
3 Act.

4 D. A violation of Subsection C of this section may  
5 be found to constitute malfeasance in office in a removal  
6 proceeding pursuant to Subsection F of Section 3 of the Public  
7 Accountability Act.

8 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND  
9 POWERS.--

10 A. The commission shall:

11 (1) meet as necessary to carry out its duties;

12 (2) receive and investigate complaints;

13 (3) hold hearings when necessary to determine  
14 whether there has been a breach as alleged in a complaint;

15 (4) administer the applicable compliance  
16 provisions of the laws listed in Section 6 of the Public  
17 Accountability Act;

18 (5) promulgate rules necessary to implement  
19 and administer the provisions of the Public Accountability Act  
20 and the applicable compliance provisions of the laws listed in  
21 Section 6 of that act;

22 (6) compile, index, maintain and provide  
23 access to all advisory opinions and reports required to be made  
24 public pursuant to the Public Accountability Act;

25 (7) compile, maintain and provide access to

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1 all codes of conduct filed with the commission in accordance  
2 with Section 10-16-11 NMSA 1978;

3 (8) draft a proposed code of public  
4 accountability and submit the proposed code to each elected  
5 public officer and public body for adoption;

6 (9) appoint an executive director;

7 (10) contract for professional services as  
8 necessary to carry out its duties;

9 (11) have the authority to accept federal  
10 funds and other public or private grants to perform duties  
11 consistent with the Public Accountability Act; and

12 (12) prepare an annual report of its  
13 activities.

14 B. The commission is limited in its authority to  
15 those powers granted by the Public Accountability Act or  
16 expressly granted in another applicable statute. In carrying  
17 out its responsibilities pursuant to the Public Accountability  
18 Act, the commission may:

19 (1) sue and be sued;

20 (2) initiate complaints;

21 (3) issue advisory opinions as provided in  
22 Section 9 of the Public Accountability Act; and

23 (4) designate committees of the commission to  
24 make recommendations for action to the commission.

25 SECTION 6. [NEW MATERIAL] COMMISSION JURISDICTION--

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1 COMPLIANCE PROVISIONS.--

2 A. The commission shall enforce the applicable  
3 civil compliance provisions of the:

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

11 B. The commission shall file any court action to  
12 enforce the civil compliance provisions of an act listed in  
13 Subsection A of this section in the district court of the  
14 county in which the defendant resides.

15 SECTION 7. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
16 APPOINTMENT--DUTIES--POWERS--LIMITATIONS.--

17 A. The director shall be:

- 18 (1) knowledgeable about state laws related to  
19 public accountability;
- 20 (2) appointed without regard to qualified  
21 political party affiliation; and
- 22 (3) appointed, retained and reappointed solely  
23 on the grounds of fitness to perform the duties of the office.

24 B. The director shall hold office for a term  
25 commencing on the date of appointment through December 31 of

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1 the fourth even-numbered year following the director's  
2 appointment.

3 C. Prior to the end of the director's term of  
4 office, the director may only be removed by the commission for  
5 cause and with the concurrence of at least five commissioners.

6 D. The director shall:

7 (1) take the oath of office required by  
8 Article 20, Section 1 of the constitution of New Mexico and  
9 file that oath of office with the secretary of state;

10 (2) devote the director's entire professional  
11 time and attention to the duties of that office;

12 (3) prepare an annual budget for the  
13 commission and submit it to the commission for approval;

14 (4) make recommendations to the commission of  
15 proposed rules or legislative changes needed to provide better  
16 administration of the Public Accountability Act;

17 (5) publish the commission's advisory opinions  
18 and annual reports and a list of persons who failed to file a  
19 report of expenditures and contributions or a statement of no  
20 activity or to pay a penalty imposed by the commission; and

21 (6) at every meeting of the commission, report  
22 on the status of all open investigations and investigations  
23 closed since the commission's last meeting.

24 E. The director may:

25 (1) hire a general counsel and additional

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1 personnel necessary to enable the commission to carry out its  
2 duties; and

3 (2) enter into contracts and agreements on  
4 behalf of the commission.

5 F. The director shall not:

6 (1) seek or hold an office in a qualified  
7 political party; or

8 (2) seek or hold an elected public office or  
9 an appointed public position.

10 G. A director who seeks or holds an office or  
11 position as prohibited in Subsection F of this section is  
12 deemed to have resigned as director.

13 SECTION 8. [NEW MATERIAL] COMMISSIONERS--RECUSAL--  
14 DISQUALIFICATION.--

15 A. A commissioner shall recuse from and not  
16 participate in a commission proceeding in which the  
17 commissioner cannot render a fair and impartial judgment.

18 B. The commission may disqualify a commissioner who  
19 has not recused from a proceeding in which the commissioner  
20 cannot render a fair and impartial judgment with the  
21 concurrence of at least five commissioners.

22 C. The commission's disqualification of a  
23 commissioner shall serve as an automatic initiation of  
24 proceedings to remove the commissioner.

25 D. If two or more commissioners have recused

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1 themselves or are disqualified from participating in a  
2 proceeding, the remaining commissioners shall request the  
3 appointment of temporary commissioners from the original  
4 appointing authorities that appointed the recused or  
5 disqualified commissioners. Appointing authorities shall  
6 appoint temporary commissioners within twenty days of the  
7 request for appointment.

8 SECTION 9. [NEW MATERIAL] ADVISORY OPINIONS.--

9 A. The commission may issue advisory opinions on  
10 matters related to the laws listed in Section 6 of the Public  
11 Accountability Act. Advisory opinions shall:

- 12 (1) be requested in writing;
- 13 (2) present a question regarding whether the  
14 requester's conduct would violate any of the laws listed in  
15 Section 6 of the Public Accountability Act;
- 16 (3) be issued within sixty days of receipt of  
17 the request, unless the commission notifies the requester in  
18 writing of the delay and the reason for the delay, and  
19 continues to notify the requester in writing every thirty days  
20 until the advisory opinion is issued, which in all cases shall  
21 be within one hundred eighty days of the request; and
- 22 (4) be published on the commission's website  
23 after omitting the requester's name and identifying  
24 information.

25 B. A request for an advisory opinion and the

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1 research conducted to formulate the advisory opinion are  
2 confidential.

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

7 SECTION 10. [NEW MATERIAL] COMPLAINTS--JURISDICTION--  
8 INVESTIGATIONS--SUBPOENAS.--

9 A. A complaint alleging a breach may be filed with  
10 the commission by any person.

11 B. The complainant shall set forth in detail the  
12 specific allegations against the respondent and the facts that  
13 support the allegations. The complainant shall submit any  
14 available evidence that supports the complaint, including  
15 documents, records, names of witnesses and other evidence. The  
16 complaint shall be in writing, signed and sworn by the  
17 complainant and notarized.

18 C. Failure to satisfy a nonsubstantive requirement  
19 for filing a complaint does not invalidate the complaint.

20 D. The commission shall not accept or consider a  
21 complaint unless the complaint is filed within two years from  
22 the last date on which the alleged breach occurred or from the  
23 last date on which a reasonable person would have discovered  
24 the facts upon which the complaint is based.

25 E. The director shall determine whether the conduct

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1 alleged in the complaint is within the civil enforcement  
2 jurisdiction of the commission and warrants investigation.

3 F. The director shall recommend that the commission  
4 dismiss a complaint that is frivolous, unfounded or outside the  
5 commission's civil enforcement jurisdiction.

6 G. The commission shall issue findings if it  
7 dismisses a complaint as frivolous or unfounded and in all  
8 cases of dismissal shall notify the complainant and respondent  
9 of the dismissal.

10 H. If the director determines that there is  
11 sufficient cause to proceed with an investigation, the director  
12 shall seek a response from the respondent and investigate the  
13 complaint. The complaint and response, if any, shall be made  
14 public within fifteen days after the director's determination.  
15 The director may request that the district court issue  
16 subpoenas requiring the attendance of witnesses or the  
17 production of books, records, documents or other evidence  
18 reasonably related to the investigation. If a person fails to  
19 comply with the subpoena, the director may apply to a district  
20 court for an order enforcing the subpoena and compelling  
21 compliance. The director may interview witnesses and examine  
22 books, records, documents and other evidence reasonably related  
23 to the complaint. A public employee or public official who is  
24 a respondent and was acting in an official capacity shall be  
25 entitled to representation by the risk management division of

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1 the general services department, a local risk management entity  
2 or other appropriate insurance carrier.

3 I. Within sixty days of the initiation of an  
4 investigation, the director shall, at a public meeting of the  
5 commission, recommend that the commission dismiss the complaint  
6 or schedule a hearing to adjudicate the complaint.

7 J. No later than July 1 of each even-numbered year,  
8 the chief justice of the supreme court shall appoint an active  
9 or pro tempore district judge to consider the issuance and  
10 enforcement of subpoenas provided for in this section. The  
11 appointment shall end on June 30 of the next even-numbered year  
12 after appointment.

13 K. The procedures provided in this section and  
14 Section 11 of the Public Accountability Act shall be used if  
15 those procedures conflict with the procedures provided by any  
16 of the laws listed in Section 6 of that act.

17 SECTION 11. [NEW MATERIAL] PRE-HEARING DISPOSITION--  
18 COMMISSION HEARINGS--FINDINGS AND CONCLUSIONS--DISCLOSURE--  
19 APPEAL OF DISMISSAL.--

20 A. Upon the director's recommendation, the  
21 commission may:

22 (1) dismiss a complaint and notify the  
23 complainant and the respondent of the dismissal; or

24 (2) set a public hearing, as soon as  
25 practicable.

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1           B. At any time before or during a hearing provided  
2 for in Subsection A of this section, the commission may, at a  
3 public meeting of the commission, approve a disposition of a  
4 complaint agreed to by the director and the respondent.

5           C. The hearing provided for in Subsection A of this  
6 section shall be pursuant to the rules of evidence that govern  
7 proceedings in the state's courts. The respondent has the  
8 right to be represented by counsel. The parties may present  
9 evidence and testimony, compel the presence of witnesses and  
10 examine and cross-examine witnesses.

11           D. The commission shall issue a written report that  
12 shall include findings of fact and conclusions of law. If the  
13 commission finds by clear and convincing evidence that the  
14 respondent's conduct constituted a breach, the report may  
15 include a public reprimand or censure of the respondent or  
16 recommendations for disciplinary action against the respondent,  
17 and if at least five commissioners find that the respondent's  
18 conduct constituted a willful breach, the commission shall  
19 impose any fines provided for by law.

20           E. The commission shall publicly disclose a report  
21 issued pursuant to Subsection D of this section. If the report  
22 concerns a willful breach, the commission shall provide the  
23 report, along with all evidence presented to the commission, to  
24 the respondent and the:

- 25                   (1) speaker and majority and minority floor



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1 leaders of the house of representatives if the respondent is a  
2 public official who is subject to impeachment;

3 (2) appropriate legislative body if the  
4 respondent is a member of the legislature;

5 (3) respondent's appointing authority if the  
6 respondent is an appointed public official;

7 (4) appropriate public body if the respondent  
8 is a public employee; or

9 (5) respondent's employer if the respondent is  
10 a lobbyist.

11 F. The commission shall promulgate rules  
12 establishing procedures for hearings.

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

14 A. Except as otherwise provided in the Public  
15 Accountability Act, all records and communications collected or  
16 generated by the director are confidential, unless:

17 (1) disclosure is necessary at a hearing or  
18 meeting of the commission;

19 (2) disclosure is required pursuant to the  
20 provisions of the Public Accountability Act; or

21 (3) they are offered into evidence at a  
22 judicial, legislative or administrative proceeding.

23 B. Information and reports containing information  
24 made confidential by law or that are exempt from disclosure  
25 pursuant to the Inspection of Public Records Act shall not be

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1 disclosed by the commission or its director, staff or  
2 contractors.

3 SECTION 13. Section 1-19-32 NMSA 1978 (being Laws 1979,  
4 Chapter 360, Section 8, as amended) is amended to read:

5 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

6 A. Each of the following documents is a public  
7 record open to public inspection during regular office hours in  
8 the office in which the document was filed or from which the  
9 document was issued:

10 (1) a statement of [~~exception~~] no activity;

11 (2) a report of expenditures and  
12 contributions;

13 (3) an advisory opinion issued by the  
14 [~~secretary of state~~] New Mexico ethics commission;

15 (4) a document specified as a public record in  
16 the Campaign Reporting Act; and

17 (5) [~~an arbitration decision issued by an~~  
18 ~~arbitration panel and filed with the secretary of state~~] a  
19 decision issued by a hearing officer and filed with the New  
20 Mexico ethics commission.

21 B. Each public record described in Subsection A of  
22 this section shall be retained by the state for five years and  
23 may be destroyed five years after the date of filing unless a  
24 legal action or prosecution is pending that requires the  
25 preservation of the public record.

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1 C. The secretary of state shall provide for  
2 electronic access to reports of expenditures and contributions  
3 and statements of [~~exception~~] no activity submitted  
4 electronically by reporting individuals. Electronic access  
5 shall include access via the internet and shall be in an easily  
6 searchable format."

7 SECTION 14. Section 1-19-32.1 NMSA 1978 (being Laws 1981,  
8 Chapter 331, Section 9, as amended) is amended to read:

9 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF  
10 REPORTS.--

11 A. The [~~secretary of state~~] New Mexico ethics  
12 commission shall conduct a thorough examination of at least ten  
13 percent of all reports filed during a year by reporting  
14 individuals, selected at random at least forty days after the  
15 general election and ten days after the April reports are filed  
16 in a non-election year, to determine compliance with the  
17 provisions of the Campaign Reporting Act. The examination may  
18 include an investigation of any discrepancies, including a  
19 cross-reference to reports filed by any other reporting  
20 individual. A reporting individual shall be notified in  
21 writing if a discrepancy is found in the report filed and shall  
22 be permitted to file a written explanation for the discrepancy  
23 within ten [~~working~~] days of the date of the notice. The  
24 notice, penalty and [~~arbitration~~] independent hearing officer  
25 provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply

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1 to examinations conducted under this section.

2 B. After the date stated in the notice of final  
3 action for submission of a written explanation, the [~~secretary~~  
4 ~~of state~~] New Mexico ethics commission shall prepare an annual  
5 report of any unresolved discrepancies found after examination  
6 of the random sample provided for in Subsection A of this  
7 section. [~~A copy of this report shall be transmitted to the~~  
8 ~~attorney general for enforcement pursuant to the provisions of~~  
9 ~~Section 1-19-36 NMSA 1978.~~] This report is a public record open  
10 to public inspection and subject to the retention and  
11 destruction provisions set forth in Section 1-19-32 NMSA 1978."

12 SECTION 15. Section 1-19-34.4 NMSA 1978 (being Laws 1993,  
13 Chapter 46, Section 15, as amended) is amended to read:

14 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--  
15 INVESTIGATIONS--~~[BINDING ARBITRATION]~~ HEARINGS--REFERRALS FOR  
16 ENFORCEMENT.--

17 A. The secretary of state shall advise and seek to  
18 educate all persons required to perform duties under the  
19 Campaign Reporting Act of those duties. This includes advising  
20 all known reporting individuals at least annually of that act's  
21 deadlines for submitting required reports and statements of  
22 [~~exception~~] no activity. The [~~secretary of state in~~  
23 ~~consultation with the attorney general~~] New Mexico ethics  
24 commission shall issue advisory opinions, when requested in  
25 writing to do so, on matters concerning that act. All

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1 prescribed forms prepared shall be clear and easy to complete.

2 B. ~~[The secretary of state may initiate~~  
3 ~~investigations to determine whether any provision of the~~  
4 ~~Campaign Reporting Act has been violated. Additionally]~~ Any  
5 person who believes that a provision of ~~[that]~~ the Campaign  
6 Reporting Act has been violated may file a written complaint  
7 with the ~~[secretary of state]~~ New Mexico ethics commission any  
8 time prior to ninety days after an election, except that no  
9 complaints from the public may be filed within eight days prior  
10 to an election. The ~~[secretary of state]~~ commission shall  
11 adopt procedures for issuing advisory opinions and processing  
12 complaints and notifications of violations.

13 C. The ~~[secretary of state]~~ New Mexico ethics  
14 commission shall at all times seek to ensure voluntary  
15 compliance with the provisions of the Campaign Reporting Act.  
16 If the ~~[secretary of state]~~ commission determines that a  
17 provision of that act for which a penalty may be imposed has  
18 been violated, the ~~[secretary of state]~~ commission shall by  
19 written notice set forth the violation and the fine imposed and  
20 inform the reporting individual that ~~[he]~~ the individual has  
21 ten ~~[working]~~ days from the date of the letter to correct the  
22 matter and to provide a written explanation, under penalty of  
23 perjury, stating any reason why the violation occurred. If a  
24 timely explanation is filed and the ~~[secretary of state]~~  
25 commission determines that good cause exists to waive the fine

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1 imposed, the ~~[secretary of state]~~ commission may by a written  
2 notice of final action partially or fully waive any fine  
3 imposed for any late, incomplete or false report or statement  
4 of ~~[exception]~~ no activity. A written notice of final action  
5 shall be sent by certified mail.

6 D. Upon receipt of the notice of final action, the  
7 person against whom the penalty has been imposed may protest  
8 the ~~[secretary of state's]~~ New Mexico ethics commission's  
9 determination, including an advisory opinion, by submitting on  
10 a prescribed form a written request for ~~[binding arbitration to~~  
11 ~~the secretary of state]~~ a hearing within ten ~~[working]~~ days of  
12 the date of the notice of final action. The hearing shall be  
13 conducted by an independent hearing officer appointed pursuant  
14 to the Administrative Hearings Office Act. Any fine imposed  
15 shall be due and payable within ten ~~[working]~~ days of the date  
16 of notice of final action. ~~[No additional fine shall accrue~~  
17 ~~pending the issuance of the arbitration decision. Fines paid~~  
18 ~~pursuant to a notice of final action that are subsequently~~  
19 ~~reduced or dismissed shall be reimbursed with interest within~~  
20 ~~ten working days after the filing of the arbitration decision~~  
21 ~~with the secretary of state. Interest on the reduced or~~  
22 ~~dismissed portion of the fine shall be the same as the rate of~~  
23 ~~interest earned by the secretary of state's escrow account to~~  
24 ~~be established by the department of finance and administration.~~

25 E. ~~An arbitration hearing shall be conducted by a~~

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1 ~~single arbitrator selected within ten days by the person~~  
2 ~~against whom the penalty has been imposed from a list of five~~  
3 ~~arbitrators provided by the secretary of state. Neither the~~  
4 ~~secretary of state nor a person subject to the Campaign~~  
5 ~~Reporting Act, Lobbyist Regulation Act or Financial Disclosure~~  
6 ~~Act may serve as an arbitrator. Arbitrators shall be~~  
7 ~~considered to be independent contractors, not public officers~~  
8 ~~or employees, and shall not be paid per diem and mileage.~~

9 F.] E. The [arbitrator] hearing officer shall  
10 conduct the hearing within thirty days of the request [for  
11 arbitration. The arbitrator] and may impose any penalty [the  
12 secretary of state is authorized to impose] provided for in the  
13 Campaign Reporting Act. The [arbitrator] hearing officer shall  
14 state the reasons for [his] the decision in a written document  
15 that shall be a public record. [The decision shall be final  
16 and binding.] The decision shall be issued and filed with the  
17 [secretary of state] New Mexico ethics commission within thirty  
18 days of the conclusion of the hearing. [Unless otherwise  
19 provided for in this section or by rule or regulation adopted  
20 by the secretary of state, the procedures for the arbitration  
21 shall be governed by the Uniform Arbitration Act. No  
22 arbitrator shall be subject to liability for actions taken  
23 pursuant to this section.

24 G. ~~The secretary of state may refer a matter to the~~  
25 ~~attorney general or a district attorney for a civil injunctive~~

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1 ~~or other appropriate order or for criminal enforcement.]"~~

2 SECTION 16. Section 1-19-34.6 NMSA 1978 (being Laws 1995,  
3 Chapter 153, Section 19) is amended to read:

4 "1-19-34.6. CIVIL PENALTIES.--

5 ~~[A. If the secretary of state reasonably believes~~  
6 ~~that a person committed, or is about to commit, a violation of~~  
7 ~~the Campaign Reporting Act, the secretary of state shall refer~~  
8 ~~the matter to the attorney general or a district attorney for~~  
9 ~~enforcement.~~

10 ~~B. The attorney general or district attorney]~~

11 A. The New Mexico ethics commission may institute a  
12 civil action in district court for any violation of the  
13 Campaign Reporting Act or to prevent a violation of that act  
14 that involves an unlawful solicitation or the making or  
15 acceptance of an unlawful contribution. An action for relief  
16 may include a permanent or temporary injunction, a restraining  
17 order or any other appropriate order, including a civil penalty  
18 of two hundred fifty dollars (\$250) for each violation not to  
19 exceed five thousand dollars (\$5,000), and forfeiture of any  
20 contribution received as a result of an unlawful solicitation  
21 or unlawful contribution. Each unlawful solicitation and each  
22 unlawful contribution made or accepted shall be deemed a  
23 separate violation of the Campaign Reporting Act.

24 ~~[G. The attorney general or district attorney]~~

25 B. The New Mexico ethics commission may institute a



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1 civil action in district court if a violation has occurred or  
2 to prevent a violation of any provision of the Campaign  
3 Reporting Act other than that specified in Subsection [B] A of  
4 this section. Relief may include a permanent or temporary  
5 injunction, a restraining order or any other appropriate order,  
6 including an order for a civil penalty of fifty dollars  
7 (\$50.00) for each violation not to exceed five thousand dollars  
8 (\$5,000)."

9 SECTION 17. Section 1-19-34.7 NMSA 1978 (being Laws 2009,  
10 Chapter 68, Section 1) is amended to read:

11 "1-19-34.7. CONTRIBUTION LIMITATIONS--CANDIDATES--  
12 POLITICAL COMMITTEES.--

13 A. The following contributions by the following  
14 persons are prohibited:

15 (1) from a person, not including a political  
16 committee, to a:

17 (a) candidate for nonstatewide office,  
18 including the candidate's campaign committee, in an amount that  
19 will cause that person's total contributions to the candidate  
20 to exceed two thousand three hundred dollars (\$2,300) during  
21 the primary election or two thousand three hundred dollars  
22 (\$2,300) during the general election;

23 (b) candidate for statewide office,  
24 including the candidate's campaign committee, in an amount that  
25 will cause that person's total contributions to the candidate

.206800.3

1 to exceed five thousand dollars (\$5,000) during the primary  
2 election or five thousand dollars (\$5,000) during the general  
3 election; or

4 (c) political committee in an amount  
5 that will cause that person's total contributions to the  
6 political committee to exceed five thousand dollars (\$5,000)  
7 during a primary election or five thousand dollars (\$5,000)  
8 during a general election; and

9 (2) from a political committee to:

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

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

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

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

7           D. On the day after each general election, the  
8 contribution amounts provided in Subsection A of this section  
9 shall be increased by the percentage of the preceding two  
10 calendar [~~year's~~] years' increase of the consumer price index  
11 for all urban consumers, United States city average for all  
12 items, published by the United States department of labor. The  
13 amount of the increase shall be rounded to the nearest multiple  
14 of one hundred dollars (\$100). The secretary of state shall  
15 publish by October 1 before each general election the adjusted  
16 contribution limits that shall take effect the day after the  
17 following general election.

18           E. All contributions in excess of the limits  
19 imposed by the provisions of this section shall be deposited in  
20 the public election fund upon a finding by the [~~secretary of~~  
21 ~~state~~] New Mexico ethics commission that the contribution  
22 limits have been exceeded.

23           F. The limitation on contributions to a candidate  
24 provided for in Subsection A of this section shall not apply to  
25 a candidate's own contribution from the candidate's personal

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1 funds to the candidate's own campaign.

2 G. For the purposes of this section:

3 (1) "primary election" means the period  
4 beginning on the day after the general election for the  
5 applicable office and ending on the day of the primary for that  
6 office; and

7 (2) "general election" means the period  
8 beginning on the day after the primary for the applicable  
9 office and ending on the day of the general election for that  
10 office."

11 SECTION 18. Section 1-19-35 NMSA 1978 (being Laws 1979,  
12 Chapter 360, Section 11, as amended) is amended to read:

13 "1-19-35. REPORTS AND STATEMENTS--LATE FILING  
14 PENALTY--FAILURE TO FILE.--

15 A. Except for the report required to be filed and  
16 delivered the Thursday prior to the election and any  
17 supplemental report, as required in Paragraph (5) of Subsection  
18 B of Section 1-19-29 NMSA 1978, that is due prior to the  
19 election, and subject to the provisions of Section 1-19-34.4  
20 NMSA 1978, if a statement of no activity or a report of  
21 expenditures and contributions contains false or incomplete  
22 information or is filed after any deadline imposed by the  
23 Campaign Reporting Act, the responsible reporting individual or  
24 political committee, in addition to any other penalties or  
25 remedies prescribed by the Election Code, shall be liable for

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1 and shall pay to the [~~secretary of state~~] New Mexico ethics  
2 commission fifty dollars (\$50.00) per day for each regular  
3 working day after the time required by the Campaign Reporting  
4 Act for the filing of statements of no activity or reports of  
5 expenditures and contributions until the complete or true  
6 statement or report is filed, up to a maximum of five thousand  
7 dollars (\$5,000).

8 B. If any reporting individual files a false,  
9 intentionally incomplete or late report of expenditures and  
10 contributions due on the Thursday prior to the election, the  
11 reporting individual or political committee shall be liable for  
12 and pay to the [~~secretary of state~~] New Mexico ethics  
13 commission five hundred dollars (\$500) for the first working  
14 day and fifty dollars (\$50.00) for each subsequent working day  
15 after the time required for the filing of the report until the  
16 true and complete report is filed, up to a maximum of five  
17 thousand dollars (\$5,000).

18 C. If a reporting individual fails to file or files  
19 a late supplemental report of expenditures and contributions as  
20 required in Paragraph (5) of Subsection B of Section 1-19-29  
21 NMSA 1978, the reporting individual or political committee  
22 shall be liable for and pay to the [~~secretary of state~~] New  
23 Mexico ethics commission a penalty equal to the amount of each  
24 contribution received or pledged after the Tuesday before the  
25 election that was not timely filed.

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1           D. All sums collected for the penalty shall be  
2 deposited in the [~~state general~~] current school fund. A report  
3 or statement of [~~exception~~] no activity shall be deemed timely  
4 filed only if it is received by the proper filing officer by  
5 the date and time prescribed by law.

6           E. Any candidate who fails or refuses to file a  
7 report of expenditures and contributions or statement of no  
8 activity or to pay a penalty imposed by the [~~secretary of~~  
9 ~~state~~] New Mexico ethics commission as required by the Campaign  
10 Reporting Act shall not, in addition to any other penalties  
11 provided by law:

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

15                   (2) be issued a certificate of nomination or  
16 election, if the violation occurs after the final date for  
17 withdrawal of candidates or after the election, until the  
18 candidate satisfies all reporting requirements of the Campaign  
19 Reporting Act and pays all penalties owed.

20           F. The New Mexico ethics commission shall maintain  
21 on its website a list of persons who failed or refused to file  
22 a report of expenditures and contributions or a statement of no  
23 activity or to pay a penalty imposed by the commission and have  
24 not remedied the failure or refusal.

25           [~~F.~~] G. Any candidate who loses an election and who

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1 failed or refused to file a report of expenditures and  
2 contributions or a statement of no activity or to pay a penalty  
3 imposed by the [~~secretary of state~~] New Mexico ethics  
4 commission as required by the Campaign Reporting Act shall not  
5 be, in addition to any other penalties provided by law,  
6 permitted to file a declaration of candidacy or nominating  
7 petition for any future election until the candidate satisfies  
8 all reporting requirements of that act and pays all penalties  
9 owed."

10 SECTION 19. Section 1-19A-16 NMSA 1978 (being Laws 2003,  
11 Chapter 14, Section 16) is amended to read:

12 "1-19A-16. APPEALS.--The procedure for challenging a  
13 certification decision by the secretary is as follows:

14 A. a person aggrieved by a certification decision  
15 or a decision regarding the distribution of matching funds may  
16 appeal to the [~~secretary~~] New Mexico ethics commission within  
17 three days of the decision. The appeal shall be in writing and  
18 shall set forth the reasons for appeal;

19 B. within five days after an appeal is properly  
20 made, and after due notice is given to the parties in dispute,  
21 the [~~secretary~~] New Mexico ethics commission shall hold a  
22 hearing [~~whereby~~] in which:

23 (1) the appellant has the burden of providing  
24 evidence to demonstrate that the secretary's decision was  
25 improper; and

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1 (2) the [secretary] commission shall rule on  
2 the appeal within three days after the completion of the  
3 hearing;

4 C. the parties in dispute may appeal the decision  
5 of the [secretary] New Mexico ethics commission by commencing  
6 an action in district court; and

7 D. certified candidates whose certification is  
8 revoked on appeal shall return to the secretary any unspent  
9 money distributed from the fund. If the [secretary] New Mexico  
10 ethics commission or court finds that an appeal was made  
11 frivolously or to result in delay or hardship, the [secretary]  
12 commission or court may sanction the moving party by requiring  
13 the party to pay costs of the administrative hearing, the court  
14 hearing and the opposing parties."

15 SECTION 20. Section 1-19A-17 NMSA 1978 (being Laws 2003,  
16 Chapter 14, Section 17) is amended to read:

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

18 A. In addition to other penalties that may be  
19 applicable, a person who violates a provision of the Voter  
20 Action Act is subject to a civil penalty of up to ten thousand  
21 dollars (\$10,000) per violation. In addition to a fine, a  
22 certified candidate found in violation of that act may be  
23 required to return to the fund all amounts distributed to the  
24 candidate from the fund. If the [secretary] New Mexico ethics  
25 commission makes a determination that a violation of that act

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1 has occurred, the [~~secretary~~] commission shall impose a fine or  
2 transmit the finding to the attorney general for prosecution.

3 In determining whether a certified candidate is in violation of  
4 the expenditure limits of that act, the [~~secretary~~] commission  
5 may consider as a mitigating factor any circumstances out of  
6 the candidate's control.

7 B. A person who willfully or knowingly violates the  
8 provisions of the Voter Action Act or rules of the secretary or  
9 knowingly makes a false statement in a report required by that  
10 act is guilty of a fourth degree felony and, if [~~he~~] the person  
11 is a certified candidate, shall return to the fund all money  
12 distributed to that candidate."

13 SECTION 21. Section 2-11-2 NMSA 1978 (being Laws 1977,  
14 Chapter 261, Section 2, as amended) is amended to read:

15 "2-11-2. DEFINITIONS.--As used in the Lobbyist Regulation  
16 Act:

17 A. "compensation" means any money, per diem,  
18 salary, fee or portion thereof or the equivalent in services  
19 rendered or in-kind contributions received or to be received in  
20 return for lobbying services performed or to be performed;

21 B. "expenditure" means a payment, transfer or  
22 distribution or obligation or promise to pay, transfer or  
23 distribute any money or other thing of value but does not  
24 include a lobbyist's own personal living expenses and the  
25 expenses incidental to establishing and maintaining an office

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1 in connection with lobbying activities or compensation paid to  
2 a lobbyist by a lobbyist's employer;

3 C. "legislative committee" means a committee  
4 created by the legislature, including interim and standing  
5 committees of the legislature;

6 D. "lobbying" means attempting to influence:

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

12 (2) an official action;

13 E. "lobbyist" means any individual who is  
14 compensated for the specific purpose of lobbying; is designated  
15 by an interest group or organization to represent it on a  
16 substantial or regular basis for the purpose of lobbying; or in  
17 the course of [~~his~~] employment, is engaged in lobbying on a  
18 substantial or regular basis. "Lobbyist" does not include:

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

22 (2) [~~any~~] an elected or appointed officer of  
23 the state or its political subdivisions or an Indian nation,  
24 tribe or pueblo acting in [~~his~~] the officer's official  
25 capacity;

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

11 (4) ~~[any]~~ a designated member of the staff of  
12 an elected state official; provided that the elected state  
13 official keeps for public inspection and files with the  
14 ~~[secretary of state]~~ New Mexico ethics commission such  
15 designation;

16 (5) a member of the legislature, the staff of  
17 ~~[any]~~ a member of the legislature or the staff of ~~[any]~~ a  
18 legislative committee when addressing legislation;

19 (6) ~~[any]~~ a witness called by a legislative  
20 committee or administrative agency to appear before that  
21 legislative committee or agency in connection with legislation  
22 or an official action;

23 (7) an individual who provides only oral or  
24 written public testimony in connection with a legislative  
25 committee or in a rulemaking proceeding and whose name and the

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1 interest on behalf of which [~~he~~] the individual testifies have  
2 been clearly and publicly identified; or

3 (8) a publisher, owner or employee of the  
4 print media, radio or television, while gathering or  
5 disseminating news or editorial comment to the general public  
6 in the ordinary course of business;

7 F. "lobbyist's employer" means the person whose  
8 interests are being represented and by whom a lobbyist is  
9 directly or indirectly retained, compensated or employed;

10 G. "official action" means the action or nonaction  
11 of a state official or state agency, board or commission acting  
12 in a rulemaking proceeding;

13 H. "person" means an individual, partnership,  
14 association, committee, federal, state or local governmental  
15 entity or agency, however constituted, public or private  
16 corporation or any other organization or group of persons who  
17 are voluntarily acting in concert;

18 I. "political contribution" means a gift,  
19 subscription, loan, advance or deposit of [~~any~~] money or other  
20 thing of value, including the estimated value of an in-kind  
21 contribution, that is made or received for the purpose of  
22 influencing a primary, general or statewide election, including  
23 a constitutional or other question submitted to the voters, or  
24 for the purpose of paying a debt incurred in any such election;

25 J. "prescribed form" means a form prepared and

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1 prescribed by the secretary of state;

2 K. "rulemaking proceeding" means a formal process  
3 conducted by a state agency, board or commission for the  
4 purpose of adopting a rule, regulation, standard, policy or  
5 other requirement of general applicability and does not include  
6 adjudicatory proceedings; and

7 L. "state public officer" means a person holding a  
8 statewide office provided for in the constitution of New  
9 Mexico."

10 SECTION 22. 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~~] HEARINGS--CIVIL PENALTIES.--

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

24 B. The [~~secretary of state~~] New Mexico ethics  
25 commission may conduct thorough examinations of reports and

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

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

23 D. If the person charged disputes the [~~secretary of~~  
24 ~~state's~~] New Mexico ethics commission's determination,  
25 including an advisory opinion, the person charged may request

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1 ~~[binding arbitration]~~ a hearing within ten ~~[working]~~ days of  
2 the date of the final action. The hearing shall be conducted  
3 by an independent hearing officer appointed pursuant to the  
4 Administrative Hearings Office Act. Any penalty imposed shall  
5 be due and payable within ten ~~[working]~~ days of the date of the  
6 notice of final action. ~~[No additional penalty shall accrue~~  
7 ~~pending issuance of the arbitration decision. Fines paid~~  
8 ~~pursuant to a notice of final action that are subsequently~~  
9 ~~reduced or dismissed shall be reimbursed with interest within~~  
10 ~~ten working days after the filing of the arbitration decision~~  
11 ~~with the secretary of state. Interest on the reduced or~~  
12 ~~dismissed portion of the fine shall be the same as the rate of~~  
13 ~~interest earned by the secretary of state's escrow account to~~  
14 ~~be established by the department of finance and 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 a person subject to the Lobbyist~~  
20 ~~Regulation Act, Campaign Reporting Act or Financial Disclosure~~  
21 ~~Act may serve as an arbitrator. Arbitrators shall be~~  
22 ~~considered to be independent contractors, not public officers~~  
23 ~~or employees, and shall not be paid per diem and mileage.~~

24 ~~F.]~~ E. The ~~[arbitrator]~~ independent hearing officer  
25 shall conduct the hearing within thirty days of the request and

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

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

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

23 SECTION 23. Section 2-15-7 NMSA 1978 (being Laws 1993,  
24 Chapter 46, Section 52) is amended to read:

25 "2-15-7. [~~INTERIM~~] LEGISLATIVE ETHICS COMMITTEE--

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1 CREATION--APPOINTMENT.--

2 A. [~~An "interim~~] The "legislative ethics  
3 committee", appointed by the New Mexico legislative council, is  
4 created as a permanent committee with authority to meet during  
5 the interim and the legislative session. Members of the New  
6 Mexico legislative council shall be allowed to serve on the  
7 [~~interim~~] legislative ethics committee.

8 B. All matters [~~arising in the interim~~] pertaining  
9 to legislative ethics shall be referred to [~~this special~~  
10 ~~interim~~] the legislative ethics committee.

11 C. The committee shall be appointed by the  
12 New Mexico legislative council so as to give the two major  
13 political parties in each house equal representation on the  
14 committee. In appointing the members to the committee, the New  
15 Mexico legislative council shall adopt the recommendations of  
16 the respective floor leaders of each house.

17 D. The New Mexico legislative council shall name  
18 the [~~interim~~] legislative ethics committee at the beginning of  
19 each interim, but the committee shall convene [~~the committee~~]  
20 only upon the receipt of a complaint, a request for an advisory  
21 opinion or a referral."

22 SECTION 24. Section 2-15-8 NMSA 1978 (being Laws 1993,  
23 Chapter 46, Section 53) is amended to read:

24 "2-15-8. [~~INTERIM~~] LEGISLATIVE ETHICS COMMITTEE--  
25 DUTIES.--

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1           A. The ~~[interim]~~ legislative ethics committee is  
2 authorized to:

3           ~~[A.]~~ (1) issue advisory opinions on the  
4 interpretation and enforcement of ethical principles as applied  
5 to the legislature and that are not under the jurisdiction of  
6 the New Mexico ethics commission;

7           ~~[B.]~~ (2) investigate complaints from another  
8 member of the legislature or a member of the public alleging  
9 misconduct of a legislator;

10          ~~[C.]~~ (3) investigate referrals made to the  
11 ~~[co-chairmen]~~ co-chairs of the New Mexico legislative council  
12 from the New Mexico ethics commission, the attorney general,  
13 the secretary of state or a district attorney;

14          ~~[D.]~~ (4) hire special counsel or independent  
15 hearing officers as necessary; and

16          ~~[E.]~~ (5) make recommendations to the  
17 respective houses ~~[by the end of the first full week of the~~  
18 ~~next convened regular session]~~ regarding proposed sanctions for  
19 ethical misconduct.

20          B. The legislative ethics committee shall issue an  
21 annual report no later than the first day of May of each year  
22 regarding its activities during the previous twelve months,  
23 including a listing of the number of complaints received, the  
24 disposition of the complaints that have been resolved and the  
25 advisory opinions issued.

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1           C. The legislative ethics committee shall maintain  
2 a webpage on the legislature's website."

3           SECTION 25. Section 2-15-9 NMSA 1978 (being Laws 1993,  
4 Chapter 46, Section 54) is amended to read:

5           "2-15-9. [~~INTERIM~~] LEGISLATIVE ETHICS COMMITTEE--  
6 PROCEDURES--CONFIDENTIALITY.--

7           A. [~~Except as provided in this section~~] The  
8 New Mexico legislative council shall develop procedures to  
9 carry out the provisions of this section [~~in accordance with~~  
10 ~~the existing procedures in the house and senate rules~~].

11           B. A member of the [~~interim~~] legislative ethics  
12 committee [~~shall be~~] is ineligible to participate in any matter  
13 relating directly to that member's conduct. In any such case,  
14 a substitute member to the committee shall be appointed from  
15 the same house from the same political party by the appropriate  
16 appointing authority. A member may seek to be disqualified  
17 from any matter brought before the legislative ethics committee  
18 on the grounds that the member cannot render a fair and  
19 impartial decision. Disqualification [~~must~~] shall be approved  
20 by [~~a majority vote of the remaining members of the committee~~]  
21 the appropriate appointing authority. In any such case, a  
22 substitute member to the committee shall be appointed from the  
23 same political party as provided in this section.

24           C. The [~~interim~~] legislative ethics committee is  
25 authorized to issue advisory opinions on matters relating to

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1 ethical conduct [~~during the interim~~]. Any question relating to  
2 the interpretation and enforcement of ethical principles as  
3 applied to the legislature may be submitted in writing to the  
4 [~~New Mexico~~] director of the legislative council service by a  
5 legislator describing a real or hypothetical situation and  
6 requesting an advisory opinion establishing an appropriate  
7 standard of ethical conduct for that situation. The question  
8 shall be referred to the [~~joint interim~~] legislative ethics  
9 committee.

10 D. To initiate any action [~~during the interim on~~  
11 ~~alleged~~] alleging misconduct, [~~any~~] a legislator or member of  
12 the public may file with the director of the legislative  
13 council service a written, sworn complaint setting forth, with  
14 specificity, the facts alleged to constitute unethical conduct.

15 E. A complaint [~~shall be~~] filed with the [~~New~~  
16 ~~Mexico~~] director of the legislative council service shall be  
17 forwarded to the appropriate co-chair of the legislative ethics  
18 committee. Upon receipt of [~~the~~] a complaint, the [~~co-~~  
19 ~~chairmen~~] appropriate co-chair shall convene the [~~interim~~]  
20 legislative ethics committee.

21 [~~E.~~] F. The [~~interim~~] legislative ethics committee  
22 shall maintain rules of confidentiality. [~~unless~~] The  
23 legislator against whom a complaint is filed [~~waives~~] may waive  
24 the rules or any part of them in writing. The confidentiality  
25 rules shall include the following provisions:

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1 (1) [~~the complainant~~] the committee and its  
2 staff shall not publicly disclose any information relating to  
3 the filing or investigation of a complaint, including the  
4 identity of the complainant or respondent, until after a  
5 finding of probable cause has been made that a violation has  
6 occurred;

7 (2) the identity of the complainant shall be  
8 released to the respondent immediately upon request; and

9 (3) no member of the committee or its staff  
10 may knowingly disclose any confidential information except as  
11 authorized by the committee.

12 G. Any hearing of the legislative ethics committee  
13 in which the committee considers or recommends sanctions  
14 against a legislator shall be open to the public, and any  
15 documents introduced as evidence in the hearing shall be public  
16 records."

17 SECTION 26. Section 2-15-10 NMSA 1978 (being Laws 1993,  
18 Chapter 46, Section 55) is amended to read:

19 "2-15-10. CRIMINAL SANCTIONS.--If the [~~interim~~]  
20 legislative ethics committee determines that, in addition to  
21 recommending that sanctions be imposed by the respective house  
22 on the member, the conduct involves criminal activity, the  
23 [~~interim~~] legislative ethics committee may refer the matter to  
24 the district attorney of the first judicial district, the  
25 district attorney of the judicial district where the member

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1 resides or the attorney general."

2 SECTION 27. Section 2-15-11 NMSA 1978 (being Laws 1993,  
3 Chapter 46, Section 56) is amended to read:

4 "2-15-11. LEGISLATIVE ETHICS COMMITTEE--STAFF.--The staff  
5 for the [~~interim~~] legislative ethics committee shall be  
6 provided by the legislative council service, but the committee  
7 is authorized to hire such special counsel or independent  
8 hearing officers, or to request the appointment of an  
9 independent hearing officer, as provided for in the  
10 Administrative Hearings Office Act, as necessary to assist the  
11 [~~legislative ethics~~] committee when it is convened."

12 SECTION 28. Section 2-15-12 NMSA 1978 (being Laws 1993,  
13 Chapter 46, Section 57) is amended to read:

14 "2-15-12. [~~NEW MEXICO~~] LEGISLATIVE [~~COUNCIL~~] ETHICS  
15 COMMITTEE--BUDGET.--The New Mexico legislative council shall  
16 annually provide an amount sufficient to carry out the duties  
17 and mandate of the [~~interim~~] legislative ethics committee."

18 SECTION 29. Section 7-1B-6 NMSA 1978 (being Laws 2015,  
19 Chapter 73, Section 6) is amended to read:

20 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

- 21 A. The chief hearing officer shall:
- 22 (1) adopt and promulgate a hearing officer
  - 23 code of conduct; and
  - 24 (2) periodically evaluate each hearing
  - 25 officer's performance for competency, efficiency and

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1 professional demeanor in [~~accord~~] accordance with relevant  
2 legal standards and the hearing officer code of conduct.

3 B. The chief hearing officer shall ensure that each  
4 hearing officer has decisional independence; however, the chief  
5 hearing officer may:

6 (1) consult with a hearing officer about a  
7 genuine question of law; and

8 (2) review with a hearing officer any issue on  
9 appeal addressed by a court of this state.

10 C. The administrative hearings office shall:

11 (1) hear all tax protests pursuant to the  
12 provisions of the Tax Administration Act;

13 (2) hear property tax protests pursuant to the  
14 provisions of the Property Tax Code;

15 (3) hear all certificate-denial protests  
16 pursuant to the provisions of Section 13-1-22 NMSA 1978;

17 (4) conduct all adjudicatory hearings pursuant  
18 to the Motor Vehicle Code;

19 (5) conduct all driver's license revocation  
20 hearings pursuant to the provisions of the Implied Consent Act;

21 (6) conduct hearings related to decisions of  
22 the New Mexico ethics commission;

23 [~~(6)~~] (7) make and preserve a complete record  
24 of all proceedings; and

25 [~~(7)~~] (8) maintain confidentiality regarding

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1 taxpayer information as required by the provisions of Section  
2 7-1-8 NMSA 1978.

3 D. In hearings conducted pursuant to the Tax  
4 Administration Act, Section 13-1-22 NMSA 1978 and the Motor  
5 Vehicle Code:

6 (1) the rules of evidence that govern  
7 proceedings in the state's courts do not apply. The hearing  
8 officer may require reasonable substantiation of statements or  
9 records tendered, the accuracy or truth of which is in  
10 reasonable doubt, to rule on the admissibility of evidence. A  
11 taxpayer or the taxation and revenue department may request a  
12 written ruling on a contested question of evidence in a matter  
13 in which the taxpayer has filed a written protest and for which  
14 that protest is pending. The administrative hearings office  
15 shall issue a copy of its written ruling to the taxation and  
16 revenue department at the time the ruling is issued to the  
17 taxpayer;

18 (2) the Rules of Civil Procedure for the  
19 District Courts do not apply. The hearing officer shall  
20 conduct a hearing to allow the ample and fair presentation of  
21 complaints and defenses. The hearing officer shall hear  
22 arguments, permit discovery, entertain and dispose of motions,  
23 require written expositions of the case as the circumstances  
24 justify and render a decision in accordance with the law and  
25 the evidence presented and admitted. A taxpayer or the

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1 taxation and revenue department may request a written ruling on  
2 a contested question of procedure in a matter in which the  
3 taxpayer has filed a written protest and for which that protest  
4 is pending. The administrative hearings office shall issue a  
5 copy of its written ruling to the taxation and revenue  
6 department at the time the ruling is issued to the taxpayer;  
7 and

8 (3) the hearing officer may administer oaths  
9 and issue subpoenas for the attendance of witnesses and the  
10 production of relevant books and papers, and for hearings  
11 conducted for a license suspension pursuant to Section 66-5-30  
12 NMSA 1978, the hearing officer may require a reexamination of  
13 the licensee."

14 SECTION 30. Section 10-16-11 NMSA 1978 (being Laws 1967,  
15 Chapter 306, Section 11, as amended) is amended to read:

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

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

24 B. Within thirty days after the general codes of  
25 conduct are adopted, they shall be given to and reviewed with

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1 all executive and legislative branch officers and employees.  
2 All new public officers and employees of the executive and  
3 legislative branches shall review the employees' general code  
4 of conduct prior to or at the time of being hired.

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

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1 inspection.

2 D. Codes of conduct shall be reviewed at least once  
3 every four years. An amended code shall be filed as provided  
4 in Subsection C of this section.

5 E. All legislators shall attend a minimum of two  
6 hours of ethics continuing education and training developed and  
7 provided by the New Mexico ethics commission biennially."

8 SECTION 31. Section 10-16-13.1 NMSA 1978 (being Laws  
9 1993, Chapter 46, Section 35) is amended to read:

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

11 A. The secretary of state shall advise and seek to  
12 educate all persons required to perform duties under the  
13 Governmental Conduct Act of those duties. This includes  
14 advising all those persons at least annually of that act's  
15 ethical principles.

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

24 SECTION 32. Section 10-16-14 NMSA 1978 (being Laws 1967,  
25 Chapter 306, Section 14, as amended) is amended to read:

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1 "10-16-14. ENFORCEMENT PROCEDURES.--

2 ~~[A. The secretary of state may refer suspected~~  
3 ~~violations of the Governmental Conduct Act to the attorney~~  
4 ~~general, district attorney or appropriate state agency or~~  
5 ~~legislative body for enforcement. If a suspected violation~~  
6 ~~involves the office of the secretary of state, the attorney~~  
7 ~~general may enforce that act. If a suspected violation~~  
8 ~~involves the office of the attorney general, a district~~  
9 ~~attorney may enforce that act.~~

10 B.] A. Violation of the provisions of the  
11 Governmental Conduct Act by any legislator is grounds for  
12 discipline by the appropriate legislative body.

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

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1 period.

2           ~~[D-]~~ C. Violation of the provisions of the  
3 Governmental Conduct Act by any public officer or employee,  
4 other than those covered by Subsection ~~[G]~~ B of this section,  
5 is grounds for discipline, including dismissal, demotion or  
6 suspension. Complaints against executive branch employees may  
7 be filed with the ~~[agency head]~~ New Mexico ethics commission  
8 and reviewed pursuant to the procedures provided in the  
9 Personnel Act. Complaints against legislative branch employees  
10 may be filed with and reviewed pursuant to procedures adopted  
11 by the New Mexico legislative council. Complaints against  
12 judicial branch employees may be filed and reviewed pursuant to  
13 the procedures provided in the judicial personnel rules.

14           ~~[E-]~~ D. Subject to the provisions of this section,  
15 the provisions of the Governmental Conduct Act may be enforced  
16 by the ~~[attorney general. Except as regards legislators or~~  
17 ~~statewide elected officials, a district attorney in the county~~  
18 ~~where a person resides or where a violation occurred may also~~  
19 ~~enforce that act]~~ New Mexico ethics commission. Enforcement  
20 actions may include seeking civil injunctive or other  
21 appropriate orders."

22           SECTION 33. Section 10-16-18 NMSA 1978 (being Laws 1995,  
23 Chapter 153, Section 23) is amended to read:

24           "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--~~[A-]~~ If the  
25 ~~[secretary of state]~~ New Mexico ethics commission reasonably

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1 believes that a person committed, or is about to commit, a  
2 violation of the Governmental Conduct Act, the [~~secretary of~~  
3 ~~state~~] commission shall [~~refer the matter to the attorney~~  
4 ~~general or a district attorney for enforcement.~~

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

13 **SECTION 34.** Section 10-16A-1 NMSA 1978 (being Laws 1993,  
14 Chapter 46, Section 39) is amended to read:

15 "10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--  
16 [~~Sections 39 through 45 of this act~~] Chapter 10, Article 16A  
17 NMSA 1978 may be cited as the "Financial Disclosure Act"."

18 **SECTION 35.** Section 10-16A-5 NMSA 1978 (being Laws 1993,  
19 Chapter 46, Section 43) is amended to read:

20 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

21 A. The secretary of state shall advise and seek to  
22 educate all persons required to perform duties under the  
23 Financial Disclosure Act of those duties. This includes  
24 providing timely advance notice of the required financial  
25 disclosure statement and preparing forms that are clear and

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1 easy to complete.

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

10 SECTION 36. Section 10-16A-6 NMSA 1978 (being Laws 1993,  
11 Chapter 46, Section 44, as amended) is amended to read:

12 "10-16A-6. INVESTIGATIONS--~~[BINDING ARBITRATION]~~  
13 ~~HEARING--FINES--ENFORCEMENT.--~~

14 A. [~~The secretary of state may conduct thorough~~  
15 ~~examinations of statements and initiate investigations to~~  
16 ~~determine whether the Financial Disclosure Act has been~~  
17 ~~violated.~~] Any person who believes that the Financial  
18 Disclosure Act has been violated may file a written complaint  
19 with the [~~secretary of state~~] New Mexico ethics commission.  
20 The [~~secretary of state~~] commission shall adopt procedures for  
21 processing complaints and notifications of violations.

22 B. If the [~~secretary of state~~] New Mexico ethics  
23 commission determines that a violation has occurred for which a  
24 penalty should be imposed, the [~~secretary of state~~] commission  
25 shall so notify the person charged and impose the penalty. If

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1 the person charged disputes the [~~secretary of state's~~]  
2 commission's determination, the person charged may request  
3 [~~binding arbitration.~~]

4 G. ~~The arbitration decision shall be decided by a~~  
5 ~~single arbitrator selected within ten days by the person~~  
6 ~~against whom the penalty has been imposed from a list of five~~  
7 ~~arbitrators provided by the secretary of state. No arbitrator~~  
8 ~~may be a person subject to the Financial Disclosure Act,~~  
9 ~~Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators~~  
10 ~~shall be considered to be independent contractors, not public~~  
11 ~~officers or employees, and shall not be paid per diem and~~  
12 ~~mileage] a hearing. The hearing shall be conducted by an~~  
13 ~~independent hearing officer appointed pursuant to the~~  
14 ~~Administrative Hearings Office Act.~~

15 [~~D.~~] C. The [~~arbitrator~~] independent hearing  
16 officer shall conduct the hearing within thirty days of the  
17 request and may take any action [~~the secretary of state is~~]  
18 authorized [~~to take~~] by the Financial Disclosure Act. The  
19 [~~arbitrator~~] independent hearing officer shall state the  
20 reasons for [~~his~~] the decision in a written document that shall  
21 be a public record. [~~The decision shall be final and binding.~~]  
22 The decision shall be issued and filed with the New Mexico  
23 ethics commission 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, the~~

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

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

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

16 SECTION 37. Section 10-16A-8 NMSA 1978 (being Laws 1995,  
17 Chapter 153, Section 25) is amended to read:

18 "10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--~~[A.]~~ If the  
19 ~~[secretary of state]~~ New Mexico ethics commission reasonably  
20 believes that a person committed, or is about to commit, a  
21 violation of the Financial Disclosure Act, the ~~[secretary of~~  
22 ~~state]~~ commission shall ~~[refer the matter to the attorney~~  
23 ~~general or a district attorney for enforcement.~~

24 ~~B. The attorney general or a district attorney may]~~  
25 institute a civil action in district court if a violation has

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1 occurred or to prevent a violation of [~~any~~] a provision of the  
2 Financial Disclosure Act. Relief may include a permanent or  
3 temporary injunction, a restraining order or any other  
4 appropriate order, including an order for a civil penalty of  
5 two hundred fifty dollars (\$250) for each violation not to  
6 exceed five thousand dollars (\$5,000)."

7 SECTION 38. REPEAL.--Sections 2-15-1 through 2-15-6 NMSA  
8 1978 (being Laws 1993, Chapter 46, Sections 46 through 51) are  
9 repealed.

10 SECTION 39. APPLICABILITY.--The provisions of the Public  
11 Accountability Act apply to conduct that occurs on or after  
12 July 1, 2019.

13 SECTION 40. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Section  
15 1 through 5 and 7 of this act is January 1, 2019.

16 B. The effective date of the provisions of Sections  
17 6 and 8 through 39 of this act is July 1, 2019.