

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 8

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2007

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
CREATING THE STATE ETHICS COMMISSION; PROVIDING POWERS AND
DUTIES; PROVIDING FOR ANNUAL ETHICS TRAINING AND THE
PUBLICATION OF AN ETHICS GUIDE; GRANTING SUBPOENA POWER;
ALLOWING ISSUANCE OF ADVISORY OPINIONS RELATED TO CERTAIN
ETHICS VIOLATIONS; PROVIDING FOR THE FILING OF COMPLAINTS
AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT
CONTRACTORS AND LOBBYISTS FOR CERTAIN ETHICS VIOLATIONS;
ESTABLISHING INVESTIGATIONS OF COMPLAINTS FOR CERTAIN ETHICS
VIOLATIONS; MAKING AN APPROPRIATION.

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

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

Section 2. DEFINITIONS.--As used in the State Ethics

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1 Commission Act:

2 A. "campaign contribution" means a gift,
3 subscription, loan, advance or deposit of money or other thing
4 of value, including the estimated value of an in-kind
5 contribution, that is made or received for a political purpose,
6 including payment of a debt incurred in an election campaign.

7 "Campaign contribution" does not include the value of services
8 provided without compensation or unreimbursed travel or other
9 personal expenses of persons who volunteer a portion or all of
10 their time on behalf of a candidate or political committee;

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

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

16 D. "government contractor" means a person who has a
17 contract with a state agency pursuant to the Procurement Code.
18 "Government contractor" also includes any person who has
19 submitted a competitive sealed proposal or competitive sealed
20 bid for a contract with a state agency;

21 E. "lobbying" means attempting to influence:

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

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1 action by the governor; or

2 (2) an official action;

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

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

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

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

23 (4) a designated member of the staff of an
24 elected state official; provided that the elected state
25 official keeps the designation for public inspection and files

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1 it with the secretary of state;

2 (5) a legislator or legislative staff member;

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

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

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

15 G. "official action" means an action or nonaction
16 of a state official or state agency, board or commission acting
17 in a rulemaking proceeding;

18 H. "political purpose" means influencing or
19 attempting to influence an election or pre-primary convention,
20 including a constitutional amendment or other question
21 submitted to the voters;

22 I. "respondent" means a state official, state
23 employee, government contractor or lobbyist who is the subject
24 of a complaint filed with the commission;

25 J. "state agency" means any department, commission,

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1 council, board, committee, institution, legislative body,
2 agency, government corporation, educational institution or
3 official of the executive, legislative or judicial branch of
4 government of the state;

5 K. "state employee" means an employee of the
6 executive, legislative or judicial branches of the state.
7 "State employee" does not include a judge or justice, whether
8 elected or appointed, of any court; and

9 L. "state official" means a person elected or
10 appointed to an office of the executive or legislative branch
11 of the state.

12 Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--
13 TERMS--REMOVAL.--

14 A. The "state ethics commission" is created as an
15 adjunct agency. The commission consists of the following ten
16 members:

17 (1) four members appointed by the governor, no
18 more than two of whom shall be of the same political party;

19 (2) two members appointed by the president pro
20 tempore of the senate, who shall not be of the same political
21 party;

22 (3) two members appointed by the speaker of
23 the house of representatives, who shall not be of the same
24 political party; and

25 (4) two members appointed by the chief justice

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1 of the supreme court, who shall not be of the same political
2 party.

3 B. Members of the commission shall be appointed for
4 staggered terms of four years. Upon initial appointment of the
5 commission, the members shall draw lots to determine which
6 three members will serve an initial term of two years, which
7 three members will serve an initial term of three years and
8 which four members will serve an initial term of four years;
9 thereafter, all members will serve four-year terms. A person
10 shall not serve as a commission member for more than two
11 consecutive terms.

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

14 (1) at least five members shall be appointed
15 from the five public regulation commission districts; and

16 (2) no more than five members shall be
17 registered members of the same political party within the year
18 prior to their appointment.

19 D. The commission shall select a chair, vice chair
20 and other officers it deems necessary.

21 E. Six members of the commission constitute a
22 quorum for the transaction of business. No action may be taken
23 by the commission unless at least six members concur.

24 F. A vacancy on the commission shall be filled by
25 appointment of the appointing authority for that member's

1 position for the remainder of the unexpired term. A commission
2 member may only be removed for incompetence, neglect of duty or
3 malfeasance in office. The supreme court of the state of New
4 Mexico has exclusive jurisdiction over proceedings to remove
5 commission members, and its decision shall be final. A member
6 shall be given notice of hearing and an opportunity to be heard
7 before the member is removed.

8 G. During a member's service, a member shall not:

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

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

13 H. Members shall recuse themselves from a
14 commission proceeding that involves the appointing authority
15 who appointed the member to the commission and in order to
16 avoid the appearance of impropriety or a conflict of interest.

17 I. For a period of one calendar year immediately
18 preceding a member's term and immediately following the
19 expiration of a member's term, the member of the commission
20 shall not:

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

23 (2) represent a person or entity who appears
24 before the commission, unless appearing on the member's own
25 behalf; or

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

4 J. Members are entitled to receive per diem and
5 mileage as provided in the Per Diem and Mileage Act and shall
6 receive no other compensation, perquisite or allowance.

7 K. The commission shall meet as necessary to carry
8 out its duties pursuant to the State Ethics Commission Act.

9 Section 4. COMMISSION--POWERS--DUTIES.--

10 A. The commission shall:

11 (1) receive and investigate complaints
12 alleging ethics violations against state officials, state
13 employees, government contractors and lobbyists;

14 (2) report findings of probable cause that a
15 respondent's conduct constituted an ethics violation to the
16 respondent's appointing authority, employer or appropriate
17 state agency;

18 (3) compile, maintain and provide public
19 access to an index of all advisory opinions, complaints and
20 reports required to be made public pursuant to the State Ethics
21 Commission Act;

22 (4) compile, adopt, publish and provide to all
23 state officials, state employees, government contractors and
24 lobbyists an ethics guide that clearly and plainly explains the
25 ethics requirements set forth in state law;

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1 (5) compile, adopt, publish and provide to all
2 state officials, state employees, government contractors and
3 lobbyists a business ethics guide that clearly and plainly
4 explains the ethics requirements set forth in state law as they
5 relate to conducting business with the state;

6 (6) provide annual ethics training to all
7 state officials, state employees, government contractors and
8 lobbyists;

9 (7) develop, adopt and promulgate all rules
10 necessary to implement and administer the provisions of the
11 State Ethics Commission Act, including rules of procedure for
12 investigations conducted by the commission;

13 (8) employ an executive director;

14 (9) submit an annual report of its activities,
15 including any recommendations regarding state ethics laws, or
16 the scope of its powers and duties, in December of each year to
17 the governor, the legislature and the chief justice of the
18 supreme court; and

19 (10) promulgate rules for the recusal of
20 members to avoid the appearance of impropriety and conflicts of
21 interest.

22 B. The commission may:

23 (1) recommend disciplinary actions for ethics
24 violations in accordance with the provisions of the State
25 Ethics Commission Act;

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1 (2) subpoena and require the attendance of
2 witnesses and the production of accounts, books, papers,
3 records and other documents relevant to an investigation
4 conducted by the commission;

5 (3) issue advisory opinions to state
6 officials, state employees, government contractors and
7 lobbyists in accordance with the provisions of the State Ethics
8 Commission Act; and

9 (4) contract for the provisions of goods and
10 services.

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

12 A. The executive director of the commission shall:

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

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

18 (3) perform all investigations on behalf of
19 the commission;

20 (4) bring complaints and investigation results
21 before the commission;

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

24 (6) make recommendations to the commission of
25 proposed rules or legislative changes needed to provide better

1 administration of the State Ethics Commission Act.

2 B. The executive director of the commission may
3 administer oaths and take depositions to the same extent and
4 subject to the same limitations as would apply if the
5 deposition were held pursuant to the discovery rules in a civil
6 action in the district court.

7 C. For a period of one calendar year immediately
8 preceding the term of an executive director and immediately
9 following the expiration of the term of an executive director,
10 the executive director shall not:

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

13 (2) represent a person or entity who appears
14 before the commission, unless appearing on the executive
15 director's own behalf;

16 (3) accept employment or otherwise provide
17 services to a person or entity who appears before the
18 commission during the year;

19 (4) hold or seek an office in a political
20 party; or

21 (5) be a state employee, a government
22 contractor or a lobbyist.

23 Section 6. COMMISSION--ADVISORY OPINIONS.--

24 A. The commission may issue an advisory opinion to
25 a state official, state employee, government contractor or

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1 lobbyist on matters relating to a specific set of circumstances
2 involving ethics violations. Unless amended or revoked, an
3 advisory opinion issued by the commission shall be binding on
4 the commission in any subsequent commission proceedings
5 concerning the person who requested the opinion; provided that
6 the person acted in good faith and in reliance upon the
7 opinion.

8 B. The commission shall promulgate rules for
9 issuing advisory opinions; provided that:

10 (1) advisory opinions shall be requested in
11 writing and identify a specific set of circumstances involving
12 an ethics issue;

13 (2) all requests to the commission for
14 advisory opinions are confidential; and

15 (3) the commission may publish an advisory
16 opinion after omitting the name of the requesting state
17 official, state employee, government contractor or lobbyist.

18 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--
19 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL
20 REFERRAL REQUIRED.--

21 A. A person who has actual knowledge of an alleged
22 ethics violation committed by a state official, state employee,
23 government contractor or lobbyist may file a complaint with the
24 commission. The complaint shall be signed under penalty of
25 false statement and set forth in detail the specific charges

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1 against the state official, state employee, government
2 contractor or lobbyist and the factual allegations that support
3 the charges. Together with the complaint, a person shall
4 submit to the commission any evidence that the person has that
5 supports the complaint. Evidence may include documents,
6 records and the names of witnesses. The commission may
7 prescribe the forms on which complaints are to be filed.

8 B. Upon receipt of a complaint filed pursuant to
9 this section, the executive director of the commission shall
10 review the complaint and make an initial determination whether
11 the conduct alleged in the complaint is within the jurisdiction
12 of the commission. If the executive director determines that
13 the alleged conduct is not within the commission's
14 jurisdiction, the executive director shall recommend to the
15 commission that it dismiss the complaint. The commission may
16 dismiss the complaint upon the recommendation of the executive
17 director or instruct the executive director to initiate an
18 investigation of the complaint.

19 C. If the commission decides to investigate the
20 complaint or the executive director determines that the alleged
21 conduct is within the commission's jurisdiction, the executive
22 director shall initiate an investigation to determine whether
23 probable cause may exist to believe the respondent's alleged
24 conduct constituted an ethics violation. As soon as
25 practicable, the executive director shall notify the person who

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1 filed the complaint and the respondent of the disposition of
2 the complaint. The executive director shall also notify the
3 respondent of the general nature of the complaint and the
4 investigation.

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

15 E. The commission may issue subpoenas for the
16 attendance and testimony of witnesses or the production of
17 books, documents, records and papers reasonably related to the
18 complaint. Subpoenas may be signed by any member of the
19 commission and shall state with reasonable certainty the nature
20 of the investigation, the nature of the information to be
21 produced, the time and place where the information shall be
22 produced and the consequences of failure to obey the subpoena.
23 After service of the subpoena upon the person, if the person
24 neglects or refuses to comply with the subpoena, the commission
25 may apply to a district court for an order compelling

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1 compliance.

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

14 G. If the commission finds that, based on the facts
15 in the investigation report and the facts alleged in the
16 complaint, probable cause exists to believe that the
17 respondent's alleged conduct constituted an ethics violation,
18 the commission shall report its finding in writing to the
19 respondent's appointing authority, employer or appropriate
20 state agency. The written finding may include recommendations
21 for disciplinary action or further proceedings against the
22 respondent. The commission shall also provide the respondent's
23 appointing authority, employer or appropriate state agency with
24 all evidence collected during its investigation; provided that
25 the receiving authority, employer or state agency agrees that

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1 the evidence remain confidential until such time as it is
2 offered into evidence at any subsequent proceeding instituted
3 against the respondent by the authority, employer or state
4 agency. A commission finding reported pursuant to this
5 subsection shall not be public.

6 H. If the commission finds that, based on the facts
7 in the investigation report and the facts alleged in the
8 complaint, probable cause does not exist to believe that the
9 respondent's alleged conduct constituted an ethics violation,
10 the commission shall dismiss the complaint and notify the
11 respondent in writing of the dismissal no later than five days
12 after the finding is made. Following a dismissal and upon the
13 request of the respondent, the commission shall provide a
14 report of its finding in writing to the respondent. A
15 commission finding issued pursuant to this subsection shall not
16 be public except upon the request of the respondent; provided
17 that the finding shall not disclose any confidential
18 communications, records or other information collected during
19 the investigation.

20 I. If the commission finds at any time that the
21 respondent's conduct may amount to a criminal violation of
22 state law, the commission shall immediately refer the matter to
23 the attorney general or an appropriate district attorney. The
24 commission shall provide the attorney general or district
25 attorney with all evidence collected during its investigation

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1 that may be used in a criminal proceeding. Nothing in this
2 subsection shall prevent the commission from taking any action
3 otherwise provided in this section.

4 J. No complaint shall be filed pursuant to this
5 section later than three years after an alleged ethics
6 violation was committed.

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

19 Section 9. PROHIBITED ACTIONS.--A person shall not take
20 or threaten to take any retaliatory, disciplinary or other
21 adverse action against another person who in good faith:

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

25 B. provides testimony, records, reports or other

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

3 Section 10. APPROPRIATION.--Five hundred thousand dollars
4 (\$500,000) is appropriated from the general fund to the state
5 ethics commission for expenditure in fiscal year 2008 to carry
6 out the provisions of the State Ethics Commission Act. Any
7 unexpended or unencumbered balance remaining at the end of
8 fiscal year 2008 shall revert to the general fund.

9 Section 11. APPLICABILITY.--The provisions of the State
10 Ethics Commission Act apply to a state official, state
11 employee, government contractor or lobbyist who commits an
12 ethics violation on or after July 1, 2007.

13 Section 12. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.