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HOUSE BILL 309

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Mary Helen Garcia

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 ETHICS GUIDES; REQUIRING PROMULGATION OF AN
ETHICS CODE FOR THE EXECUTIVE BRANCH; 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".

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1 Section 2. DEFINITIONS.--As used in the State Ethics
2 Commission Act:

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

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

16 C. "commissioner" means a person appointed to the
17 state ethics commission;

18 D. "ethics violation" means any action that amounts
19 to a violation of the Gift Act, the Governmental Conduct Act,
20 the Procurement Code, the Lobbyist Regulation Act, the
21 Financial Disclosure Act or Chapter 1, Article 19 NMSA 1978;

22 E. "government contractor" means a person who has a
23 contract with a state agency pursuant to the Procurement Code.

24 "Government contractor" also includes any person who has
25 submitted a competitive sealed proposal or competitive sealed

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1 bid for a contract with a state agency;

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

4 G. "lobbying" means attempting to influence:

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

10 (2) an official action;

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

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

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

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

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

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

10 (5) a legislator or legislative staff member;

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

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

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

23 I. "official action" means an action or nonaction
24 of a state official or state agency, board or commission acting
25 in a rulemaking proceeding;

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1 J. "political purpose" means influencing or
2 attempting to influence an election or pre-primary convention,
3 including a constitutional amendment or other question
4 submitted to the voters;

5 K. "respondent" means a state official, state
6 employee, government contractor or lobbyist who is the subject
7 of a complaint filed with the commission;

8 L. "state agency" means any department, commission,
9 council, board, committee, institution, agency, government
10 corporation, educational institution or official of the
11 executive, legislative or judicial branch of government of the
12 state;

13 M. "state employee" means an employee of the
14 executive, legislative or judicial branch of the state; and

15 N. "state official" means a person elected or
16 appointed to an office of the executive, judicial or
17 legislative branch of the state.

18 Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--
19 TERMS--REMOVAL.--

20 A. The "state ethics commission" is created as an
21 adjunct agency. The commission consists of the following ten
22 commissioners:

23 (1) four commissioners appointed by the
24 governor, no more than two of whom shall be of the same
25 political party and at least one commissioner shall be

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1 appointed from each congressional district;

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

4 (3) one commissioner appointed by the minority
5 floor leader of the senate;

6 (4) one commissioner appointed by the speaker
7 of the house of representatives;

8 (5) one commissioner appointed by the minority
9 floor leader of the house of representatives; and

10 (6) two commissioners appointed by the chief
11 justice of the supreme court, who shall not be of the same
12 political party and shall not be appointed from the same
13 congressional district.

14 B. Appointments shall be made in a manner that
15 meets the following requirements:

16 (1) all commissioners shall be residents of
17 New Mexico;

18 (2) no more than five commissioners shall be
19 registered members of the same political party and no person
20 whose party registration changed in the year prior to
21 appointment shall be appointed to the commission; and

22 (3) the appointing authorities shall give due
23 consideration to achieving geographical representation from
24 across the state.

25 C. Commissioners shall be appointed for staggered

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1 terms of four years. Upon initial appointment of the
2 commission, the commissioners shall draw lots to determine
3 which three commissioners will serve an initial term of two
4 years, which three commissioners will serve an initial term of
5 three years and which four commissioners will serve an initial
6 term of four years; thereafter, all commissioners will serve
7 four-year terms. A person shall not serve as a commissioner
8 for more than two consecutive terms.

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

11 E. Six commissioners constitute a quorum for the
12 transaction of business. No action may be taken by the
13 commission unless at least six members concur.

14 F. A vacancy on the commission shall be filled by
15 appointment of the appointing authority for that commissioner's
16 position for the remainder of the unexpired term. A
17 commissioner may only be removed for incompetence, neglect of
18 duty or malfeasance in office. A proceeding for the removal of
19 a commissioner may be commenced by the commission or by the
20 attorney general upon the request of the commission. The
21 supreme court of the state of New Mexico has exclusive
22 jurisdiction over proceedings to remove commissioners, and its
23 decision shall be final. A commissioner shall be given notice
24 of hearing and an opportunity to be heard before the
25 commissioner is removed.

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1 G. During a commissioner's service, a commissioner
2 shall not:

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

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

7 H. Commissioners shall disqualify themselves from a
8 commission proceeding that involves the appointing authority
9 who appointed the commissioner to the commission or when a
10 commissioner has a conflict of interest. Commissioners who
11 disqualify themselves shall state the reason for the
12 disqualification. If the propriety of a commissioner's
13 participation in a particular matter is questioned due to a
14 conflict of interest, the commission may disqualify that
15 commissioner from participation in a commission proceeding. A
16 disqualified commissioner shall not participate in any
17 proceedings with reference to the matter from which the
18 commissioner is disqualified, and the commissioner shall be
19 excused from that portion of any meeting at which the matter is
20 discussed. If four or more commissioners are disqualified from
21 participating in a proceeding, the remaining commissioners
22 shall appoint temporary commissioners to participate in that
23 proceeding. Appointments of temporary commissioners shall be
24 made by majority vote of the remaining commissioners and in
25 accordance with the geographical representation and political

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1 party membership requirements of Subsections A and B of this
2 section.

3 I. For a period of one calendar year following the
4 expiration of a commissioner's term or following the
5 resignation or removal of the commissioner, the commissioner
6 shall not:

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

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

11 (3) accept employment or otherwise provide
12 services to a person or entity that is a respondent, unless the
13 commissioner accepted employment or provided services to the
14 person or entity prior to the filing of a complaint against the
15 person or entity.

16 J. Commissioners are entitled to receive per diem
17 and mileage as provided in the Per Diem and Mileage Act and
18 shall receive no other compensation, perquisite or allowance.

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

21 Section 4. COMMISSION--POWERS--DUTIES.--

22 A. The commission shall:

23 (1) receive and investigate complaints
24 alleging ethics violations against state officials, state
25 employees, government contractors and lobbyists;

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

5 (3) compile, maintain and provide public
6 access to an index of all advisory opinions, complaints and
7 reports required to be made public pursuant to the State Ethics
8 Commission Act;

9 (4) draft a proposed code of ethics for all
10 state officials and state employees of the executive branch and
11 submit the proposed code to each elected state official of the
12 executive branch for adoption;

13 (5) compile, adopt, publish and provide to all
14 state officials, state employees, government contractors and
15 lobbyists an ethics guide that clearly and plainly explains the
16 ethics requirements set forth in state law;

17 (6) compile, adopt, publish and provide to all
18 state officials, state employees, government contractors and
19 lobbyists a business ethics guide that clearly and plainly
20 explains the ethics requirements set forth in state law as they
21 relate to conducting business with the state;

22 (7) provide annual ethics training to all
23 state officials, state employees, government contractors and
24 lobbyists;

25 (8) develop, adopt and promulgate all rules

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1 necessary to implement and administer the provisions of the
2 State Ethics Commission Act, including rules of procedure for
3 investigations conducted by the commission;

4 (9) employ an executive director;

5 (10) submit an annual report of its
6 activities, including any recommendations regarding state
7 ethics laws or the scope of its powers and duties, in December
8 of each year to the governor, the legislature and the chief
9 justice of the supreme court; and

10 (11) promulgate rules for the recusal of
11 members to avoid the appearance of impropriety and conflicts of
12 interest.

13 B. The commission may:

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

17 (2) issue public reprimands or censures or
18 recommend disciplinary actions in accordance with the
19 provisions of the State Ethics Commission Act for ethics
20 violations committed by state officials and state employees of
21 the executive branch;

22 (3) subpoena and require the attendance of
23 witnesses and the production of accounts, books, papers,
24 records and other documents relevant to an investigation
25 conducted by the commission;

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1 (4) issue advisory opinions to state
2 officials, state employees, government contractors and
3 lobbyists in accordance with the provisions of the State Ethics
4 Commission Act; and

5 (5) contract for the provisions of goods and
6 services.

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

8 A. The executive director of the commission shall:

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

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

14 (3) perform all investigations on behalf of
15 the commission;

16 (4) bring complaints and investigation results
17 before the commission for consideration;

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

20 (6) make recommendations to the commission of
21 proposed rules or legislative changes needed to provide better
22 administration of the State Ethics Commission Act.

23 B. The executive director of the commission may
24 administer oaths and take depositions to the same extent and
25 subject to the same limitations as would apply if the

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1 deposition were held pursuant to the discovery rules in a civil
2 action in the district court.

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

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

8 (2) represent a respondent, unless appearing
9 on the executive director's own behalf; or

10 (3) accept employment or otherwise provide
11 services to a person or entity that is a respondent, unless the
12 executive director accepted employment or provided services to
13 the person or entity prior to the filing of a complaint against
14 the person or entity.

15 Section 6. COMMISSION--ADVISORY OPINIONS.--

16 A. The commission may issue an advisory opinion to
17 a state official, state employee, government contractor or
18 lobbyist on matters relating to a specific set of circumstances
19 involving ethics violations. Unless amended or revoked, an
20 advisory opinion issued by the commission shall be binding on
21 the commission in any subsequent commission proceedings
22 concerning the person who requested the opinion; provided that
23 the person acted in good faith and in reliance upon the
24 opinion.

25 B. The commission shall promulgate rules for

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1 issuing advisory opinions; provided that:

2 (1) advisory opinions shall be requested in
3 writing and identify a specific set of circumstances involving
4 an ethics issue;

5 (2) all requests to the commission for
6 advisory opinions are confidential; and

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

10 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--
11 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL
12 REFERRAL REQUIRED.--

13 A. A complaint of an alleged ethics violation
14 committed by a state official, state employee, government
15 contractor or lobbyist may be:

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

18 (2) initiated by the commission upon receipt
19 of evidence deemed sufficient by the commission of an alleged
20 ethics violation.

21 B. A person who files a complaint with the
22 commission shall sign the complaint under penalty of false
23 statement and set forth in detail the specific charges against
24 the state official, state employee, government contractor or
25 lobbyist and the factual allegations that support the charges.

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1 Together with the complaint, a person shall submit to the
2 commission any evidence that the person has that supports the
3 complaint. Evidence may include documents, records and the
4 names of witnesses. The commission may prescribe the forms on
5 which complaints are to be filed.

6 C. The chair of the commission shall sign a
7 complaint initiated by the commission, and the complaint shall
8 set forth in detail the specific charges against the state
9 official, state employee, government contractor or lobbyist and
10 the factual allegations that support the charges.

11 D. Upon receipt of a complaint filed or initiated
12 pursuant to this section, the executive director of the
13 commission shall examine the complaint and make an initial
14 determination whether the conduct alleged in the complaint is
15 within the jurisdiction of the commission and warrants
16 investigation. The executive director shall bring all
17 complaints before the commission and make recommendations to
18 the commission regarding whether to proceed with investigations
19 of the complaints.

20 E. The commission may dismiss complaints that are
21 frivolous, unfounded or outside the jurisdiction of the
22 commission. If the commission determines there is sufficient
23 cause to proceed with the investigation of a complaint, the
24 executive director shall initiate an investigation to determine
25 whether probable cause may exist to believe the respondent's

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1 alleged conduct constituted an ethics violation. As soon as
2 practicable, the executive director shall notify the person who
3 filed the complaint and the respondent of the disposition of
4 the complaint. The executive director shall also notify the
5 respondent of the general nature of the complaint and the
6 investigation.

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

17 G. The commission may issue subpoenas for the
18 attendance and testimony of witnesses or the production of
19 books, documents, records and papers reasonably related to the
20 complaint. Subpoenas may be signed by the chair of the
21 commission and shall state with reasonable certainty the nature
22 of the investigation, the nature of the information to be
23 produced, the time and place where the information shall be
24 produced and the consequences of failure to obey the subpoena.
25 After service of the subpoena upon the person, if the person

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1 neglects or refuses to comply with the subpoena, the commission
2 may apply to a district court for an order compelling
3 compliance.

4 H. The executive director shall present a written
5 report of the investigation to the commission. The respondent
6 and the respondent's legal counsel may attend the meeting, and
7 the executive director shall provide reasonable notice to the
8 respondent in writing of the date, time and place of the
9 meeting. Notwithstanding the provisions of the Open Meetings
10 Act, meetings of the commission held for the purpose of an
11 investigation conducted pursuant to this section are closed to
12 the public.

13 I. If the commission finds that, based on the facts
14 in the investigation report and the facts alleged in the
15 complaint, probable cause exists to believe that the
16 respondent's alleged conduct constituted an ethics violation,
17 the commission shall issue a written report of its findings.
18 The report shall include findings of fact and conclusions of
19 law. If the respondent is a state official or state employee
20 of the executive branch, the written report may include a
21 public reprimand or censure regarding the respondent's behavior
22 or recommendations for disciplinary action against the
23 respondent.

24 J. The commission shall publicly disclose a report
25 issued pursuant to Subsection I of this section. The

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1 commission shall also transmit the report and provide all
2 evidence collected during its investigation to the respondent,
3 the attorney general and the:

4 (1) respondent's appointing authority if the
5 respondent is a state official appointed to an office of the
6 executive branch;

7 (2) appropriate legislative body, in the care
8 of the legislative council service, if the respondent is a
9 legislator;

10 (3) judicial standards commission if the
11 respondent is a judge or a justice;

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

14 (5) respondent's employer if the respondent is
15 a lobbyist; or

16 (6) state agency with which the respondent has
17 a government contract if the respondent is a government
18 contractor.

19 K. If the commission finds that, based on the facts
20 in the investigation report and the facts alleged in the
21 complaint, probable cause does not exist to believe that the
22 respondent's alleged conduct constituted an ethics violation,
23 the commission shall dismiss the complaint and provide a report
24 of its finding in writing to the respondent no later than five
25 days after the finding is made. The report shall include

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1 findings of fact and conclusions of law. A commission report
2 issued pursuant to this subsection shall not be public except
3 upon the request of the respondent.

4 Section 8. COMMISSION INVESTIGATIONS--CONFIDENTIALITY.--

5 All complaints, files, records and communications collected by
6 the commission that pertain to investigations of ethics
7 violations are confidential and not subject to the provisions
8 of the Inspection of Public Records Act. The commission or any
9 person who receives the evidence collected in a commission
10 investigation pursuant to Subsection G of Section 7 of the
11 State Ethics Commission Act shall not disclose the complaints,
12 files, records and communications unless:

13 A. disclosure is required pursuant to the
14 provisions of the State Ethics Commission Act;

15 B. they are offered into evidence at any judicial,
16 legislative or administrative proceeding;

17 C. disclosure is required by law or ordered by a
18 court; or

19 D. the respondent files with the commission a
20 written waiver of confidentiality.

21 Section 9. CRIMINAL VIOLATIONS--REFERRAL REQUIRED.--If

22 the commission finds at any time that the respondent's conduct
23 may amount to a criminal violation of state law, the commission
24 shall immediately refer the matter to the attorney general or
25 an appropriate district attorney. The commission shall provide

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1 the attorney general or district attorney with all evidence
2 collected during its investigation that may be used in a
3 criminal proceeding. Nothing in this subsection shall prevent
4 the commission from taking any action otherwise provided in the
5 State Ethics Commission Act.

6 Section 10. COMPLAINTS AND INVESTIGATIONS--TIME
7 LIMITATIONS.--

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

20 B. Upon a dismissal or decision to continue an
21 investigation of a complaint pursuant to this section, the
22 commission shall notify the respondent in writing of its
23 action. The commission shall not publicly disclose its action
24 except upon the request of the respondent.

25 Section 11. ETHICS VIOLATIONS--STATUTE OF LIMITATIONS.--

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1 The commission shall not consider a complaint against a state
2 official, state employee, lobbyist or government contractor
3 unless the complaint is filed or initiated within three years
4 from the date on which the ethics violation occurred.

5 Section 12. PROHIBITED ACTIONS.--

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

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

12 (2) provides testimony, records, reports or
13 other information to the commission during an investigation
14 conducted pursuant to the State Ethics Commission Act.

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

19 Section 13. TEMPORARY PROVISION--REPORT ON EXTENSION OF
20 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
21 January 1, 2010, the state ethics commission shall submit a
22 report to the governor, the legislature and the chief justice
23 of the supreme court regarding the extension of state ethics
24 commission jurisdiction to elected and appointed officials and
25 employees of counties, municipalities and school districts.

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1 The report shall include and make recommendations on:

2 A. a detailed plan formulated by the commission for
3 implementation of an extension of its jurisdiction, including a
4 proposed timeline;

5 B. the estimated number of additional employees and
6 the amount and type of resources needed by the state ethics
7 commission to carry out its powers and duties if its
8 jurisdiction were extended;

9 C. all estimated budget increases needed and the
10 estimated annual budget for the state ethics commission if its
11 jurisdiction were extended; and

12 D. any changes that are needed to existing law.

13 Section 14. APPROPRIATION.--Five hundred thousand dollars
14 (\$500,000) is appropriated from the general fund to the state
15 ethics commission for expenditure in fiscal year 2009 to carry
16 out the provisions of the State Ethics Commission Act. Any
17 unexpended or unencumbered balance remaining at the end of
18 fiscal year 2009 shall revert to the general fund.

19 Section 15. APPLICABILITY.--The provisions of the State
20 Ethics Commission Act apply to a state official, state
21 employee, government contractor or lobbyist who commits an
22 ethics violation on or after July 1, 2008.

23 Section 16. EFFECTIVE DATES.--

24 A. The effective date of the provisions of Sections
25 1 through 5, 8 and 11 through 15 of this act is July 1, 2008.

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B. The effective date of the provisions of Sections
6, 7, 9 and 10 of this act is January 1, 2009.