

1 SENATE BILL 437

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 Sue Wilson Beffort

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10 AN ACT

11 RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
12 CREATING THE STATE ETHICS COMMISSION; PROVIDING POWERS AND
13 DUTIES; PROVIDING FOR ANNUAL ETHICS TRAINING AND THE
14 PUBLICATION OF ETHICS GUIDES; REQUIRING PROMULGATION OF AN
15 ETHICS CODE FOR THE EXECUTIVE BRANCH; GRANTING SUBPOENA POWER;
16 ALLOWING ISSUANCE OF ADVISORY OPINIONS RELATED TO CERTAIN
17 ETHICS VIOLATIONS; PROVIDING FOR THE FILING OF COMPLAINTS
18 AGAINST STATE OFFICIALS, STATE EMPLOYEES, GOVERNMENT
19 CONTRACTORS AND LOBBYISTS FOR CERTAIN ETHICS VIOLATIONS;
20 ESTABLISHING INVESTIGATIONS OF COMPLAINTS FOR CERTAIN ETHICS
21 VIOLATIONS; PROHIBITING PUBLIC EMPLOYER RETALIATORY ACTION
22 AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES; CREATING A
23 RIGHT TO CIVIL ACTION FOR DAMAGES; MAKING AN APPROPRIATION.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

10 "Campaign contribution" does not include the value of services
11 provided without compensation or unreimbursed travel or other
12 personal expenses of persons who volunteer a portion or all of
13 their time on behalf of a candidate or political committee, nor
14 does it include the administrative or solicitation expenses of
15 a political committee that are paid by an organization that
16 sponsors the committee;

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

18 C. "commissioner" means a person appointed to the
19 state ethics commission;

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

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

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1 "Government contractor" also includes any person who has
2 submitted a competitive sealed proposal or competitive sealed
3 bid for a contract with a state agency;

4 F. "legislative body" means the house of
5 representatives or the senate;

6 G. "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 to any
10 legislative matter requiring action by the governor or awaiting
11 action by the governor; or

12 (2) an official action;

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

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

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

25 (3) an employee of the state or a political

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1 subdivision of the state, specifically designated by an elected
2 or appointed officer, who appears before a legislative
3 committee or in a rulemaking proceeding only to explain the
4 effect of legislation or a rule on that employee's agency or
5 political subdivision; provided that the elected or appointed
6 officer keeps the designation for public inspection and files
7 it with the secretary of state;

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

12 (5) a legislator or legislative staff member;

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

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

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

25 I. "official action" means an action or nonaction

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1 of a state official or state agency, board or commission acting
2 in a rulemaking proceeding;

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

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

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

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

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

20 Section 3. STATE ETHICS COMMISSION CREATED--MEMBERSHIP--
21 TERMS--REMOVAL.--

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

25 (1) four commissioners appointed by the

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1 governor, no more than two of whom shall be of the same
2 political party and at least one commissioner shall be
3 appointed from each congressional district;

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

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

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

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

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

16 B. Appointments shall be made in a manner that
17 meets the following requirements:

18 (1) all commissioners shall be residents of
19 New Mexico;

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

24 (3) the appointing authorities shall give due
25 consideration to achieving geographical representation from

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1 across the state.

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

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

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

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

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1 of hearing and an opportunity to be heard before the
2 commissioner is removed.

3 G. During a commissioner's service, a commissioner
4 shall not:

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

7 (2) be a state employee, a government
8 contractor or a lobbyist.

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

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1 made by majority vote of the remaining commissioners and in
2 accordance with the geographical representation and political
3 party membership requirements of Subsections A and B of this
4 section.

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

9 (1) hold or seek an elective public office, an
10 appointed public position or public employment;

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

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

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

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

23 Section 4. COMMISSION--POWERS--DUTIES.--

24 A. The commission shall:

25 (1) receive and investigate complaints

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1 alleging ethics violations against state officials, state
2 employees, government contractors and lobbyists;

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

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

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

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

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

24 (7) provide annual ethics training to all
25 state officials, state employees, government contractors and

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1 lobbyists;

2 (8) develop, adopt and promulgate all rules
3 necessary to implement and administer the provisions of the
4 State Ethics Commission Act, including rules of procedure for
5 investigations conducted by the commission;

6 (9) employ an executive director;

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

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

15 B. The commission may:

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

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

24 (3) subpoena and require the attendance of
25 witnesses and the production of accounts, books, papers,

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1 records and other documents relevant to an investigation
2 conducted by the commission;

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

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

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

10 A. The executive director of the commission shall:

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

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

16 (3) perform all investigations on behalf of
17 the commission;

18 (4) bring complaints and investigation results
19 before the commission for consideration;

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

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

25 B. The executive director of the commission may

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1 administer oaths and take depositions to the same extent and
2 subject to the same limitations as would apply if the
3 deposition were held pursuant to the discovery rules in a civil
4 action in the district court.

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

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

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

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

17 Section 6. COMMISSION--ADVISORY OPINIONS.--

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

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1 opinion.

2 B. The commission shall promulgate rules for
3 issuing advisory opinions; provided that:

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

7 (2) all requests to the commission for
8 advisory opinions are confidential; and

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

12 Section 7. COMMISSION--COMPLAINTS--INVESTIGATIONS--
13 FINDINGS AND RECOMMENDATIONS--REPORTS REQUIRED--CRIMINAL
14 REFERRAL REQUIRED.--

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

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

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

23 B. A person who files a complaint with the
24 commission shall sign the complaint under penalty of false
25 statement and set forth in detail the specific charges against

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

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

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

22 E. The commission may dismiss complaints that are
23 frivolous, unfounded or outside the jurisdiction of the
24 commission. If the commission determines there is sufficient
25 cause to proceed with the investigation of a complaint, the

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1 executive director shall initiate an investigation to determine
2 whether probable cause may exist to believe the respondent's
3 alleged conduct constituted an ethics violation. As soon as
4 practicable, the executive director shall notify the person who
5 filed the complaint and the respondent of the disposition of
6 the complaint. The executive director shall also notify the
7 respondent of the general nature of the complaint and the
8 investigation.

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

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

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1 produced and the consequences of failure to obey the subpoena.
2 After service of the subpoena upon the person, if the person
3 neglects or refuses to comply with the subpoena, the commission
4 may apply to a district court for an order compelling
5 compliance.

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

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

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1 J. The commission shall publicly disclose a report
2 issued pursuant to Subsection I of this section. The
3 commission shall also transmit the report and provide all
4 evidence collected during its investigation to the respondent,
5 the attorney general and the:

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

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

12 (3) judicial standards commission if the
13 respondent is a judge or a justice;

14 (4) appropriate state agency if the respondent
15 is a state employee;

16 (5) respondent's employer if the respondent is
17 a lobbyist; or

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

21 K. If the commission finds that, based on the facts
22 in the investigation report and the facts alleged in the
23 complaint, probable cause does not exist to believe that the
24 respondent's alleged conduct constituted an ethics violation,
25 the commission shall dismiss the complaint and provide a report

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1 of its finding in writing to the respondent no later than five
2 days after the finding is made. The report shall include
3 findings of fact and conclusions of law. A commission report
4 issued pursuant to this subsection shall not be public except
5 upon the request of the respondent.

6 Section 8. COMMISSION INVESTIGATIONS--CONFIDENTIALITY.--

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

15 A. disclosure is required pursuant to the
16 provisions of the State Ethics Commission Act;

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

19 C. disclosure is required by law or ordered by a
20 court; or

21 D. the respondent files with the commission a
22 written waiver of confidentiality.

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

24 the commission finds at any time that the respondent's conduct
25 may amount to a criminal violation of state law, the commission

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

8 Section 10. COMPLAINTS AND INVESTIGATIONS--TIME
9 LIMITATIONS.--

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

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

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1 except upon the request of the respondent.

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

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

7 Section 12. PROHIBITED ACTIONS.--A person shall not take
8 or threaten to take any retaliatory, disciplinary or other
9 adverse action against another person who in good faith:

10 A. files a complaint with the commission alleging
11 an ethics violation against a state official, state employee or
12 lobbyist; or

13 B. provides testimony, records, reports or other
14 information to the commission during an investigation conducted
15 pursuant to the State Ethics Commission Act.

16 Section 13. PUBLIC EMPLOYER RETALIATORY ACTION
17 PROHIBITED.--

18 A. A public employer shall not take any retaliatory
19 action against a public employee because the public employee:

20 (1) discloses or threatens to disclose an
21 activity, policy or practice of the public employer that
22 constitutes an unlawful or improper act or that the public
23 employee believes in good faith constitutes an unlawful or
24 improper act;

25 (2) provides information to, or testifies

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1 before, a public body as part of an investigation, hearing or
2 inquiry into an unlawful or improper act; or

3 (3) objects to or refuses to participate in an
4 activity, policy or practice that constitutes an unlawful or
5 improper act or that the public employee believes in good faith
6 constitutes an unlawful or improper act.

7 B. A public employer that violates the provisions
8 of this section shall be liable to the public employee for all
9 relief necessary to make the employee whole, including actual
10 damages, reinstatement with the same seniority status that the
11 employee would have had but for the violation, two times the
12 amount of back pay with interest on the back pay and
13 compensation for any special damage sustained as a result of
14 the violation. In addition, an employer shall be required to
15 pay the litigation costs and reasonable attorney fees of the
16 employee. An employee may bring an action pursuant to this
17 section in any court of competent jurisdiction.

18 C. It shall be an affirmative defense to a civil
19 action brought pursuant to this section that the action taken
20 by a public employer against a public employee was due to the
21 employee's misconduct, poor job performance or a reduction in
22 workforce for purposes unrelated to conduct prohibited pursuant
23 to this section.

24 D. The remedies provided for in this section are
25 not exclusive and shall be in addition to any other remedies

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1 provided for in any other law or available under common law.

2 E. Every public employer shall keep posted in a
3 conspicuous place on the public employer's premises notices
4 prepared by the employer that set forth the provisions of this
5 section.

6 F. As used in this section:

7 (1) "good faith" means that a reasonable basis
8 exists in fact as evidenced by the facts available to the
9 public employee;

10 (2) "public employee" means a person who works
11 for or contracts with a public employer;

12 (3) "public employer" means:

13 (a) any department, agency, office,
14 institution, board, commission, committee, branch or district
15 of state government;

16 (b) any political subdivision of the
17 state, created under either general or special act, that
18 receives or expends public money from whatever source derived;

19 (c) any entity or instrumentality of the
20 state specifically provided for by law; and

21 (d) every office or officer of any
22 entity listed in Subparagraphs (a) through (c) of this
23 paragraph;

24 (4) "retaliatory action" means the discharge,
25 suspension, demotion or disciplining of or the threatening or

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1 taking any discriminatory or adverse employment action against
2 a public employee in the terms and conditions of public
3 employment; and

4 (5) "unlawful or improper act" means a
5 practice, procedure, action or failure to act on the part of a
6 public employer that:

7 (a) violates or is a suspected violation
8 of a federal law, federal regulation, state law, state
9 administrative rule or a law of any political subdivision of
10 the state;

11 (b) constitutes malfeasance in public
12 office; or

13 (c) is of public concern or results or
14 would result in a specific and substantial danger to public
15 health and safety.

16 Section 14. LIMITATIONS ON ACTIONS.--

17 A. A civil action pursuant to Section 12 or 13 of
18 the State Ethics Commission Act shall be forever barred unless
19 the action is filed within three years from the date on which
20 the retaliatory, disciplinary or other adverse action occurred.

21 B. Nothing in the State Ethics Commission Act
22 precludes civil actions or criminal sanctions for libel,
23 slander or other civil or criminal claims against a person who
24 files a false claim under that act.

25 Section 15. TEMPORARY PROVISION--REPORT ON EXTENSION OF

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1 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
2 January 1, 2010, the state ethics commission shall submit a
3 report to the governor, the legislature and the chief justice
4 of the supreme court regarding the extension of state ethics
5 commission jurisdiction to elected and appointed officials and
6 employees of counties, municipalities and school districts.

7 The report shall include and make recommendations on:

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

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

15 C. all estimated budget increases needed and the
16 estimated annual budget for the state ethics commission if its
17 jurisdiction were extended; and

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

19 Section 16. APPROPRIATION.--Five hundred thousand dollars
20 (\$500,000) is appropriated from the general fund to the state
21 ethics commission for expenditure in fiscal year 2009 to carry
22 out the provisions of the State Ethics Commission Act. Any
23 unexpended or unencumbered balance remaining at the end of
24 fiscal year 2009 shall revert to the general fund.

25 Section 17. APPLICABILITY.--

.172263.1

