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SENATE BILL 124

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO ETHICS; ENACTING THE STATE ETHICS COMMISSION ACT;
CREATING THE STATE ETHICS COMMISSION; PROVIDING FOR AN
EXECUTIVE DIRECTOR; PROVIDING FOR ANNUAL ETHICS TRAINING AND
THE PUBLICATION OF ETHICS GUIDES; REQUIRING THE DEVELOPMENT OF
A PROPOSED ETHICS CODE; PROVIDING FOR THE ISSUANCE OF ADVISORY
OPINIONS; PROVIDING FOR THE FILING OF COMPLAINTS AGAINST
CERTAIN PUBLIC OFFICIALS, PUBLIC EMPLOYEES, GOVERNMENT
CONTRACTORS AND LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR
INVESTIGATIONS AND HEARINGS; GRANTING SUBPOENA POWERS;
REQUIRING CONFIDENTIALITY; PROHIBITING RETALIATION; PROVIDING
PENALTIES; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 16 of this act may be cited as the "State Ethics

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1 Commission Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 State Ethics Commission Act:

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

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

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

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

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

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

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

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1 contract with a public agency;

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

4 I. "lobbying" means attempting to influence:

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

10 (2) an official action;

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

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

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

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

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

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

10 (5) a legislator or legislative staff member;

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

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

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

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

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

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

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

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

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

24 SECTION 3. [NEW MATERIAL] STATE ETHICS COMMISSION

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

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

4 (1) one commissioner appointed by the majority
5 floor leader of the house of representatives;

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

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

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

12 (5) two commissioners appointed by the
13 governor, one of whom shall be a member of the political party
14 with the largest membership in the state and one of whom shall
15 be a member of the political party with the second largest
16 membership in the state; and

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

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

23 C. Each appointing authority shall file letters of
24 appointment with the secretary of state.

25 D. Commissioners shall be appointed for staggered

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1 terms of four years beginning July 1, 2016. The initial
2 commissioners shall draw lots to determine which two
3 commissioners serve an initial term of two years, which two
4 commissioners serve an initial term of three years and which
5 three commissioners serve an initial term of four years;
6 thereafter, all commissioners shall serve four-year terms.
7 Members shall serve until their successors are appointed and
8 qualified.

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

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

18 G. Four commissioners consisting of two members of
19 the largest political party in the state and two members of the
20 second largest political party in the state constitute a quorum
21 for the transaction of business. No action shall be taken by
22 the commission unless at least four members, including at least
23 two members of the largest political party in the state and two
24 members of the second largest political party in the state,
25 concur.

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1 H. A commissioner may be removed only for
2 incompetence, neglect of duty or malfeasance in office. A
3 proceeding for the removal of a commissioner may be commenced
4 by the commission or by the attorney general upon the request
5 of the commission. The New Mexico supreme court has exclusive
6 jurisdiction over proceedings to remove commissioners, and its
7 decision shall be final. A commissioner shall be given notice
8 of hearing and an opportunity to be heard before the
9 commissioner is removed.

10 SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
11 LIMITATIONS.--

12 A. To qualify for appointment to the commission, a
13 person shall:

- 14 (1) be a resident of New Mexico; and
- 15 (2) have been a member of the same political
- 16 party for at least three years prior to appointment or shall
- 17 not have been a member of any political party for at least
- 18 three years prior to appointment.

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

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1 C. During a commissioner's tenure, a commissioner
2 shall not:

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

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

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

10 E. For a period of one calendar year following a
11 commissioner's tenure or following the resignation or removal
12 of a commissioner, the commissioner shall not:

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

15 (2) accept employment or otherwise provide
16 services to a respondent unless the commissioner accepted
17 employment or provided services prior to the filing of a
18 complaint against the respondent.

19 SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND
20 POWERS.--

21 A. The commission shall:

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

25 (2) hold hearings in appropriate cases to

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1 determine whether there has been an ethics violation;

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

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

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

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

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

17 B. The commission may:

18 (1) initiate complaints alleging ethics
19 violations against public officials, public employees,
20 government contractors and lobbyists;

21 (2) petition a district court to issue
22 subpoenas under seal requiring the attendance of witnesses and
23 the production of books, records, documents or other evidence
24 relevant or material to an investigation;

25 (3) issue advisory opinions to public

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1 officials, public employees, government contractors and
2 lobbyists in accordance with the provisions of the State Ethics
3 Commission Act;

4 (4) compile, adopt, publish and make available
5 to all public officials, public employees, government
6 contractors and lobbyists an ethics guide that clearly and
7 plainly explains the ethics requirements set forth in state
8 law, including those that relate to conducting business with
9 the state and public agencies; and

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

13 SECTION 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--
14 APPOINTMENT--DUTIES AND POWERS.--

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

22 B. The director shall:

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

25 (2) perform investigations on behalf of the

1 commission;

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

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

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

9 (6) perform other duties as assigned by the
10 commission.

11 C. The director may:

12 (1) hire a general counsel for the commission
13 and additional personnel as may be necessary to carry out the
14 duties of the commission;

15 (2) enter into contracts and agreements on
16 behalf of the commission; and

17 (3) administer oaths and take depositions
18 subject to the Rules of Civil Procedure for the District
19 Courts.

20 D. For a period of one calendar year immediately
21 following the director's employment with the commission, the
22 director shall not:

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

25 (2) accept employment or otherwise provide

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1 services to a respondent, unless the director accepted
2 employment or provided services prior to the filing of a
3 complaint against the respondent.

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

5 A. A commissioner shall recuse the commissioner's
6 self from and not participate in a commission proceeding in
7 which the commissioner has a conflict of interest. The
8 commissioner may state the reason for the recusal.

9 B. If the propriety of a commissioner's
10 participation in a particular matter is questioned on the
11 grounds that the commissioner has a conflict of interest, the
12 commission may disqualify that commissioner from participation
13 in a commission proceeding.

14 C. A recused or disqualified commissioner shall not
15 participate in any proceeding related to the matter from which
16 the commissioner is recused or disqualified, and the
17 commissioner shall be excused from that portion of a meeting at
18 which the matter is discussed.

19 D. If two or more commissioners have recused
20 themselves or are disqualified from participating in a
21 proceeding so that there is no longer a quorum, the remaining
22 commissioners shall appoint temporary commissioners to
23 participate in that proceeding. Appointments of temporary
24 commissioners shall be made by the remaining commissioners in
25 accordance with the political party affiliation requirements

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1 and the qualifications of Sections 3 and 4 of the State Ethics
2 Commission Act.

3 E. The commission shall promulgate rules for the
4 recusal and disqualification of members and for the appointment
5 of temporary commissioners.

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

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

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

11 (2) identify a specific set of circumstances
12 involving an ethics issue;

13 (3) be issued within sixty days of receipt of
14 the request unless the commission notifies the requester of a
15 delay in issuance and continues to notify the requester every
16 thirty days until the advisory opinion is issued; and

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

19 B. A request for an advisory opinion shall be
20 confidential and not subject to the provisions of the
21 Inspection of Public Records Act.

22 C. Unless amended or revoked, an advisory opinion
23 shall be binding on the commission in any subsequent commission
24 proceedings concerning a person who acted in good faith and in
25 reasonable reliance on the advisory opinion.

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1 SECTION 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--

2 SUBPOENAS.--

3 A. A complaint of an alleged ethics violation
4 committed by a public official, public employee, government
5 contractor or lobbyist may be:

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

8 (2) initiated by the commission upon receipt
9 of evidence deemed sufficient by the commission.

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

20 "The complainant agrees to be bound by the
21 confidentiality rules of the State Ethics Commission
22 and other provisions of the State Ethics Commission
23 Act."

24 C. The chair of the commission shall sign a
25 complaint initiated by the commission, and the complaint shall

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1 set forth in detail the specific charges against the public
2 official, public employee, government contractor or lobbyist
3 and the factual allegations that support the charges.

4 D. The director shall promptly bring all complaints
5 before the commission and make recommendations to the
6 commission as to whether the conduct alleged in a complaint is
7 within the jurisdiction of the commission and warrants
8 investigation.

9 E. The commission shall promptly dismiss complaints
10 that are frivolous, unfounded or outside the jurisdiction of
11 the commission. If the commission dismisses a complaint
12 pursuant to this subsection, the director shall promptly notify
13 the complainant and the respondent.

14 F. If the commission decides to proceed with an
15 investigation, the director shall investigate the complaint.
16 The director shall promptly notify the respondent that a
17 complaint has been filed and is being investigated and shall
18 notify the respondent of the specific allegations in the
19 complaint and the specific ethics violations implicated by the
20 complaint.

21 G. As part of an investigation, the director may
22 administer oaths, interview witnesses and examine books,
23 records, documents and other evidence reasonably related to the
24 complaint. If the director determines that a subpoena is
25 necessary to obtain the testimony of any person or the

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1 production of books, records, documents or other evidence, the
2 director shall ask the commission to petition a district court
3 to issue a subpoena under seal. The commission may petition a
4 district court, under seal, to subpoena witnesses, compel their
5 attendance and examine them under oath or affirmation and to
6 require the production of any books, records, documents or
7 other evidence that it deems relevant or material to an
8 investigation. Any challenge to a subpoena shall be heard by
9 the district court in a confidential proceeding. If a person
10 refuses to comply with a subpoena, the district court shall
11 compel compliance.

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

23 SECTION 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
24 LIMITATIONS.--

25 A. If the commission has not scheduled a hearing

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1 concerning the disposition of a complaint within ninety days
2 after the complaint is received or initiated by the commission,
3 the director shall, as soon as practicable, report to the
4 commission on the progress and status of the investigation.
5 The commission may dismiss the complaint or instruct the
6 director to continue investigating the complaint. Unless the
7 commission dismisses the complaint, the director shall report
8 to the commission every ninety days thereafter on the progress
9 and status of the investigation.

10 B. Upon dismissal or a decision to continue an
11 investigation of a complaint, the commission shall notify the
12 complainant and respondent in writing of its action. The
13 commission shall not publicly disclose its action or
14 notification except upon the request of the respondent.

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

17 A. The director shall provide a written report of
18 the investigation to the commission and to the respondent and
19 complainant. The director shall provide the respondent with
20 reasonable written notice of the date, time and place of the
21 commission hearing.

22 B. The commission may appoint a retired judge to
23 preside over and conduct the hearing. The retired judge shall
24 have no vote at the hearing. The retired judge shall be
25 entitled to receive per diem and mileage as provided in the Per

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1 Diem and Mileage Act and shall receive no other compensation,
2 perquisite or allowance.

3 C. At the hearing, the commission has the power to
4 administer oaths. The respondent has the right to be
5 represented by counsel and to present evidence and testimony
6 and examine and cross-examine witnesses. The respondent shall
7 be afforded due process at the hearing.

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

- 18 (1) appropriate legislative body if the
19 respondent is a member of the legislature;
20 (2) house of representatives if the respondent
21 is a public official elected to an office of the executive
22 branch of the state;
23 (3) respondent's appointing authority if the
24 respondent is an appointed public official;
25 (4) appropriate public agency if the

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1 respondent is a public employee;

2 (5) public education department if the
3 respondent is a member of a local school board or of the
4 governing authority of a state-chartered charter school;

5 (6) local school board if the respondent is a
6 member of the governing authority of a locally chartered
7 charter school;

8 (7) public agency with which the respondent
9 has a government contract if the respondent is a government
10 contractor; or

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

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

21 F. Notwithstanding the provisions of the Open
22 Meetings Act, commission hearings held pursuant to this section
23 are closed to the public. The commission shall promulgate
24 rules establishing procedures for hearings.

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

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1 All complaints, reports, files, records and communications
2 collected or generated by the commission or its director that
3 pertain to alleged ethics violations are confidential and not
4 subject to the provisions of the Inspection of Public Records
5 Act. Such complaints, reports, files, records or
6 communications shall not be disclosed unless:

7 A. disclosure is required pursuant to the
8 provisions of the State Ethics Commission Act;

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

11 C. disclosure is required by law or ordered by a
12 court; or

13 D. the respondent files with the commission a
14 written waiver of confidentiality.

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

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1 charges.

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

3 A. The commission shall not accept or consider a
4 complaint unless the complaint is filed or initiated within
5 three years from the date on which the alleged conduct
6 occurred.

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

19 C. The commission shall not investigate allegations
20 of misconduct involving campaign advertisements.

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

22 A. A person shall not take or threaten to take any
23 retaliatory, disciplinary or other adverse action against
24 another person who in good faith:

- 25 (1) files a complaint with the commission

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1 alleging an ethics violation against a public official, public
2 employee, government contractor or lobbyist; or

3 (2) provides testimony, records, documents or
4 other information to the commission during an investigation or
5 at a hearing conducted pursuant to the State Ethics Commission
6 Act.

7 B. Nothing in the State Ethics Commission Act
8 precludes civil actions or criminal sanctions for libel,
9 slander or other civil or criminal claims against a person who
10 files a false claim under that act.

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

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

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

22 C. The provisions of this section apply to a
23 commission member, the director and commission employees or
24 agents and also apply to a complainant from the time the
25 complaint is filed until it is resolved and a final

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1 determination is made.

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

4 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
5 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

19 B. All meetings of a quorum of members of any
20 board, commission, administrative adjudicatory body or other
21 policymaking body of any state agency or any agency or
22 authority of any county, municipality, district or political
23 subdivision, held for the purpose of formulating public policy,
24 including the development of personnel policy, rules,
25 regulations or ordinances, discussing public business or taking

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1 any action within the authority of or the delegated authority
2 of any board, commission or other policymaking body, are
3 declared to be public meetings open to the public at all times,
4 except as otherwise provided in the constitution of New Mexico
5 or the Open Meetings Act. No public meeting once convened that
6 is otherwise required to be open pursuant to the Open Meetings
7 Act shall be closed or dissolved into small groups or
8 committees for the purpose of permitting the closing of the
9 meeting.

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

20 D. Any meetings at which the discussion or adoption
21 of any proposed resolution, rule, regulation or formal action
22 occurs and at which a majority or quorum of the body is in
23 attendance, and any closed meetings, shall be held only after
24 reasonable notice to the public. The affected body shall
25 determine at least annually in a public meeting what notice for

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1 a public meeting is reasonable when applied to that body. That
2 notice shall include broadcast stations licensed by the federal
3 communications commission and newspapers of general circulation
4 that have provided a written request for such notice.

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

16 F. Meeting notices shall include an agenda
17 containing a list of specific items of business to be discussed
18 or transacted at the meeting or information on how the public
19 may obtain a copy of such an agenda. Except in the case of an
20 emergency or in the case of a public body that ordinarily meets
21 more frequently than once per week, at least seventy-two hours
22 prior to the meeting, the agenda shall be available to the
23 public and posted on the public body's [~~web site~~] website, if
24 one is maintained. A public body that ordinarily meets more
25 frequently than once per week shall post a draft agenda at

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1 least seventy-two hours prior to the meeting and a final agenda
2 at least thirty-six hours prior to the meeting. Except for
3 emergency matters, a public body shall take action only on
4 items appearing on the agenda. For purposes of this
5 subsection, "emergency" refers to unforeseen circumstances
6 that, if not addressed immediately by the public body, will
7 likely result in injury or damage to persons or property or
8 substantial financial loss to the public body. Within ten days
9 of taking action on an emergency matter, the public body shall
10 report to the attorney general's office the action taken and
11 the circumstances creating the emergency; provided that the
12 requirement to report to the attorney general is waived upon
13 the declaration of a state or national emergency.

14 G. The board, commission or other policymaking body
15 shall keep written minutes of all its meetings. The minutes
16 shall include at a minimum the date, time and place of the
17 meeting, the names of members in attendance and those absent,
18 the substance of the proposals considered and a record of any
19 decisions and votes taken that show how each member voted. All
20 minutes are open to public inspection. Draft minutes shall be
21 prepared within ten working days after the meeting and shall be
22 approved, amended or disapproved at the next meeting where a
23 quorum is present. Minutes shall not become official until
24 approved by the policymaking body.

25 H. The provisions of Subsections A, B and G of this

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1 section do not apply to:

2 (1) meetings pertaining to issuance,
3 suspension, renewal or revocation of a license, except that a
4 hearing at which evidence is offered or rebutted shall be open.
5 All final actions on the issuance, suspension, renewal or
6 revocation of a license shall be taken at an open meeting;

7 (2) limited personnel matters; provided that
8 for purposes of the Open Meetings Act, "limited personnel
9 matters" means the discussion of hiring, promotion, demotion,
10 dismissal, assignment or resignation of or the investigation or
11 consideration of complaints or charges against any individual
12 public employee; provided further that this paragraph is not to
13 be construed as to exempt final actions on personnel from being
14 taken at open public meetings, nor does it preclude an
15 aggrieved public employee from demanding a public hearing.
16 Judicial candidates interviewed by any commission shall have
17 the right to demand an open interview;

18 (3) deliberations by a public body in
19 connection with an administrative adjudicatory proceeding. For
20 purposes of this paragraph, "administrative adjudicatory
21 proceeding" means a proceeding brought by or against a person
22 before a public body in which individual legal rights, duties
23 or privileges are required by law to be determined by the
24 public body after an opportunity for a trial-type hearing.
25 Except as otherwise provided in this section, the actual

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1 administrative adjudicatory proceeding at which evidence is
2 offered or rebutted and any final action taken as a result of
3 the proceeding shall occur in an open meeting;

4 (4) the discussion of personally identifiable
5 information about any individual student, unless the student or
6 the student's parent or guardian requests otherwise;

7 (5) meetings for the discussion of bargaining
8 strategy preliminary to collective bargaining negotiations
9 between the policymaking body and a bargaining unit
10 representing the employees of that policymaking body and
11 collective bargaining sessions at which the policymaking body
12 and the representatives of the collective bargaining unit are
13 present;

14 (6) that portion of meetings at which a
15 decision concerning purchases in an amount exceeding two
16 thousand five hundred dollars (\$2,500) that can be made only
17 from one source is discussed and that portion of meetings at
18 which the contents of competitive sealed proposals solicited
19 pursuant to the Procurement Code are discussed during the
20 contract negotiation process. The actual approval of purchase
21 of the item or final action regarding the selection of a
22 contractor shall be made in an open meeting;

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

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1 (8) meetings for the discussion of the
2 purchase, acquisition or disposal of real property or water
3 rights by the public body;

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

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

10 (11) meetings of the state ethics commission
11 relating to complaints or investigations of alleged ethics
12 violations.

13 I. If any meeting is closed pursuant to the
14 exclusions contained in Subsection H of this section:

15 (1) the closure, if made in an open meeting,
16 shall be approved by a majority vote of a quorum of the
17 policymaking body; the authority for the closure and the
18 subject to be discussed shall be stated with reasonable
19 specificity in the motion calling for the vote on a closed
20 meeting; the vote shall be taken in an open meeting; and the
21 vote of each individual member shall be recorded in the
22 minutes. Only those subjects announced or voted upon prior to
23 closure by the policymaking body may be discussed in a closed
24 meeting; or

25 (2) if a closure is called for when the

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1 policymaking body is not in an open meeting, the closed meeting
2 shall not be held until public notice, appropriate under the
3 circumstances, stating the specific provision of the law
4 authorizing the closed meeting and stating with reasonable
5 specificity the subject to be discussed is given to the members
6 and to the general public.

7 J. Following completion of any closed meeting, the
8 minutes of the open meeting that was closed or the minutes of
9 the next open meeting if the closed meeting was separately
10 scheduled shall state that the matters discussed in the closed
11 meeting were limited only to those specified in the motion for
12 closure or in the notice of the separate closed meeting. This
13 statement shall be approved by the public body under Subsection
14 G of this section as part of the minutes."

15 SECTION 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF
16 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
17 January 1, 2019, the state ethics commission shall submit a
18 report to the legislature and the governor regarding the
19 extension of commission jurisdiction to elected and appointed
20 officials and employees of political subdivisions of the state.
21 The report shall include and make recommendations on:

22 A. a detailed plan formulated by the commission for
23 implementation of an extension of its jurisdiction, including a
24 proposed time line;

25 B. the estimated number of additional employees and

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1 the amount and type of resources needed by the commission to
2 carry out its powers and duties if its jurisdiction were
3 extended;

4 C. estimated budget increases and the estimated
5 annual budget for the commission if its jurisdiction were
6 extended; and

7 D. any changes needed to existing law.

8 SECTION 19. APPROPRIATION.--Two hundred thousand dollars
9 (\$200,000) is appropriated from the general fund to the state
10 ethics commission for expenditure in fiscal year 2017 to carry
11 out the provisions of the State Ethics Commission Act. Any
12 unexpended or unencumbered balance remaining at the end of
13 fiscal year 2017 shall revert to the general fund.

14 SECTION 20. SEVERABILITY.--If any part or application of
15 this act is held invalid, the remainder or its application to
16 other situations or persons shall not be affected.

17 SECTION 21. APPLICABILITY.--The provisions of the State
18 Ethics Commission Act apply to conduct that occurs on or after
19 July 1, 2016.

20 SECTION 22. EFFECTIVE DATE.--

21 A. The effective date of the provisions of Sections
22 1 through 7 and 12 through 21 of this act is July 1, 2016.

23 B. The effective date of the provisions of Sections
24 8 through 11 of this act is January 1, 2017.