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AN ACT

RELATING TO ETHICS; PROVIDING PROCEDURES FOR DETERMINING
PROBABLE CAUSE.

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

SECTION 1. Section 10-16G-1 NMSA 1978 (being Laws 2019,
Chapter 86, Section 1) is amended to read:

"10-16G-1. SHORT TITLE.--Chapter 10, Article 16G NMSA
1978 may be cited as the "State Ethics Commission Act"."

SECTION 2. Section 10-16G-10 NMSA 1978 (being Laws
2019, Chapter 86, Section 10, as amended) is amended to read:

"10-16G-10. COMPLAINTS--INVESTIGATIONS--SUBPOENAS.--

A. A complaint of an alleged ethics violation
committed by a public official, public employee, candidate,
person subject to the Campaign Reporting Act, government
contractor, lobbyist, lobbyist's employer or a restricted
donor subject to the Gift Act may be filed with the
commission by a person who has actual knowledge of the
alleged ethics violation.

B. The complainant shall set forth in detail the
specific charges against the respondent and the factual
allegations that support the charges and shall sign the
complaint under penalty of false statement. The complainant
shall submit any evidence the complainant has that supports
the complaint. Evidence may include documents, records and

1 names of witnesses. The commission shall prescribe the forms
2 on which complaints are to be filed. The complaint form
3 shall be signed under oath by the complainant.

4 C. Except as provided in Subsection H of this
5 section, the respondent shall be notified within seven days
6 of the filing of the complaint and offered an opportunity to
7 file a response on the merits of the complaint.

8 D. The director shall determine if the complaint
9 is subject to referral to another state agency pursuant to an
10 agreement or outside the jurisdiction of the commission, and
11 if so, promptly refer the complaint to the appropriate
12 agency. If the director determines that the complaint is
13 within the commission's jurisdiction, the director shall have
14 the general counsel initiate an investigation.

15 E. The general counsel shall conduct an
16 investigation to determine whether the complaint is frivolous
17 or unsubstantiated. If the general counsel determines that
18 the complaint is frivolous or unsubstantiated, the complaint
19 shall be dismissed, and the complainant and respondent shall
20 be notified in writing of the decision and reasons for the
21 dismissal. The commission shall not make public a complaint
22 that has been dismissed pursuant to this subsection or the
23 reasons for the dismissal.

24 F. If the general counsel and the respondent reach
25 a settlement on the matters of the complaint, the settlement

1 shall be submitted to the commission for its approval, and if
2 the matter has been resolved to the satisfaction of the
3 commission, the complaint and terms of the settlement shall
4 be subject to public disclosure.

5 G. If an independent hearing officer determines
6 that there is probable cause, the director shall promptly
7 notify the respondent of the finding of probable cause and of
8 the specific allegations in the complaint that are being
9 investigated and that a public hearing will be set. If the
10 finding of probable cause involves a discriminatory practice
11 or actions by the respondent against the complainant, no
12 settlement agreement shall be reached without prior
13 consultation with the complainant. In any case, the
14 notification, complaint, specific allegations being
15 investigated and any response to the complaint shall be made
16 public thirty days following notice to the respondent. The
17 hearing officer chosen to consider probable cause shall not
18 participate in the adjudication of the complaint.

19 H. Notwithstanding the provisions of Subsections C
20 and G of this section, the director may delay notifying a
21 respondent and complainant and releasing to the public the
22 complaint and related information required by Subsection G of
23 this section if it is deemed necessary to protect the
24 integrity of a criminal investigation. A decision whether to
25 delay notifying a respondent shall be taken by a majority

1 vote of the commission and shall be documented in writing
2 with reasonable specificity.

3 I. As part of an investigation, the general
4 counsel may administer oaths, interview witnesses and examine
5 books, records, documents and other evidence reasonably
6 related to the complaint. All testimony in an investigation
7 shall be under oath, and the respondent may be represented by
8 legal counsel. If the general counsel determines that a
9 subpoena is necessary to obtain the testimony of a person or
10 the production of books, records, documents or other
11 evidence, the director shall request that the commission
12 petition a district court to issue a subpoena.

13 J. The commission may petition the court for a
14 subpoena for the attendance and examination of witnesses or
15 for the production of books, records, documents or other
16 evidence reasonably related to an investigation. If a person
17 neglects or refuses to comply with a subpoena, the commission
18 may apply to a district court for an order enforcing the
19 subpoena and compelling compliance. All proceedings in the
20 district court prior to the complaint being made public
21 pursuant to Subsection G of this section, or upon entry of a
22 settlement agreement, shall be sealed. A case is
23 automatically unsealed upon notice by the commission to the
24 court that the commission has made the complaint public. No
25 later than July 1 of each even-numbered year, the chief

1 justice of the supreme court shall appoint an active or pro
2 tempore district judge to consider the issuance and
3 enforcement of subpoenas provided for in this section. The
4 appointment shall end on June 30 of the next even-numbered
5 year after appointment.

6 K. A public official or state public employee who
7 is a respondent who is subject to a complaint alleging a
8 violation made in the performance of the respondent's duties
9 shall be entitled to representation by the risk management
10 division of the general services department."

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