

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 10

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Daymon Ely and Daniel A. Ivey-Soto

AN ACT

RELATING TO PUBLIC ACCOUNTABILITY; ENACTING THE PUBLIC
ACCOUNTABILITY ACT; CREATING THE PUBLIC ACCOUNTABILITY BOARD;
PROVIDING FOR AN EXECUTIVE DIRECTOR; REQUIRING THE DEVELOPMENT
OF A PROPOSED CODE OF PUBLIC ACCOUNTABILITY; PROVIDING FOR THE
ISSUANCE OF BOARD ADVISORY OPINIONS; REQUIRING PUBLICATION OF
CERTAIN REPORTS; TRANSFERRING CERTAIN ACCOUNTABILITY AND
ENFORCEMENT FUNCTIONS TO THE BOARD; PROVIDING FOR THE FILING,
INVESTIGATION AND ADJUDICATION OF COMPLAINTS RELATED TO PUBLIC
ACCOUNTABILITY; PROVIDING FOR CONFIDENTIALITY OF CERTAIN
RECORDS; PROVIDING FOR PENALTIES COLLECTED PURSUANT TO THE
CAMPAIGN REPORTING ACT TO BE DEPOSITED IN THE PUBLIC ELECTION
FUND; REVISING THE TIME PERIOD IN WHICH LEGISLATION MAY BE
INTRODUCED AND FILED; REVISING EXCLUSIONS FROM THE DEFINITION
OF "LOBBYIST" IN THE LOBBYIST REGULATION ACT; PROVIDING FOR A
PERMANENT LEGISLATIVE ETHICS COMMITTEE; EXPANDING THE SCOPE OF

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 THE JUDICIAL STANDARDS COMMISSION'S DUTIES; AMENDING, REPEALING
2 AND ENACTING SECTIONS OF THE NMSA 1978.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
6 through 13 of this act may be cited as the "Public
7 Accountability Act".

8 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
9 Public Accountability Act:

10 A. "adjunct agency" means an agency, board,
11 commission, office or other instrumentality, not assigned to an
12 elected constitutional officer, that is excluded from any
13 direct or administrative attachment to a department of state
14 government and that retains policymaking and administrative
15 autonomy separate from any other agency of state government;

16 B. "board" means the public accountability board;

17 C. "breach" means an action that is a violation of
18 any of the acts provided in Section 6 of the Public
19 Accountability Act;

20 D. "complainant" means a person who files a
21 complaint with the board;

22 E. "complaint" means a formal written assertion of
23 a breach filed with the board in accordance with the Public
24 Accountability Act;

25 F. "director" means the executive director of the

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 board;

2 G. "government contractor" means a person who has a
3 contract with a public body or who has submitted a bid for a
4 contract with a public body;

5 H. "instrumentality of the state" means the New
6 Mexico exposition center authority, New Mexico finance
7 authority, New Mexico industrial and agricultural finance
8 authority, New Mexico lottery authority, New Mexico mortgage
9 finance authority, New Mexico renewable energy transmission
10 authority, New Mexico state fair and water quality control
11 commission;

12 I. "lobbyist" means "lobbyist", as that term is
13 defined in the Lobbyist Regulation Act;

14 J. "public body" means a department, commission,
15 council, board, committee or agency of the executive branch of
16 government of the state; a state educational institution; a
17 state institution; a political subdivision of the state; or an
18 instrumentality of the state;

19 K. "public employee" means a person employed by a
20 public body;

21 L. "public officer" means a person elected or
22 appointed to an office of the executive branch of government of
23 the state; a person elected or appointed to a position with a
24 public body; a person elected to a public office of a political
25 subdivision of the state; or a member of a governing body of a

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 charter school;

2 M. "qualified political party" means a political
3 party that has been qualified in accordance with the provisions
4 of the Election Code;

5 N. "respondent" means a person whose conduct or
6 alleged breach is the subject of a complaint; and

7 O. "retired judge" means a person who has
8 previously served as a judge; who has been retained pursuant to
9 the provisions of Article 6, Section 33 of the constitution of
10 New Mexico; who remains an active member of the state bar; and
11 who is qualified to serve again as a judge pursuant to the laws
12 of the state.

13 SECTION 3. [NEW MATERIAL] PUBLIC ACCOUNTABILITY BOARD
14 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

15 A. The "public accountability board" is created as
16 an adjunct agency under the direction of twelve board members,
17 appointed as follows:

18 (1) three members appointed by the secretary
19 of state:

20 (a) one member upon the recommendation
21 of the New Mexico municipal league;

22 (b) one member upon the recommendation
23 of the New Mexico association of counties; and

24 (c) one member upon the recommendation
25 of the New Mexico school boards association;

.205610.2

underscored material = new
[bracketed material] = delete

1 (2) three members appointed by majority vote
2 of all members of the board of commissioners of the state bar
3 of New Mexico, of which at least one member shall be appointed
4 from each congressional district;

5 (3) three members appointed by the governor,
6 of which at least one member shall be appointed from each
7 congressional district; and

8 (4) three members appointed by the chief
9 justice of the supreme court, of which at least one member
10 shall be appointed from each congressional district.

11 B. No more than five board members shall be
12 registered members of the same qualified political party.

13 C. Each appointing authority shall file letters of
14 appointment with the secretary of state no later than the dates
15 provided in Subsection D of this section.

16 D. Appointments shall be made as follows:

17 (1) by the third Tuesday in May of each odd-
18 numbered year:

19 (a) one board member shall be appointed
20 by the secretary of state upon the recommendation of the New
21 Mexico municipal league, the New Mexico association of counties
22 or the New Mexico school boards association on a rotating
23 basis; and

24 (b) one board member shall be appointed
25 by the board of commissioners of the state bar of New Mexico;

.205610.2

underscored material = new
~~[bracketed material] = delete~~

1 (2) by the second Tuesday in June of each odd-
2 numbered year, one board member shall be appointed by the
3 governor; and

4 (3) by the last business day in June of each
5 odd-numbered year, one board member shall be appointed by the
6 chief justice of the supreme court.

7 E. Terms of office are six years in length and
8 begin on July 1 of the year of the board member's appointment
9 and continue through June 30 of the sixth year of a term.
10 Board members shall serve until their successors are appointed
11 and qualified. A person shall not serve as a board member for
12 more than two consecutive terms. A board member who serves a
13 partial term of at least four years shall be deemed to have
14 served a full term of six years. A vacancy on the board shall
15 be filled for the remainder of the unexpired term by
16 appointment by the original appointing authority upon the
17 recommendation of the original recommending authority, if
18 applicable.

19 F. Board members are entitled to receive per diem
20 and mileage as provided in the Per Diem and Mileage Act.

21 G. The board shall elect a chair and a vice chair
22 at the first regular meeting following July 1 of each odd-
23 numbered year. The chair and vice chair shall not be of the
24 same qualified political party and shall not have been
25 appointed by the same appointing authority. The board may

.205610.2

underscored material = new
[bracketed material] = delete

1 elect other officers as necessary.

2 H. Seven board members constitute a quorum for the
3 transaction of business. The board shall not take action
4 unless at least seven members concur.

5 I. A board member may be removed only for
6 incompetence, neglect of duty or malfeasance in office. A
7 proceeding for the removal of a member may be commenced by
8 action by the board. The supreme court has exclusive original
9 jurisdiction in quo warranto over proceedings to remove
10 members. A member shall be given notice of hearing and an
11 opportunity to be heard before the member is removed.

12 SECTION 4. [NEW MATERIAL] BOARD MEMBERS--QUALIFICATIONS--
13 LIMITATIONS.--

14 A. To qualify for appointment to the board, a
15 person shall:

16 (1) be a resident of New Mexico for at least
17 four years;

18 (2) not have changed qualified political party
19 affiliation as shown on the person's voter registration for at
20 least two years prior to appointment;

21 (3) if appointed by the board of commissioners
22 of the state bar of New Mexico, be an attorney licensed to
23 practice law in this state; and

24 (4) if appointed by the chief justice of the
25 supreme court, be a retired judge.

.205610.2

underscored material = new
[bracketed material] = delete

1 B. Before entering upon the duties of the office of
2 board member, each board member shall take the oath of office
3 as provided in Article 20, Section 1 of the constitution of New
4 Mexico and shall file that oath of office with the secretary of
5 state.

6 C. A board member shall not:

7 (1) seek or hold an office or act as a leader
8 in a political organization or a qualified political party;

9 (2) seek or hold an elective public office or
10 an appointed public position;

11 (3) be a public employee, government
12 contractor or lobbyist;

13 (4) be employed or contracted by a political
14 committee or a person in that person's capacity as a candidate
15 for public office;

16 (5) publicly endorse or publicly oppose a
17 candidate for public office or a ballot issue unrelated to the
18 administration of justice or the legal system;

19 (6) make speeches on behalf of a political
20 organization; or

21 (7) solicit funds for, pay an assessment to or
22 make a contribution to a political organization or candidate.

23 D. A board member who seeks or holds an office or
24 position or is employed as prohibited in Subsection C of this
25 section is deemed to have resigned from the board.

.205610.2

1 SECTION 5. [NEW MATERIAL] BOARD--DUTIES AND POWERS.--

2 A. The board shall:

3 (1) meet as necessary, at least once in each
4 calendar quarter to carry out its duties;

5 (2) receive and investigate complaints;

6 (3) designate a complaint review committee of
7 the board;

8 (4) hold hearings when necessary to determine
9 whether there has been a breach as alleged in a complaint;

10 (5) administer the applicable compliance
11 provisions of the acts listed in Section 6 of the Public
12 Accountability Act;

13 (6) promulgate rules necessary to implement
14 and administer the provisions of the Public Accountability Act
15 and the applicable compliance provisions of the acts listed in
16 Section 6 of the Public Accountability Act;

17 (7) compile, index, maintain and provide
18 public and online access to all advisory opinions and reports
19 required to be made public pursuant to the Public
20 Accountability Act;

21 (8) compile, maintain and provide access to
22 all codes of conduct filed with the board in accordance with
23 Section 10-16-11 NMSA 1978;

24 (9) draft a proposed code of public
25 accountability and submit the proposed code to each elected

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 public officer and public body for adoption;

2 (10) appoint an executive director;

3 (11) contract for professional services as
4 necessary to carry out duties;

5 (12) have the authority to accept federal
6 funds and other public or private grants to perform duties
7 consistent with the Public Accountability Act; and

8 (13) prepare an annual report of its
9 activities, including any recommendations regarding state
10 ethics or public accountability laws or the scope of its powers
11 and duties, and the number of complaints received, dismissed,
12 adjudicated and referred to other authorities, publish the
13 report on the board's website and provide copies of the report
14 upon request.

15 B. The board is limited in its authority to those
16 powers granted by the Public Accountability Act or expressly
17 granted in another applicable statute. In carrying out its
18 responsibilities pursuant to the Public Accountability Act, the
19 board may:

20 (1) sue and be sued;

21 (2) issue advisory opinions as provided in
22 Section 9 of the Public Accountability Act;

23 (3) designate a campaign finance committee of
24 the board to resolve matters related to violations of the
25 Campaign Reporting Act; and

.205610.2

1 (4) as necessary, designate such other
2 committees of the board to make recommendations for action to
3 the board.

4 SECTION 6. [NEW MATERIAL] BOARD JURISDICTION--COMPLIANCE
5 PROVISIONS.--

6 A. The board shall enforce the applicable civil
7 compliance provisions of the:

- 8 (1) Campaign Reporting Act;
- 9 (2) Financial Disclosure Act;
- 10 (3) Gift Act;
- 11 (4) Governmental Conduct Act;
- 12 (5) Inspection of Public Records Act;
- 13 (6) Lobbyist Regulation Act;
- 14 (7) Open Meetings Act;
- 15 (8) Procurement Code;
- 16 (9) Public Accountability Act;
- 17 (10) School District Campaign Reporting Act;
- 18 (11) Voter Action Act; and
- 19 (12) Article 9, Section 14 of the constitution
20 of New Mexico.

21 B. Except where a local accountability board or its
22 equivalent with civil enforcement jurisdiction exists, the
23 board shall also enforce the applicable civil compliance
24 provisions of any local ordinances that regulate the matters
25 regulated by the laws listed in Subsection A of this section.

.205610.2

underscored material = new
[bracketed material] = delete

1 The board may exercise concurrent jurisdiction with a local
2 accountability board or its equivalent as provided for in any
3 local ordinance. As used in this subsection, "local ordinance"
4 includes any rule, ordinance, resolution or other instrument
5 containing the force of law that was adopted by a political
6 subdivision of the state, including a home rule municipality
7 and an incorporated or urban county.

8 C. The board shall file any court action to enforce
9 the civil compliance provisions of an act listed in Subsection
10 A of this section in the district court of the county in which
11 the defendant resides.

12 SECTION 7. [NEW MATERIAL] EXECUTIVE DIRECTOR--
13 APPOINTMENT--DUTIES--POWERS--LIMITATIONS.--

14 A. The executive director of the board shall be:

15 (1) knowledgeable about state laws related to
16 public accountability;

17 (2) appointed without regard to qualified
18 political party affiliation; and

19 (3) appointed, retained and reappointed solely
20 on the grounds of fitness to perform the duties of the office.

21 B. The director shall hold office for a term
22 commencing on the date of appointment through June 30 of the
23 fourth even-numbered year following the director's appointment.

24 C. Prior to the end of the director's term of
25 office, the director may only be removed by the board for cause

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 and with the concurrence of at least nine board members.

2 D. Once appointed or reappointed through an action
3 by the board, the director shall:

4 (1) take the oath of office required by
5 Article 20, Section 1 of the constitution of New Mexico and
6 file that oath of office with the secretary of state;

7 (2) devote the director's entire professional
8 time and attention to the duties of that office;

9 (3) prepare an annual budget for the board and
10 submit it to the board for approval;

11 (4) make recommendations to the board of
12 proposed rules or legislative changes needed to provide better
13 administration of the Public Accountability Act;

14 (5) operate and maintain a publicly accessible
15 internet website on which shall be published the board's
16 advisory opinions and annual reports and a list of persons who
17 failed or refused to file a report of expenditures and
18 contributions or a statement of no activity or to pay a penalty
19 imposed by the board shall be published; and

20 (6) at every meeting of the board, report any
21 complaints referred to the board by the complaint review
22 committee and the status of all open investigations and
23 investigations closed since the board's last meeting.

24 E. The director may:

25 (1) hire a general counsel for the board and

underscored material = new
[bracketed material] = delete

1 additional personnel necessary to enable the board to carry out
2 its duties; and

3 (2) enter into contracts and agreements on
4 behalf of the board.

5 F. The director shall not:

6 (1) seek or hold an office in a qualified
7 political party; or

8 (2) seek or hold an elected public office or
9 an appointed public position.

10 G. A director who seeks or holds an office or
11 position as prohibited in Subsection F of this section is
12 deemed to have resigned as director.

13 SECTION 8. [NEW MATERIAL] BOARD MEMBER RECUSAL--
14 DISQUALIFICATION.--

15 A. A board member shall recuse from and not
16 participate in a board proceeding in which the member has a
17 conflict of interest. The member shall state in writing the
18 reason for the recusal.

19 B. If the propriety of a board member's
20 participation in a particular matter is questioned on the
21 grounds that the member has a conflict of interest and if the
22 member refuses to recuse from participation in the matter, the
23 board may disqualify that member from participation in the
24 relevant board proceeding with concurrence of at least nine
25 members.

.205610.2

underscored material = new
[bracketed material] = delete

1 C. The board's disqualification of a board member
2 shall serve as an automatic initiation of proceedings to remove
3 the member.

4 D. A recused or disqualified board member shall not
5 participate in any proceeding related to the matter from which
6 the member is recused or disqualified, and the member shall be
7 excused from that portion of a meeting at which the matter is
8 discussed.

9 E. If four or more board members have recused
10 themselves or are disqualified from participating in a
11 proceeding, the remaining members shall request the appointment
12 of temporary members from the original appointing authorities
13 that appointed the recused or disqualified members. If the
14 original appointing authority was the secretary of state, then
15 the secretary of state shall appoint temporary members
16 recommended by the original recommending authority. Appointing
17 authorities shall appoint temporary members within twenty days
18 of the request for appointment.

19 SECTION 9. [NEW MATERIAL] ADVISORY OPINIONS.--

20 A. The board may issue advisory opinions on matters
21 related to the laws listed in Section 6 of the Public
22 Accountability Act. Advisory opinions shall:

- 23 (1) be requested in writing;
24 (2) present a question regarding whether the
25 requester's contemplated future conduct would violate any of

underscored material = new
[bracketed material] = delete

1 the acts listed in Section 6 of the Public Accountability Act;

2 (3) be issued within sixty days of receipt of
3 the request unless the board notifies the requester in writing
4 of a delay in issuance and with specificity as to that request,
5 the reason for the delay, and continues to notify the requester
6 in writing every thirty days until the advisory opinion is
7 issued, which in all cases shall be within one hundred eighty
8 days of the request; and

9 (4) be published on the board's website after
10 omitting the requester's name and identifying information.

11 B. A request for an advisory opinion and the
12 research conducted to formulate the advisory opinion are
13 confidential and not subject to the provisions of the
14 Inspection of Public Records Act.

15 C. Unless amended or revoked, an advisory opinion
16 shall be binding on the board in any subsequent board
17 proceedings concerning a person who acted in good faith and in
18 reasonable reliance on the advisory opinion.

19 **SECTION 10. [NEW MATERIAL] COMPLAINTS--JURISDICTION--**
20 **INVESTIGATIONS--SUBPOENAS.--**

21 A. A complaint alleging a breach of the acts listed
22 in Section 6 of the Public Accountability Act may be filed with
23 the board by any person other than the director, a board member
24 or a person employed by or in a contractual relationship with
25 the board.

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 B. The complainant shall set forth in detail the
2 specific allegations against the respondent and the facts that
3 support the allegations. The complainant shall submit any
4 available evidence that supports the complaint, including
5 documents, records, names of witnesses and other evidence. The
6 complaint shall be in writing, signed and sworn by the
7 complainant and notarized.

8 C. Failure to satisfy a nonsubstantive requirement
9 for filing a complaint does not invalidate the complaint.

10 D. The board shall not accept or consider a
11 complaint unless the complaint is filed within two years from
12 the last date on which the alleged conduct or breach occurred
13 or from the last date on which a reasonable person would have
14 discovered the facts upon which the complaint is based.

15 E. When a complaint is filed, the director shall
16 present the complaint to the complaint review committee and
17 make recommendations whether the conduct alleged in the
18 complaint is within the civil enforcement jurisdiction of the
19 board and warrants investigation.

20 F. The complaint review committee shall dismiss a
21 complaint that is frivolous, unfounded or outside the board's
22 civil enforcement jurisdiction within ten days of receipt of
23 the complaint.

24 G. If the complaint review committee determines
25 that a complaint is under the jurisdiction of another entity,

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 the committee shall, within ten days of receipt of the
2 complaint by the board, forward the complaint to the relevant
3 entity. A complaint shall be deemed to have been filed timely,
4 for the purpose of the relevant entity's deadlines, if the
5 complaint is prepared in compliance with the requirements in
6 this section and is filed with the board.

7 H. The complaint review committee or the board may
8 dismiss a complaint upon a finding that the complaint was filed
9 for the primary purpose of publicity.

10 I. If a complaint is dismissed as frivolous,
11 unfounded or outside the board's jurisdiction, or in accordance
12 with Subsection H of this section, or is forwarded to another
13 entity, the complaint review committee shall notify the
14 complainant of the complaint's dismissal or referral to another
15 entity and notify the respondent of the specific allegations in
16 and the dismissal or referral of the complaint. A complainant
17 shall be notified of the complainant's ability to appeal a
18 dismissal to the board.

19 J. If the complaint review committee determines
20 that there is sufficient cause to proceed with an
21 investigation, it shall investigate the complaint. As part of
22 an investigation, the complaint review committee may request
23 that the district court issue subpoenas requiring the
24 attendance of witnesses or the production of books, records,
25 documents or other evidence reasonably related to the

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 investigation. After the service of a subpoena, if a person
2 neglects or refuses to comply with the subpoena, the board may
3 apply to a district court for an order enforcing the subpoena
4 and compelling compliance. The complaint review committee may
5 administer oaths, interview witnesses and examine books,
6 records, documents and other evidence reasonably related to the
7 complaint. All testimony in an investigation shall be under
8 oath, and the respondent shall have the right to be represented
9 by legal counsel and to request that the district court issue
10 subpoenas requiring the attendance of witnesses or the
11 production of books, records, documents or other evidence
12 reasonably related to the complaint. A public employee or
13 public official who is a respondent shall be entitled to
14 representation by the risk management division of the general
15 services department, a local risk management entity or other
16 appropriate insurance carrier.

17 K. Within sixty days of the receipt of a complaint
18 under investigation, the complaint review committee shall
19 either:

20 (1) provide a copy of the complaint to the
21 respondent and notify the respondent that the respondent shall
22 file with the board a response to the complaint within thirty
23 days of the respondent's receipt of the notice, unless the
24 director approves an extension of time for filing the response;
25 or

.205610.2

underscored material = new
[bracketed material] = delete

1 (2) dismiss the complaint and notify the
2 complainant of the dismissal and notify the respondent of the
3 specific allegations in and the dismissal of the complaint.

4 L. If a respondent fails to file a response to a
5 complaint within thirty days or the extended time period
6 approved by the director, the complaint review committee shall
7 refer the complaint along with the complaint review committee's
8 investigation and recommendation to the board for its
9 consideration and decision.

10 M. Within thirty days of the filing of a
11 respondent's response, the complaint review committee shall,
12 having considered the response, either:

13 (1) dismiss the complaint and notify the
14 complainant and the respondent of the dismissal; or

15 (2) refer the complaint, response,
16 investigation and recommendation to the board for its
17 consideration and decision and notify the complainant and the
18 respondent that the complaint was referred to the board.

19 N. No later than July 1 of each even-numbered year,
20 the chief justice of the supreme court shall appoint an active
21 or pro tempore district judge to consider the issuance and
22 enforcement of subpoenas provided for in this section. The
23 appointment shall end on June 30 of the next even-numbered year
24 after appointment.

25 SECTION 11. [NEW MATERIAL] PRE-HEARING DISPOSITION--BOARD

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 HEARINGS--FINDINGS AND CONCLUSIONS--DISCLOSURE--APPEAL OF
2 DISMISSAL.--

3 A. If a complaint is referred to the board by the
4 complaint review committee, the director shall provide the
5 board at its next meeting a report of the committee's
6 investigation of any complaints referred to the board. Based
7 on the director's report, the board shall:

8 (1) dismiss the complaint and notify the
9 complainant and the respondent of the dismissal; or

10 (2) set a public hearing, as soon as
11 practicable, and notify the complainant of the date, time and
12 place of the hearing at which the board will consider and
13 adjudicate the matter.

14 B. At any time before a hearing provided for in
15 Subsection A of this section, the board may approve a pre-
16 hearing disposition of a complaint agreed to by the director
17 and the respondent.

18 C. The hearing provided for in Subsection A of this
19 section shall be pursuant to the rules of evidence that govern
20 proceedings in the state's courts. One of the board members
21 appointed by the chief justice of the supreme court shall
22 preside over the hearing and is authorized to administer oaths.
23 The respondent has the right to be represented by counsel. The
24 parties may present evidence and testimony, compel the presence
25 of witnesses and examine and cross-examine witnesses.

.205610.2

underscoring material = new
~~[bracketed material]~~ = delete

1 D. After the hearing, if the board finds by clear
2 and convincing evidence that the respondent's conduct
3 constituted a breach, the board shall, within thirty days of
4 the hearing, issue a written report that shall include findings
5 of fact and conclusions of law. The written report may include
6 a public reprimand or censure regarding the respondent's breach
7 or recommendations for disciplinary action against the
8 respondent, and if the respondent's conduct constituted a
9 willful breach, the board shall impose any fines provided for
10 by law.

11 E. The board shall publicly disclose a report
12 issued pursuant to Subsection D of this section. If the report
13 concerns a willful breach, the board shall provide the report,
14 along with all evidence collected during the board's
15 investigation, to the respondent and the:

16 (1) speaker and majority and minority floor
17 leaders of the house of representatives if the respondent is a
18 public official who is subject to impeachment;

19 (2) respondent's appointing authority if the
20 respondent is an appointed public official;

21 (3) appropriate public body if the respondent
22 is a public employee;

23 (4) public body with which the respondent has
24 a government contract if the respondent is a government
25 contractor; or

.205610.2

underscoring material = new
[bracketed material] = delete

1 (5) respondent's employer if the respondent is
2 a lobbyist.

3 F. After the hearing, if the board does not find by
4 clear and convincing evidence that the respondent's conduct
5 constituted a breach, the board shall dismiss the complaint and
6 provide notice of the dismissal to the complainant and the
7 respondent within thirty days after the hearing.

8 G. The board shall promulgate rules establishing
9 procedures for hearings.

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

11 A. A finding that a respondent's conduct
12 constituted a breach shall be a public record. A dismissal of
13 a complaint shall be a public record only upon the request of
14 the respondent.

15 B. Except as otherwise provided in the acts listed
16 in Section 6 of the Public Accountability Act, all complaints,
17 reports, files, records and communications collected or
18 generated by the board, complaint review committee or director
19 that pertain to alleged breaches shall not be disclosed by the
20 board or any board member, agent or employee of the board and
21 are not subject to the Inspection of Public Records Act,
22 unless:

23 (1) disclosure is necessary to pursue an
24 investigation by the board or one of its committees;

25 (2) disclosure is required pursuant to the

.205610.2

underscored material = new
[bracketed material] = delete

1 provisions of the Public Accountability Act; or

2 (3) they are offered into evidence by the
3 board, respondent or another party at a judicial, legislative
4 or administrative proceeding.

5 C. Information and reports containing information
6 made confidential by law or exempt from the Inspection of
7 Public Records Act shall not be disclosed by the board or its
8 director, staff or contractors.

9 SECTION 13. [NEW MATERIAL] BOARD--INITIAL APPOINTMENTS.--

10 A. The initial appointments to the board shall be:

11 (1) four board members whose terms shall
12 expire on June 30, 2019, referred to as "class A" appointments
13 for the purposes of this section;

14 (2) four board members whose terms shall
15 expire on June 30, 2021, referred to as "class B" appointments
16 for the purposes of this section; and

17 (3) four board members whose terms shall
18 expire on June 30, 2023, referred to as "class C" appointments
19 for the purposes of this section.

20 B. No later than July 15, 2018, the New Mexico
21 association of counties, New Mexico municipal league and New
22 Mexico school boards association shall meet to determine,
23 either by agreement or by lot, which organization shall
24 recommend a person for appointment to class A, class B and
25 class C positions of the board. The secretary of state shall

.205610.2

underscored material = new
~~[bracketed material] = delete~~

1 appoint board members to class A, class B and class C positions
2 of the board in accordance with the determination and
3 recommendations provided for in this subsection. Appointments
4 by the secretary of state shall be without regard to residency
5 within a particular area of the state and without regard to
6 political affiliation. No later than September 1, 2018, the
7 secretary of state shall file with the office of the secretary
8 of state a designation of appointment to the board, along with
9 a designation as to which appointees shall serve in class A,
10 class B and class C.

11 C. No later than September 1, 2018, the board of
12 commissioners of the state bar of New Mexico shall file with
13 the secretary of state a designation of appointment of three
14 attorneys licensed to practice law in this state to serve as
15 members of the board, of which at least one member shall be
16 appointed from each congressional district. The board of
17 commissioners shall make appointments such that no qualified
18 political party is represented by more than five members on the
19 board. In making the appointments, the board of commissioners
20 shall designate which board members shall serve in class A,
21 class B and class C positions.

22 D. No later than October 1, 2018, the governor
23 shall file with the secretary of state a designation of
24 appointment of three persons to serve as members of the board,
25 of which at least one member shall be appointed from each

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 congressional district. The governor shall not appoint more
2 than one board member from a qualified political party in the
3 state. In making the appointments, the governor shall
4 designate which board members shall serve in class A, class B
5 and class C positions.

6 E. No later than November 1, 2018, the chief
7 justice of the supreme court shall file with the secretary of
8 state a designation of appointment of three retired judges to
9 serve as members of the board, of which at least one member
10 shall be appointed from each congressional district. The chief
11 justice shall make appointments such that no qualified
12 political party is represented by more than five members on the
13 board. In making the appointments, the chief justice shall
14 designate which board members shall serve in class A, class B
15 and class C positions.

16 F. Except as provided in this section, to qualify
17 for appointment to the board, a person:

18 (1) shall:

19 (a) be a resident of New Mexico for at
20 least four years;

21 (b) not have changed qualified political
22 party affiliation as shown on the person's voter registration
23 for at least two years prior to appointment;

24 (c) if appointed by the board of
25 commissioners of the state bar of New Mexico, be an attorney

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 licensed to practice law in this state; and

2 (d) if appointed by the chief justice of
3 the supreme court, be a retired judge; and

4 (2) shall not:

5 (a) seek or hold an office in a
6 qualified political party;

7 (b) seek or hold an elective public
8 office or an appointed public position; or

9 (c) be a state employee, government
10 contractor or lobbyist.

11 G. Before entering upon the duties of the office of
12 board member, each member shall take the oath of office as
13 provided in Article 20, Section 1 of the constitution of New
14 Mexico and shall file that oath of office with the secretary of
15 state.

16 H. A board member who does not qualify or fails to
17 meet the requirements of Subsection F or G of this section is
18 deemed to have resigned from the board.

19 I. The board shall:

20 (1) convene its first meeting no sooner than
21 December 1, 2018;

22 (2) establish a budget for the board; and

23 (3) appoint an executive director of the
24 board.

25 J. Until the board establishes a website, and no

.205610.2

underscoring material = new
[bracketed material] = delete

1 later than October 1, 2019, the secretary of state shall
2 provide information regarding appointments to the board,
3 notices of board meetings and such other information as
4 requested by the board.

5 SECTION 14. Section 1-19-32 NMSA 1978 (being Laws 1979,
6 Chapter 360, Section 8, as amended) is amended to read:

7 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

8 A. Each of the following documents is a public
9 record open to public inspection during regular office hours in
10 the office in which the document was filed or from which the
11 document was issued:

12 (1) a statement of [~~exception~~] no activity;

13 (2) a report of expenditures and
14 contributions;

15 (3) an advisory opinion issued by the
16 [~~secretary of state~~] public accountability board;

17 (4) a document specified as a public record in
18 the Campaign Reporting Act; and

19 (5) [~~an arbitration decision issued by an~~
20 ~~arbitration panel and filed with the secretary of state~~] a
21 decision issued by a hearing officer and filed with the public
22 accountability board.

23 B. Each public record described in Subsection A of
24 this section shall be retained by the state for five years and
25 may be destroyed five years after the date of filing unless a

.205610.2

underscored material = new
[bracketed material] = delete

1 legal action or prosecution is pending that requires the
2 preservation of the public record.

3 C. The secretary of state shall provide for
4 electronic access to reports of expenditures and contributions
5 and statements of [~~exception~~] no activity submitted
6 electronically by reporting individuals. Electronic access
7 shall include access via the internet and shall be in an easily
8 searchable format."

9 SECTION 15. Section 1-19-32.1 NMSA 1978 (being Laws 1981,
10 Chapter 331, Section 9, as amended) is amended to read:

11 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
12 REPORTS.--

13 A. The [~~secretary of state~~] public accountability
14 board shall conduct a thorough examination of at least ten
15 percent of all reports filed during a year by reporting
16 individuals, selected at random at least forty days after the
17 general election and ten days after the April reports are filed
18 in a non-election year, to determine compliance with the
19 provisions of the Campaign Reporting Act. The examination may
20 include an investigation of any discrepancies, including a
21 cross-reference to reports filed by any other reporting
22 individual. A reporting individual shall be notified in
23 writing if a discrepancy is found in the report filed and shall
24 be permitted to file a written explanation for the discrepancy
25 within ten [~~working~~] days of the date of the notice. The

.205610.2

underscored material = new
[bracketed material] = delete

1 notice, penalty and [~~arbitration~~] independent hearing officer
2 provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply
3 to examinations conducted under this section.

4 B. After the date stated in the notice of final
5 action for submission of a written explanation, the [~~secretary~~
6 ~~of state~~] public accountability board shall prepare an annual
7 report of any unresolved discrepancies found after examination
8 of the random sample provided for in Subsection A of this
9 section. [~~A copy of this report shall be transmitted to the~~
10 ~~attorney general for enforcement pursuant to the provisions of~~
11 ~~Section 1-19-36 NMSA 1978.~~] This report is a public record open
12 to public inspection and subject to the retention and
13 destruction provisions set forth in Section 1-19-32 NMSA 1978."

14 SECTION 16. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
15 Chapter 46, Section 15, as amended) is amended to read:

16 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
17 INVESTIGATIONS--[~~BINDING ARBITRATION~~] HEARINGS--REFERRALS FOR
18 ENFORCEMENT.--

19 A. The secretary of state shall advise and seek to
20 educate all persons required to perform duties under the
21 Campaign Reporting Act of those duties. This includes advising
22 all known reporting individuals at least annually of that act's
23 deadlines for submitting required reports and statements of
24 [~~exception~~] no activity. The [~~secretary of state in~~
25 ~~consultation with the attorney general~~] public accountability

.205610.2

underscored material = new
[bracketed material] = delete

1 board shall issue advisory opinions, when requested in writing
2 to do so, on matters concerning that act. All prescribed forms
3 prepared shall be clear and easy to complete.

4 B. [~~The secretary of state may initiate~~
5 ~~investigations to determine whether any provision of the~~
6 ~~Campaign Reporting Act has been violated. Additionally~~] Any
7 person who believes that a provision of [~~that~~] the Campaign
8 Reporting Act has been violated may file a written complaint
9 with the [~~secretary of state~~] public accountability board any
10 time prior to ninety days after an election, except that no
11 complaints from the public may be filed within eight days prior
12 to an election. The [~~secretary of state~~] board shall adopt
13 procedures for issuing advisory opinions and processing
14 complaints and notifications of violations.

15 C. The [~~secretary of state~~] public accountability
16 board shall at all times seek to ensure voluntary compliance
17 with the provisions of the Campaign Reporting Act. If the
18 [~~secretary of state~~] board determines that a provision of that
19 act for which a penalty may be imposed has been violated, the
20 [~~secretary of state~~] board shall by written notice set forth
21 the violation and the fine imposed and inform the reporting
22 individual that [~~he~~] the individual has ten [~~working~~] days from
23 the date of the letter to correct the matter and to provide a
24 written explanation, under penalty of perjury, stating any
25 reason why the violation occurred. If a timely explanation is

.205610.2

underscored material = new
[bracketed material] = delete

1 filed and the [~~secretary of state~~] board determines that good
2 cause exists to waive the fine imposed, the [~~secretary of~~
3 ~~state~~] board may by a written notice of final action partially
4 or fully waive any fine imposed for any late, incomplete or
5 false report or statement of [~~exception~~] no activity. A
6 written notice of final action shall be sent by certified mail.

7 D. Upon receipt of the notice of final action, the
8 person against whom the penalty has been imposed may protest
9 the [~~secretary of state's~~] public accountability board's
10 determination, including an advisory opinion, by submitting on
11 a prescribed form a written request for [~~binding arbitration to~~
12 ~~the secretary of state~~] a hearing within ten [~~working~~] days of
13 the date of the notice of final action. The hearing shall be
14 conducted by an independent hearing officer appointed pursuant
15 to the Administrative Hearings Office Act. Any fine imposed
16 shall be due and payable within ten [~~working~~] days of the date
17 of notice of final action. [~~No additional fine shall accrue~~
18 ~~pending the issuance of the arbitration decision. Fines paid~~
19 ~~pursuant to a notice of final action that are subsequently~~
20 ~~reduced or dismissed shall be reimbursed with interest within~~
21 ~~ten working days after the filing of the arbitration decision~~
22 ~~with the secretary of state. Interest on the reduced or~~
23 ~~dismissed portion of the fine shall be the same as the rate of~~
24 ~~interest earned by the secretary of state's escrow account to~~
25 ~~be established by the department of finance and administration.~~

.205610.2

underscored material = new
[bracketed material] = delete

1 ~~E. An arbitration hearing shall be conducted by a~~
2 ~~single arbitrator selected within ten days by the person~~
3 ~~against whom the penalty has been imposed from a list of five~~
4 ~~arbitrators provided by the secretary of state. Neither the~~
5 ~~secretary of state nor a person subject to the Campaign~~
6 ~~Reporting Act, Lobbyist Regulation Act or Financial Disclosure~~
7 ~~Act may serve as an arbitrator. Arbitrators shall be~~
8 ~~considered to be independent contractors, not public officers~~
9 ~~or employees, and shall not be paid per diem and mileage.~~

10 ~~F.]~~ E. The ~~[arbitrator]~~ hearing officer shall
11 conduct the hearing within thirty days of the request ~~[for~~
12 ~~arbitration. The arbitrator]~~ and may impose any penalty ~~[the~~
13 ~~secretary of state is authorized to impose]~~ provided for in the
14 Campaign Reporting Act. The ~~[arbitrator]~~ hearing officer shall
15 state the reasons for ~~[his]~~ the decision in a written document
16 that shall be a public record. ~~[The decision shall be final~~
17 ~~and binding.]~~ The decision shall be issued and filed with the
18 ~~[secretary of state]~~ public accountability board within thirty
19 days of the conclusion of the hearing. ~~[Unless otherwise~~
20 ~~provided for in this section or by rule or regulation adopted~~
21 ~~by the secretary of state, the procedures for the arbitration~~
22 ~~shall be governed by the Uniform Arbitration Act. No~~
23 ~~arbitrator shall be subject to liability for actions taken~~
24 ~~pursuant to this section.~~

25 ~~G. The secretary of state may refer a matter to the~~

underscored material = new
[bracketed material] = delete

1 ~~attorney general or a district attorney for a civil injunctive~~
2 ~~or other appropriate order or for criminal enforcement.]"~~

3 SECTION 17. Section 1-19-34.6 NMSA 1978 (being Laws 1995,
4 Chapter 153, Section 19) is amended to read:

5 "1-19-34.6. CIVIL PENALTIES.--

6 ~~[A. If the secretary of state reasonably believes~~
7 ~~that a person committed, or is about to commit, a violation of~~
8 ~~the Campaign Reporting Act, the secretary of state shall refer~~
9 ~~the matter to the attorney general or a district attorney for~~
10 ~~enforcement.~~

11 ~~B. The attorney general or district attorney]~~

12 A. The public accountability board may institute a
13 civil action in district court for any violation of the
14 Campaign Reporting Act or to prevent a violation of that act
15 that involves an unlawful solicitation or the making or
16 acceptance of an unlawful contribution. An action for relief
17 may include a permanent or temporary injunction, a restraining
18 order or any other appropriate order, including a civil penalty
19 of two hundred fifty dollars (\$250) for each violation not to
20 exceed five thousand dollars (\$5,000), and forfeiture of any
21 contribution received as a result of an unlawful solicitation
22 or unlawful contribution. Each unlawful solicitation and each
23 unlawful contribution made or accepted shall be deemed a
24 separate violation of the Campaign Reporting Act.

25 ~~[G. The attorney general or district attorney]~~

.205610.2

underscored material = new
[bracketed material] = delete

1 B. The public accountability board may institute a
2 civil action in district court if a violation has occurred or
3 to prevent a violation of any provision of the Campaign
4 Reporting Act other than that specified in Subsection [~~B~~] A of
5 this section. Relief may include a permanent or temporary
6 injunction, a restraining order or any other appropriate order,
7 including an order for a civil penalty of fifty dollars
8 (\$50.00) for each violation not to exceed five thousand dollars
9 (\$5,000)."

10 SECTION 18. Section 1-19-34.7 NMSA 1978 (being Laws 2009,
11 Chapter 68, Section 1) is amended to read:

12 "1-19-34.7. CONTRIBUTION LIMITATIONS--CANDIDATES--
13 POLITICAL COMMITTEES.--

14 A. The following contributions by the following
15 persons are prohibited:

16 (1) from a person, not including a political
17 committee, to a:

18 (a) candidate for nonstatewide office,
19 including the candidate's campaign committee, in an amount that
20 will cause that person's total contributions to the candidate
21 to exceed two thousand three hundred dollars (\$2,300) during
22 the primary election or two thousand three hundred dollars
23 (\$2,300) during the general election;

24 (b) candidate for statewide office,
25 including the candidate's campaign committee, in an amount that

underscoring material = new
~~[bracketed material] = delete~~

1 will cause that person's total contributions to the candidate
2 to exceed five thousand dollars (\$5,000) during the primary
3 election or five thousand dollars (\$5,000) during the general
4 election; or

5 (c) political committee in an amount
6 that will cause that person's total contributions to the
7 political committee to exceed five thousand dollars (\$5,000)
8 during a primary election or five thousand dollars (\$5,000)
9 during a general election; and

10 (2) from a political committee to:

11 (a) a candidate for office, including
12 the candidate's campaign committee, in an amount that will
13 cause the political committee's total contributions to the
14 candidate to exceed five thousand dollars (\$5,000) during the
15 primary election or five thousand dollars (\$5,000) during the
16 general election; or

17 (b) another political committee in an
18 amount that will cause that political committee's total
19 contributions to the political committee to exceed five
20 thousand dollars (\$5,000) during a primary election or five
21 thousand dollars (\$5,000) during a general election.

22 B. All contributions made by a person to a
23 candidate, either directly or indirectly, including
24 contributions that are in any way earmarked or otherwise
25 directed through another person to a candidate, shall be

.205610.2

underscored material = new
[bracketed material] = delete

1 treated as contributions from the person to that candidate.

2 C. A person, including a political committee, shall
3 not knowingly accept or solicit a contribution, directly or
4 indirectly, including a contribution earmarked or otherwise
5 directed or coordinated through another person, including a
6 political committee, that violates the contribution limits
7 provided for in this section.

8 D. On the day after each general election, the
9 contribution amounts provided in Subsection A of this section
10 shall be increased by the percentage of the preceding two
11 calendar [~~year's~~] years' increase of the consumer price index
12 for all urban consumers, United States city average for all
13 items, published by the United States department of labor. The
14 amount of the increase shall be rounded to the nearest multiple
15 of one hundred dollars (\$100). The secretary of state shall
16 publish by October 1 before each general election the adjusted
17 contribution limits that shall take effect the day after the
18 following general election.

19 E. All contributions in excess of the limits
20 imposed by the provisions of this section shall be deposited in
21 the public election fund upon a finding by the [~~secretary of~~
22 ~~state~~] public accountability board that the contribution limits
23 have been exceeded.

24 F. The limitation on contributions to a candidate
25 provided for in Subsection A of this section shall not apply to

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 a candidate's own contribution from the candidate's personal
2 funds to the candidate's own campaign.

3 G. For the purposes of this section:

4 (1) "primary election" means the period
5 beginning on the day after the general election for the
6 applicable office and ending on the day of the primary for that
7 office; and

8 (2) "general election" means the period
9 beginning on the day after the primary for the applicable
10 office and ending on the day of the general election for that
11 office."

12 SECTION 19. Section 1-19-35 NMSA 1978 (being Laws 1979,
13 Chapter 360, Section 11, as amended) is amended to read:

14 "1-19-35. REPORTS AND STATEMENTS--LATE FILING
15 PENALTY--FAILURE TO FILE.--

16 A. Except for the report required to be filed and
17 delivered the Thursday prior to the election and any
18 supplemental report, as required in Paragraph (5) of Subsection
19 B of Section 1-19-29 NMSA 1978, that is due prior to the
20 election, and subject to the provisions of Section 1-19-34.4
21 NMSA 1978, if a statement of no activity or a report of
22 expenditures and contributions contains false or incomplete
23 information or is filed after any deadline imposed by the
24 Campaign Reporting Act, the responsible reporting individual or
25 political committee, in addition to any other penalties or

.205610.2

underscored material = new
[bracketed material] = delete

1 remedies prescribed by the Election Code, shall be liable for
2 and shall pay to the [~~secretary of state~~] public accountability
3 board fifty dollars (\$50.00) per day for each regular working
4 day after the time required by the Campaign Reporting Act for
5 the filing of statements of no activity or reports of
6 expenditures and contributions until the complete or true
7 statement or report is filed, up to a maximum of five thousand
8 dollars (\$5,000).

9 B. If any reporting individual files a false,
10 intentionally incomplete or late report of expenditures and
11 contributions due on the Thursday prior to the election, the
12 reporting individual or political committee shall be liable for
13 and pay to the [~~secretary of state~~] public accountability board
14 five hundred dollars (\$500) for the first working day and fifty
15 dollars (\$50.00) for each subsequent working day after the time
16 required for the filing of the report until the true and
17 complete report is filed, up to a maximum of five thousand
18 dollars (\$5,000).

19 C. If a reporting individual fails to file or files
20 a late supplemental report of expenditures and contributions as
21 required in Paragraph (5) of Subsection B of Section 1-19-29
22 NMSA 1978, the reporting individual or political committee
23 shall be liable for and pay to the [~~secretary of state~~] public
24 accountability board a penalty equal to the amount of each
25 contribution received or pledged after the Tuesday before the

.205610.2

underscored material = new
[bracketed material] = delete

1 election that was not timely filed.

2 D. All sums collected for the penalty shall be
3 deposited in the [~~state general~~] public election fund. A
4 report or statement of [~~exception~~] no activity shall be deemed
5 timely filed only if it is received by the proper filing
6 officer by the date and time prescribed by law.

7 E. Any candidate who fails or refuses to file a
8 report of expenditures and contributions or statement of no
9 activity or to pay a penalty imposed by the [~~secretary of~~
10 ~~state~~] public accountability board as required by the Campaign
11 Reporting Act shall not, in addition to any other penalties
12 provided by law:

13 (1) have the candidate's name printed upon the
14 ballot if the violation occurs before and through the final
15 date for the withdrawal of candidates; or

16 (2) be issued a certificate of nomination or
17 election, if the violation occurs after the final date for
18 withdrawal of candidates or after the election, until the
19 candidate satisfies all reporting requirements of the Campaign
20 Reporting Act and pays all penalties owed.

21 F. The public accountability board shall maintain
22 on its website a list of persons who failed or refused to file
23 a report of expenditures and contributions or a statement of no
24 activity or to pay a penalty imposed by the board and have not
25 remedied the failure or refusal.

.205610.2

underscored material = new
[bracketed material] = delete

1 [F-] G. Any candidate who loses an election and who
2 failed or refused to file a report of expenditures and
3 contributions or a statement of no activity or to pay a penalty
4 imposed by the [~~secretary of state~~] public accountability board
5 as required by the Campaign Reporting Act shall not be, in
6 addition to any other penalties provided by law, permitted to
7 file a declaration of candidacy or nominating petition for any
8 future election until the candidate satisfies all reporting
9 requirements of that act and pays all penalties owed."

10 **SECTION 20.** Section 1-19A-16 NMSA 1978 (being Laws 2003,
11 Chapter 14, Section 16) is amended to read:

12 "1-19A-16. APPEALS.--The procedure for challenging a
13 certification decision by the secretary is as follows:

14 A. a person aggrieved by a certification decision
15 or a decision regarding the distribution of matching funds may
16 appeal to the [~~secretary~~] public accountability board within
17 three days of the decision. The appeal shall be in writing and
18 shall set forth the reasons for appeal;

19 B. within five days after an appeal is properly
20 made, and after due notice is given to the parties in dispute,
21 the [~~secretary~~] public accountability board shall hold a
22 hearing [~~whereby~~] in which:

23 (1) the appellant has the burden of providing
24 evidence to demonstrate that the secretary's decision was
25 improper; and

.205610.2

underscored material = new
[bracketed material] = delete

1 (2) the [~~secretary~~] public accountability
2 board shall rule on the appeal within three days after the
3 completion of the hearing;

4 C. the parties in dispute may appeal the decision
5 of the [~~secretary~~] public accountability board by commencing an
6 action in district court; and

7 D. certified candidates whose certification is
8 revoked on appeal shall return to the secretary any unspent
9 money distributed from the fund. If the secretary or court
10 finds that an appeal was made frivolously or to result in delay
11 or hardship, the secretary or court may sanction the moving
12 party by requiring the party to pay costs of the administrative
13 hearing, the court hearing and the opposing parties."

14 SECTION 21. Section 1-19A-17 NMSA 1978 (being Laws 2003,
15 Chapter 14, Section 17) is amended to read:

16 "1-19A-17. PENALTIES.--

17 A. In addition to other penalties that may be
18 applicable, a person who violates a provision of the Voter
19 Action Act is subject to a civil penalty of up to ten thousand
20 dollars (\$10,000) per violation. In addition to a fine, a
21 certified candidate found in violation of that act may be
22 required to return to the fund all amounts distributed to the
23 candidate from the fund. If the [~~secretary~~] public
24 accountability board makes a determination that a violation of
25 that act has occurred, the [~~secretary~~] public accountability

.205610.2

underscored material = new
[bracketed material] = delete

1 board shall impose a fine or transmit the finding to the
2 attorney general for prosecution. In determining whether a
3 certified candidate is in violation of the expenditure limits
4 of that act, the [~~secretary~~] public accountability board may
5 consider as a mitigating factor any circumstances out of the
6 candidate's control.

7 B. A person who willfully or knowingly violates the
8 provisions of the Voter Action Act or rules of the secretary or
9 knowingly makes a false statement in a report required by that
10 act is guilty of a fourth degree felony and, if [~~he~~] the person
11 is a certified candidate, shall return to the fund all money
12 distributed to that candidate."

13 SECTION 22. Section 1-22A-8 NMSA 1978 (being Laws 2013,
14 Chapter 180, Section 8) is amended to read:

15 "1-22A-8. CIVIL PENALTIES.--

16 ~~[A. If the secretary of state reasonably believes~~
17 ~~that a person committed, or is about to commit, a violation of~~
18 ~~the School District Campaign Reporting Act, the secretary of~~
19 ~~state shall refer the matter to the attorney general or a~~
20 ~~district attorney for enforcement.~~

21 ~~B. The attorney general or district attorney]~~

22 A. The public accountability board may institute a
23 civil action in district court for any violation of the School
24 District Campaign Reporting Act or to prevent a violation of
25 that act that involves an unlawful solicitation or the making

.205610.2

underscored material = new
[bracketed material] = delete

1 or acceptance of an unlawful contribution. An action for
2 relief may include a permanent or temporary injunction, a
3 restraining order or any other appropriate order, including a
4 civil penalty of two hundred fifty dollars (\$250) for each
5 violation not to exceed five thousand dollars (\$5,000), and
6 forfeiture of any contribution received as a result of an
7 unlawful solicitation or unlawful contribution. Each unlawful
8 solicitation and each unlawful contribution made or accepted
9 shall be deemed a separate violation of the Campaign Reporting
10 Act.

11 [~~G. The attorney general or district attorney~~]

12 B. The public accountability board may institute a
13 civil action in district court if a violation has occurred or
14 to prevent a violation of any provision of the School District
15 Campaign Reporting Act other than that specified in Subsection
16 [B] A of this section. Relief may include a permanent or
17 temporary injunction, a restraining order or any other
18 appropriate order, including an order for a civil penalty of
19 fifty dollars (\$50.00) for each violation not to exceed five
20 thousand dollars (\$5,000)."

21 **SECTION 23.** Section 2-6-1 NMSA 1978 (being Laws 1961,
22 Chapter 2, Section 1, as amended) is amended to read:

23 "2-6-1. LIMIT ON THE TIME WITHIN WHICH BILLS MAY BE
24 INTRODUCED.--

25 A. A bill shall not be accepted for filing until

.205610.2

underscored material = new
[bracketed material] = delete

1 after the beginning of the prohibited period for soliciting
2 campaign contributions provided for in Section 1-19-34.1 NMSA
3 1978.

4 B. No bill shall be introduced at any regular
5 session of the legislature subsequent to the thirtieth
6 legislative day in sessions held in the odd-numbered years or
7 subsequent to the fifteenth legislative day in sessions held in
8 the even-numbered years. The limitation provided in this
9 [~~section~~] subsection does not apply to the general
10 appropriation bill, bills to provide for the current expenses
11 of the government and such bills as may be referred to the
12 legislature by the governor by special message specifically
13 setting forth the emergency or necessity requiring such
14 legislation."

15 SECTION 24. Section 2-11-2 NMSA 1978 (being Laws 1977,
16 Chapter 261, Section 2, as amended) is amended to read:

17 "2-11-2. DEFINITIONS.--As used in the Lobbyist Regulation
18 Act:

19 A. "compensation" means any money, per diem,
20 salary, fee or portion thereof or the equivalent in services
21 rendered or in-kind contributions received or to be received in
22 return for lobbying services performed or to be performed;

23 B. "expenditure" means a payment, transfer or
24 distribution or obligation or promise to pay, transfer or
25 distribute any money or other thing of value but does not

.205610.2

underscored material = new
[bracketed material] = delete

1 include a lobbyist's own personal living expenses and the
2 expenses incidental to establishing and maintaining an office
3 in connection with lobbying activities or compensation paid to
4 a lobbyist by a lobbyist's employer;

5 C. "legislative committee" means a committee
6 created by the legislature, including interim and standing
7 committees of the legislature;

8 D. "lobbying" means attempting to influence:

9 (1) a decision related to any matter to be
10 considered or being considered by the legislative branch of
11 state government or any legislative committee or any
12 legislative matter requiring action by the governor or awaiting
13 action by the governor; or

14 (2) an official action;

15 E. "lobbyist" means any individual who is
16 compensated for the specific purpose of lobbying; is designated
17 by an interest group or organization to represent it on a
18 substantial or regular basis for the purpose of lobbying; or in
19 the course of [~~his~~] employment, is engaged in lobbying on a
20 substantial or regular basis. "Lobbyist" does not include:

21 (1) an individual who appears on [~~his~~] the
22 individual's own behalf in connection with legislation or an
23 official action;

24 (2) [~~any~~] an elected or appointed officer of
25 the state or its political subdivisions or an Indian nation,

.205610.2

underscored material = new
[bracketed material] = delete

1 tribe or pueblo acting in [~~his~~] the officer's official
2 capacity;

3 (3) an employee of the state or its political
4 subdivisions, specifically designated by an elected or
5 appointed officer of the state or its political subdivision,
6 who appears before a legislative committee or in a rulemaking
7 proceeding only to explain the effect of legislation or a rule
8 on [~~his~~] the designated employee's agency or political
9 subdivision; provided that the elected or appointed officer of
10 the state or its political subdivision keeps for public
11 inspection and files with the [~~secretary of state~~] public
12 accountability board such designation;

13 (4) [~~any~~] a designated member of the staff of
14 an elected state official; provided that the elected state
15 official keeps for public inspection and files with the
16 [~~secretary of state~~] public accountability board such
17 designation;

18 (5) a member of the legislature, the staff of
19 [~~any~~] a member of the legislature or the staff of [~~any~~] a
20 legislative committee when addressing legislation;

21 (6) [~~any~~] a witness called by a legislative
22 committee or administrative agency to appear before that
23 legislative committee or agency in connection with legislation
24 or an official action;

25 (7) an individual who provides only oral or

.205610.2

underscored material = new
[bracketed material] = delete

1 written public testimony in connection with a legislative
2 committee or in a rulemaking proceeding and whose name and the
3 interest on behalf of which [~~he~~] the individual testifies have
4 been clearly and publicly identified; [~~or~~]

5 (8) the executive director of a nonprofit or
6 an intergovernmental or trade association organized under the
7 provisions of Section 501(c) of the Internal Revenue Code of
8 1986 who provides oral or written public testimony in
9 connection with a legislative committee or in a rulemaking
10 proceeding and whose name and organization have been clearly
11 and publicly identified; or

12 [~~(8)~~] (9) a publisher, owner or employee of
13 the print media, radio or television, while gathering or
14 disseminating news or editorial comment to the general public
15 in the ordinary course of business;

16 F. "lobbyist's employer" means the person whose
17 interests are being represented and by whom a lobbyist is
18 directly or indirectly retained, compensated or employed;

19 G. "official action" means the action or nonaction
20 of a state official or state agency, board or commission acting
21 in a rulemaking proceeding;

22 H. "person" means an individual, partnership,
23 association, committee, federal, state or local governmental
24 entity or agency, however constituted, public or private
25 corporation or any other organization or group of persons who

.205610.2

underscored material = new
[bracketed material] = delete

1 are voluntarily acting in concert;

2 I. "political contribution" means a gift,
3 subscription, loan, advance or deposit of ~~[any]~~ money or other
4 thing of value, including the estimated value of an in-kind
5 contribution, that is made or received for the purpose of
6 influencing a primary, general or statewide election, including
7 a constitutional or other question submitted to the voters, or
8 for the purpose of paying a debt incurred in any such election;

9 J. "prescribed form" means a form prepared and
10 prescribed by the secretary of state;

11 K. "rulemaking proceeding" means a formal process
12 conducted by a state agency, board or commission for the
13 purpose of adopting a rule, regulation, standard, policy or
14 other requirement of general applicability and does not include
15 adjudicatory proceedings; and

16 L. "state public officer" means a person holding a
17 statewide office provided for in the constitution of New
18 Mexico."

19 SECTION 25. Section 2-11-8.2 NMSA 1978 (being Laws 1977,
20 Chapter 261, Section 4, as amended) is amended to read:

21 "2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
22 BINDING ARBITRATION--CIVIL PENALTIES.--

23 A. The secretary of state shall advise and seek to
24 educate all persons required to perform duties pursuant to the
25 Lobbyist Regulation Act of those duties. This includes

.205610.2

underscored material = new
[bracketed material] = delete

1 advising all registered lobbyists at least annually of the
2 Lobbyist Regulation Act's deadlines for submitting required
3 reports. The ~~[secretary of state, in consultation with the~~
4 ~~attorney general]~~ public accountability board shall issue
5 advisory opinions, when requested to do so in writing, on
6 matters concerning the Lobbyist Regulation Act. All prescribed
7 forms prepared shall be clear and easy to complete.

8 B. The ~~[secretary of state]~~ public accountability
9 board may conduct thorough examinations of reports and initiate
10 investigations to determine whether the Lobbyist Regulation Act
11 has been violated. Additionally, any person who believes that
12 a provision of that act has been violated may file a written
13 complaint with the ~~[secretary of state]~~ board. The ~~[secretary~~
14 ~~of state]~~ board shall adopt procedures for issuing advisory
15 opinions, processing complaints and notifications of
16 violations.

17 C. The ~~[secretary of state]~~ public accountability
18 board shall at all times seek to ensure voluntary compliance
19 with the provisions of the Lobbyist Regulation Act. If the
20 ~~[secretary of state]~~ board determines that a provision of that
21 act for which a penalty may be imposed has been violated, the
22 ~~[secretary of state]~~ board shall by written notice set forth
23 the violation and the fine imposed and inform the person that
24 ~~[he]~~ the person has ten ~~[working]~~ days to provide a written
25 explanation, under penalty of perjury, stating any reason the

.205610.2

underscored material = new
[bracketed material] = delete

1 violation occurred. If a timely explanation is filed and the
2 ~~[secretary of state]~~ board determines that good cause exists,
3 the ~~[secretary of state]~~ board may by a written notice of final
4 action partially or fully waive any fine imposed. A written
5 notice of final action shall be sent by certified mail.

6 D. If the person charged disputes the ~~[secretary of~~
7 ~~state's]~~ public accountability board's determination, including
8 an advisory opinion, the person charged may request ~~[binding~~
9 ~~arbitration]~~ a hearing within ten ~~[working]~~ days of the date of
10 the final action. The hearing shall be conducted by an
11 independent hearing officer appointed pursuant to the
12 Administrative Hearings Office Act. Any penalty imposed shall
13 be due and payable within ten ~~[working]~~ days of the date of the
14 notice of final action. ~~[No additional penalty shall accrue~~
15 ~~pending issuance of the arbitration decision. Fines paid~~
16 ~~pursuant to a notice of final action that are subsequently~~
17 ~~reduced or dismissed shall be reimbursed with interest within~~
18 ~~ten working days after the filing of the arbitration decision~~
19 ~~with the secretary of state. Interest on the reduced or~~
20 ~~dismissed portion of the fine shall be the same as the rate of~~
21 ~~interest earned by the secretary of state's escrow account to~~
22 ~~be established by the department of finance and administration.~~

23 E. ~~An arbitration hearing shall be conducted by a~~
24 ~~single arbitrator selected within ten days by the person~~
25 ~~against whom the penalty has been imposed from a list of five~~

.205610.2

underscored material = new
[bracketed material] = delete

1 ~~arbitrators provided by the secretary of state. Neither the~~
2 ~~secretary of state nor a person subject to the Lobbyist~~
3 ~~Regulation Act, Campaign Reporting Act or Financial Disclosure~~
4 ~~Act may serve as an arbitrator. Arbitrators shall be~~
5 ~~considered to be independent contractors, not public officers~~
6 ~~or employees, and shall not be paid per diem and mileage.~~

7 ~~F.]~~ E. The ~~[arbitrator]~~ independent hearing officer
8 shall conduct the hearing within thirty days of the request and
9 may impose any penalty and take any action ~~[the secretary of~~
10 ~~state is]~~ authorized ~~[to take]~~ by the Lobbyist Regulation Act.
11 The ~~[arbitrator]~~ hearing officer shall state the reasons for
12 ~~[his]~~ the decision in a written document that shall be a public
13 record. ~~[The decision shall be final and binding.]~~ The
14 decision shall be issued and filed with the ~~[secretary of~~
15 ~~state]~~ public accountability board within thirty days of the
16 conclusion of the hearing. ~~[Unless otherwise provided for in~~
17 ~~this section, or by rule or regulation adopted by the secretary~~
18 ~~of state, the procedures for the arbitration shall be governed~~
19 ~~by the Uniform Arbitration Act. No arbitrator shall be subject~~
20 ~~to liability for actions taken pursuant to this section.~~

21 ~~G. Any]~~ F. A person who files a report after the
22 deadline imposed by the Lobbyist Regulation Act, or ~~[any]~~ a
23 person who files a false or incomplete report, shall be liable
24 for and shall pay to the ~~[secretary of state]~~ public election
25 fund fifty dollars (\$50.00) per day for each regular working

underscored material = new
[bracketed material] = delete

1 day after the time required for the filing of the report until
2 the complete report is filed, up to a maximum of five thousand
3 dollars (\$5,000).

4 ~~[H. The secretary of state may refer a matter to~~
5 ~~the attorney general or a district attorney for a civil~~
6 ~~injunctive or other appropriate order or enforcement.]"~~

7 SECTION 26. Section 2-15-7 NMSA 1978 (being Laws 1993,
8 Chapter 46, Section 52) is amended to read:

9 "2-15-7. ~~[INTERIM]~~ LEGISLATIVE ETHICS COMMITTEE--
10 CREATION--APPOINTMENT.--

11 A. ~~[An "interim]~~ The "legislative ethics
12 committee", appointed by the New Mexico legislative council, is
13 created as a permanent committee with authority to meet during
14 the interim and the legislative session. Members of the New
15 Mexico legislative council shall be allowed to serve on the
16 ~~[interim]~~ legislative ethics committee.

17 B. All matters ~~[arising in the interim]~~ pertaining
18 to legislative ethics shall be referred to ~~[this special~~
19 ~~interim]~~ the legislative ethics committee.

20 C. The committee shall be appointed by the
21 New Mexico legislative council so as to give the two major
22 political parties in each house equal representation on the
23 committee. In appointing the members to the committee, the New
24 Mexico legislative council shall adopt the recommendations of
25 the respective floor leaders of each house.

.205610.2

underscored material = new
[bracketed material] = delete

1 D. The legislative ethics committee shall include
2 two nonvoting public members, one appointed by the speaker of
3 the house of representatives with the agreement of the majority
4 and minority leaders of the house of representatives and one
5 appointed by the president pro tempore of the senate with the
6 agreement of the majority and minority leaders of the senate.

7 ~~[D.]~~ E. The New Mexico legislative council shall
8 name the ~~[interim]~~ legislative ethics committee at the
9 beginning of each interim, but the committee shall convene ~~[the~~
10 ~~committee]~~ only upon the receipt of a complaint, a request for
11 an advisory opinion or a referral."

12 SECTION 27. Section 2-15-8 NMSA 1978 (being Laws 1993,
13 Chapter 46, Section 53) is amended to read:

14 "2-15-8. ~~[INTERIM]~~ LEGISLATIVE ETHICS COMMITTEE--
15 DUTIES.--

16 A. The ~~[interim]~~ legislative ethics committee is
17 authorized to:

18 ~~[A.]~~ (1) issue advisory opinions on the
19 interpretation and enforcement of ethical principles as applied
20 to the legislature and that are not under the jurisdiction of
21 the public accountability board;

22 ~~[B.]~~ (2) investigate complaints from another
23 member of the legislature or a member of the public alleging
24 misconduct of a legislator;

25 ~~[C.]~~ (3) investigate referrals made to the

underscored material = new
[bracketed material] = delete

1 ~~[co-chairmen]~~ co-chairs of the New Mexico legislative council
2 from the public accountability board, the attorney general, the
3 secretary of state or a district attorney;

4 ~~[D.]~~ (4) hire special counsel, arbitrators or
5 independent hearing officers as necessary; and

6 ~~[E.]~~ (5) make recommendations to the
7 respective houses ~~[by the end of the first full week of the~~
8 ~~next convened regular session]~~ regarding proposed sanctions for
9 ethical misconduct.

10 B. The legislative ethics committee shall issue an
11 annual report no later than the first day of May of each year
12 regarding its activities during the previous twelve months,
13 including a listing of the number of complaints received, the
14 disposition of the complaints that have been resolved and the
15 advisory opinions issued.

16 C. The legislative ethics committee shall maintain
17 a web page on the legislature's website."

18 SECTION 28. Section 2-15-9 NMSA 1978 (being Laws 1993,
19 Chapter 46, Section 54) is amended to read:

20 "2-15-9. ~~[INTERIM]~~ LEGISLATIVE ETHICS COMMITTEE--
21 PROCEDURES--CONFIDENTIALITY.--

22 A. ~~[Except as provided in this section]~~ The
23 New Mexico legislative council shall develop procedures to
24 carry out the provisions of this section ~~[in accordance with~~
25 ~~the existing procedures in the house and senate rules].~~

.205610.2

underscored material = new
[bracketed material] = delete

1 B. A member of the [~~interim~~] legislative ethics
2 committee [~~shall be~~] is ineligible to participate in any matter
3 relating directly to that member's conduct. In any such case,
4 a substitute member to the committee shall be appointed from
5 the same house from the same political party by the appropriate
6 appointing authority. A member may seek to be disqualified
7 from any matter brought before the legislative ethics committee
8 on the grounds that the member cannot render a fair and
9 impartial decision. Disqualification [~~must~~] shall be approved
10 by [~~a majority vote of the remaining members of the committee~~]
11 the appropriate appointing authority. In any such case, a
12 substitute member to the committee shall be appointed from the
13 same political party as provided in this section.

14 C. The [~~interim~~] legislative ethics committee is
15 authorized to issue advisory opinions on matters relating to
16 ethical conduct [~~during the interim~~]. Any question relating to
17 the interpretation and enforcement of ethical principles as
18 applied to the legislature may be submitted in writing to the
19 [~~New Mexico~~] director of the legislative council service by a
20 legislator describing a real or hypothetical situation and
21 requesting an advisory opinion establishing an appropriate
22 standard of ethical conduct for that situation. The question
23 shall be referred to the [~~joint interim~~] legislative ethics
24 committee. The public members of the committee shall be
25 allowed to participate in committee meetings related to

.205610.2

underscored material = new
[bracketed material] = delete

1 advisory opinions.

2 D. To initiate any action [~~during the interim on~~
3 ~~alleged~~] alleging misconduct [~~any~~]:

4 (1) a legislator [~~or member of the public may~~]
5 shall file with the director of the legislative council service
6 a written, sworn, notarized complaint setting forth, with
7 specificity, the facts alleged to constitute unethical conduct;
8 and

9 (2) a member of the public shall file with the
10 public accountability board a written, sworn, notarized
11 complaint setting forth, with specificity, the facts alleged to
12 constitute unethical conduct.

13 E. A complaint [~~shall be~~] filed with the [~~New~~
14 ~~Mexico~~] director of the legislative council service shall be
15 forwarded to the appropriate co-chairs of the legislative
16 ethics committee. Upon receipt of [~~the~~] a complaint, the [~~co-~~
17 ~~chairmen~~] co-chairs shall convene the [~~interim~~] legislative
18 ethics committee. The public member appointed by the speaker
19 of the house of representatives shall be allowed to participate
20 in committee meetings related to a complaint about a member of
21 the house of representatives and the public member appointed by
22 the president pro tempore of the senate shall be allowed to
23 participate in committee meetings related to a complaint about
24 a member of the senate. The public members shall be allowed to
25 participate in committee meetings that relate to all other

.205610.2

underscored material = new
[bracketed material] = delete

1 matters.

2 [E-] F. The [~~interim~~] legislative ethics committee
3 shall maintain rules of confidentiality unless the legislator
4 against whom a complaint is filed waives the rules or any part
5 of them in writing. The confidentiality rules shall include
6 the following provisions:

7 (1) the complainant, the committee and its
8 staff shall not publicly disclose any information relating to
9 the filing or investigation of a complaint, including the
10 identity of the complainant or respondent, until after a
11 finding of probable cause has been made that a violation has
12 occurred;

13 (2) the identity of the complainant shall be
14 released to the respondent immediately upon request; and

15 (3) no member of the committee or its staff
16 may knowingly disclose any confidential information except as
17 authorized by the committee."

18 **SECTION 29.** Section 2-15-11 NMSA 1978 (being Laws 1993,
19 Chapter 46, Section 56) is amended to read:

20 "2-15-11. LEGISLATIVE ETHICS COMMITTEE--STAFF.--The staff
21 for the [~~interim~~] legislative ethics committee shall be
22 provided by the legislative council service, but the committee
23 is authorized to hire such special counsel, arbitrators or
24 independent hearing officers, or to request the appointment of
25 an independent hearing officer, as provided for in the

.205610.2

underscoring material = new
[bracketed material] = delete

1 Administrative Hearings Office Act, as necessary to assist the
2 [~~legislative ethics~~] committee when it is convened."

3 SECTION 30. Section 2-15-12 NMSA 1978 (being Laws 1993,
4 Chapter 46, Section 57) is amended to read:

5 "2-15-12. [~~NEW MEXICO~~] LEGISLATIVE [~~COUNCIL~~] ETHICS
6 COMMITTEE--BUDGET.--The New Mexico legislative council shall
7 annually provide an amount sufficient to carry out the duties
8 and mandate of the [~~interim~~] legislative ethics committee."

9 SECTION 31. Section 7-1B-6 NMSA 1978 (being Laws 2015,
10 Chapter 73, Section 6) is amended to read:

11 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

12 A. The chief hearing officer shall:

13 (1) adopt and promulgate a hearing officer
14 code of conduct; and

15 (2) periodically evaluate each hearing
16 officer's performance for competency, efficiency and
17 professional demeanor in [~~accord~~] accordance with relevant
18 legal standards and the hearing officer code of conduct.

19 B. The chief hearing officer shall ensure that each
20 hearing officer has decisional independence; however, the chief
21 hearing officer may:

22 (1) consult with a hearing officer about a
23 genuine question of law; and

24 (2) review with a hearing officer any issue on
25 appeal addressed by a court of this state.

.205610.2

underscored material = new
[bracketed material] = delete

- 1 C. The administrative hearings office shall:
- 2 (1) hear all tax protests pursuant to the
- 3 provisions of the Tax Administration Act;
- 4 (2) hear property tax protests pursuant to the
- 5 provisions of the Property Tax Code;
- 6 (3) hear all certificate-denial protests
- 7 pursuant to the provisions of Section 13-1-22 NMSA 1978;
- 8 (4) conduct all adjudicatory hearings pursuant
- 9 to the Motor Vehicle Code;
- 10 (5) conduct all driver's license revocation
- 11 hearings pursuant to the provisions of the Implied Consent Act;
- 12 (6) conduct hearings related to decisions of
- 13 the public accountability board;
- 14 [~~6~~] (7) make and preserve a complete record
- 15 of all proceedings; and
- 16 [~~7~~] (8) maintain confidentiality regarding
- 17 taxpayer information as required by the provisions of Section
- 18 7-1-8 NMSA 1978.

19 D. In hearings conducted pursuant to the Tax

20 Administration Act, Section 13-1-22 NMSA 1978 and the Motor

21 Vehicle Code:

- 22 (1) the rules of evidence that govern
- 23 proceedings in the state's courts do not apply. The hearing
- 24 officer may require reasonable substantiation of statements or
- 25 records tendered, the accuracy or truth of which is in

underscoring material = new
~~[bracketed material] = delete~~

1 reasonable doubt, to rule on the admissibility of evidence. A
2 taxpayer or the taxation and revenue department may request a
3 written ruling on a contested question of evidence in a matter
4 in which the taxpayer has filed a written protest and for which
5 that protest is pending. The administrative hearings office
6 shall issue a copy of its written ruling to the taxation and
7 revenue department at the time the ruling is issued to the
8 taxpayer;

9 (2) the Rules of Civil Procedure for the
10 District Courts do not apply. The hearing officer shall
11 conduct a hearing to allow the ample and fair presentation of
12 complaints and defenses. The hearing officer shall hear
13 arguments, permit discovery, entertain and dispose of motions,
14 require written expositions of the case as the circumstances
15 justify and render a decision in accordance with the law and
16 the evidence presented and admitted. A taxpayer or the
17 taxation and revenue department may request a written ruling on
18 a contested question of procedure in a matter in which the
19 taxpayer has filed a written protest and for which that protest
20 is pending. The administrative hearings office shall issue a
21 copy of its written ruling to the taxation and revenue
22 department at the time the ruling is issued to the taxpayer;
23 and

24 (3) the hearing officer may administer oaths
25 and issue subpoenas for the attendance of witnesses and the

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 production of relevant books and papers, and for hearings
2 conducted for a license suspension pursuant to Section 66-5-30
3 NMSA 1978, the hearing officer may require a reexamination of
4 the licensee."

5 SECTION 32. Section 10-15-1 NMSA 1978 (being Laws 1974,
6 Chapter 91, Section 1, as amended) is amended to read:

7 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
8 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

22 B. All meetings of a quorum of members of any
23 board, commission, administrative adjudicatory body or other
24 policymaking body of any state agency or any agency or
25 authority of any county, municipality, district or political

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

23 D. Any meetings at which the discussion or adoption
24 of any proposed resolution, rule, regulation or formal action
25 occurs and at which a majority or quorum of the body is in

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 attendance, and any closed meetings, shall be held only after
2 reasonable notice to the public. The affected body shall
3 determine at least annually in a public meeting what notice for
4 a public meeting is reasonable when applied to that body. That
5 notice shall include broadcast stations licensed by the federal
6 communications commission and newspapers of general circulation
7 that have provided a written request for such notice.

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

19 F. Meeting notices shall include an agenda
20 containing a list of specific items of business to be discussed
21 or transacted at the meeting or information on how the public
22 may obtain a copy of such an agenda. Except in the case of an
23 emergency or in the case of a public body that ordinarily meets
24 more frequently than once per week, at least seventy-two hours
25 prior to the meeting, the agenda shall be available to the

.205610.2

underscored material = new
[bracketed material] = delete

1 public and posted on the public body's ~~[web site]~~ website, if
2 one is maintained. A public body that ordinarily meets more
3 frequently than once per week shall post a draft agenda at
4 least seventy-two hours prior to the meeting and a final agenda
5 at least thirty-six hours prior to the meeting. Except for
6 emergency matters, a public body shall take action only on
7 items appearing on the agenda. For purposes of this
8 subsection, "emergency" refers to unforeseen circumstances
9 that, if not addressed immediately by the public body, will
10 likely result in injury or damage to persons or property or
11 substantial financial loss to the public body. Within ten days
12 of taking action on an emergency matter, the public body shall
13 report to the ~~[attorney general's office]~~ public accountability
14 board the action taken and the circumstances creating the
15 emergency; provided that the requirement to report to the
16 ~~[attorney general]~~ public accountability board is waived upon
17 the declaration of a state or national emergency.

18 G. The board, commission or other policymaking body
19 shall keep written minutes of all its meetings. The minutes
20 shall include at a minimum the date, time and place of the
21 meeting, the names of members in attendance and those absent,
22 the substance of the proposals considered and a record of any
23 decisions and votes taken that show how each member voted. All
24 minutes are open to public inspection. Draft minutes shall be
25 prepared within ten working days after the meeting and shall be

.205610.2

underscoring material = new
~~[bracketed material]~~ = delete

1 approved, amended or disapproved at the next meeting where a
2 quorum is present. Minutes shall not become official until
3 approved by the policymaking body.

4 H. The provisions of Subsections A, B and G of this
5 section do not apply to:

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

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

22 (3) deliberations by a public body in
23 connection with an administrative adjudicatory proceeding. For
24 purposes of this paragraph, "administrative adjudicatory
25 proceeding" means a proceeding brought by or against a person

.205610.2

underscored material = new
~~[bracketed material] = delete~~

1 before a public body in which individual legal rights, duties
2 or privileges are required by law to be determined by the
3 public body after an opportunity for a trial-type hearing.
4 Except as otherwise provided in this section, the actual
5 administrative adjudicatory proceeding at which evidence is
6 offered or rebutted and any final action taken as a result of
7 the proceeding shall occur in an open meeting;

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

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

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

.205610.2

underscored material = new
[bracketed material] = delete

1 contractor shall be made in an open meeting;

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

5 (8) meetings for the discussion of the
6 purchase, acquisition or disposal of real property or water
7 rights by the public body;

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

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

14 (11) except as provided in the Public
15 Accountability Act, meetings of the public accountability board
16 or its committees that relate to complaints or investigations.

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

19 (1) the closure, if made in an open meeting,
20 shall be approved by a majority vote of a quorum of the
21 policymaking body; the authority for the closure and the
22 subject to be discussed shall be stated with reasonable
23 specificity in the motion calling for the vote on a closed
24 meeting; the vote shall be taken in an open meeting; and the
25 vote of each individual member shall be recorded in the

.205610.2

underscored material = new
[bracketed material] = delete

1 minutes. Only those subjects announced or voted upon prior to
2 closure by the policymaking body may be discussed in a closed
3 meeting; or

4 (2) if a closure is called for when the
5 policymaking body is not in an open meeting, the closed meeting
6 shall not be held until public notice, appropriate under the
7 circumstances, stating the specific provision of the law
8 authorizing the closed meeting and stating with reasonable
9 specificity the subject to be discussed is given to the members
10 and to the general public.

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

19 **SECTION 33.** Section 10-15-3 NMSA 1978 (being Laws 1974,
20 Chapter 91, Section 3, as amended) is amended to read:

21 "10-15-3. INVALID ACTIONS--STANDING.--

22 A. No resolution, rule, regulation, ordinance or
23 action of any board, commission, committee or other
24 policymaking body shall be valid unless taken or made at a
25 meeting held in accordance with the requirements of Section

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 10-15-1 NMSA 1978. Every resolution, rule, regulation,
2 ordinance or action of any board, commission, committee or
3 other policymaking body shall be presumed to have been taken or
4 made at a meeting held in accordance with the requirements of
5 Section 10-15-1 NMSA 1978.

6 B. Civil enforcement of all provisions of the Open
7 Meetings Act shall be ~~[enforced]~~ by the ~~[attorney general or by~~
8 ~~the district attorney in the county of jurisdiction]~~ public
9 accountability board. However, nothing in that act shall
10 prevent an individual from independently applying for
11 enforcement through the district courts; provided that the
12 individual first provides written notice of the claimed
13 violation to the public body and that the public body has
14 denied or not acted on the claim within fifteen days of
15 receiving it. A public meeting held to address a claimed
16 violation of the Open Meetings Act shall include a summary of
17 comments made at the meeting at which the claimed violation
18 occurred.

19 C. The district courts of this state shall have
20 jurisdiction, upon the application of any person to enforce the
21 purpose of the Open Meetings Act, by injunction, mandamus or
22 other appropriate order. The court shall award costs and
23 reasonable attorney fees to any person who is successful in
24 bringing a court action to enforce the provisions of the Open
25 Meetings Act. If the prevailing party in a legal action

.205610.2

underscoring material = new
~~[bracketed material] = delete~~

1 brought under this section is a public body defendant, it shall
2 be awarded court costs. A public body defendant that prevails
3 in a court action brought under this section shall be awarded
4 its reasonable attorney fees from the plaintiff if the
5 plaintiff brought the action without sufficient information and
6 belief that good grounds supported it.

7 D. No section of the Open Meetings Act shall be
8 construed to preclude other remedies or rights not relating to
9 the question of open meetings."

10 SECTION 34. Section 10-16-11 NMSA 1978 (being Laws 1967,
11 Chapter 306, Section 11, as amended) is amended to read:

12 "10-16-11. CODES OF CONDUCT.--

13 A. ~~[By January 1, 1994]~~ Each elected statewide
14 executive branch public officer shall adopt a general code of
15 conduct for employees subject to ~~[his]~~ the officer's control.
16 The New Mexico legislative council shall adopt a general code
17 of conduct for all legislative branch employees. The general
18 codes of conduct shall be based on the principles set forth in
19 the Governmental Conduct Act.

20 B. Within thirty days after the general codes of
21 conduct are adopted, they shall be given to and reviewed with
22 all executive and legislative branch officers and employees.
23 All new public officers and employees of the executive and
24 legislative branches shall review the employees' general code
25 of conduct prior to or at the time of being hired.

.205610.2

underscored material = new
[bracketed material] = delete

1 C. The head of every executive and legislative
2 agency and institution of the state may draft a separate code
3 of conduct for all public officers and employees in that agency
4 or institution. The separate agency code of conduct shall
5 prescribe standards, in addition to those set forth in the
6 Governmental Conduct Act and the general codes of conduct for
7 all executive and legislative branch public officers and
8 employees, that are peculiar and appropriate to the function
9 and purpose for which the agency or institution was created or
10 exists. The separate codes, upon approval of the responsible
11 executive branch public officer for executive branch public
12 officers and employees or the New Mexico legislative council
13 for legislative branch employees, govern the conduct of the
14 public officers and employees of that agency or institution
15 and, except for those public officers and employees removable
16 only by impeachment, shall, if violated, constitute cause for
17 dismissal, demotion or suspension. The head of each executive
18 and legislative branch agency shall adopt ongoing education
19 programs to advise public officers and employees about the
20 codes of conduct. All codes shall be filed with the [~~secretary~~
21 ~~of state~~] public accountability board and are open to public
22 inspection.

23 D. Codes of conduct shall be reviewed at least once
24 every four years. An amended code shall be filed as provided
25 in Subsection C of this section.

.205610.2

underscored material = new
[bracketed material] = delete

1 E. All legislators shall attend a minimum of two
2 hours of ethics continuing education and training developed and
3 provided by the public accountability board biennially."

4 **SECTION 35.** Section 10-16-13.1 NMSA 1978 (being Laws
5 1993, Chapter 46, Section 35) is amended to read:

6 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

7 A. The secretary of state shall advise and seek to
8 educate all persons required to perform duties under the
9 Governmental Conduct Act of those duties. This includes
10 advising all those persons at least annually of that act's
11 ethical principles.

12 B. The [~~secretary of state~~] public accountability
13 board shall seek first to ensure voluntary compliance with the
14 provisions of the Governmental Conduct Act. A person who
15 violates that act unintentionally or for good cause shall be
16 given ten days' notice to correct the matter. Referrals for
17 civil enforcement of that act shall be pursued only after
18 efforts to secure voluntary compliance with that act have
19 failed."

20 **SECTION 36.** Section 10-16-18 NMSA 1978 (being Laws 1995,
21 Chapter 153, Section 23) is amended to read:

22 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--[A.] If the
23 [~~secretary of state~~] public accountability board reasonably
24 believes that a person committed, or is about to commit, a
25 violation of the Governmental Conduct Act, the [~~secretary of~~

.205610.2

underscored material = new
[bracketed material] = delete

1 state] board shall [~~refer the matter to the attorney general or~~
2 ~~a district attorney for enforcement.~~

3 B. ~~The attorney general or a district attorney may]~~
4 institute a civil action in district court if a violation has
5 occurred or to prevent a violation of [~~any~~] a provision of the
6 Governmental Conduct Act. Relief may include a permanent or
7 temporary injunction, a restraining order or any other
8 appropriate order, including an order for a civil penalty of
9 two hundred fifty dollars (\$250) for each violation not to
10 exceed five thousand dollars (\$5,000)."

11 SECTION 37. Section 10-16A-1 NMSA 1978 (being Laws 1993,
12 Chapter 46, Section 39) is amended to read:

13 "10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--
14 [~~Sections 39 through 45 of this act~~] Chapter 10, Article 16A
15 NMSA 1978 may be cited as the "Financial Disclosure Act"."

16 SECTION 38. Section 10-16A-5 NMSA 1978 (being Laws 1993,
17 Chapter 46, Section 43) is amended to read:

18 "10-16A-5. EDUCATION AND VOLUNTARY COMPLIANCE.--

19 A. The secretary of state shall advise and seek to
20 educate all persons required to perform duties under the
21 Financial Disclosure Act of those duties. This includes
22 providing timely advance notice of the required financial
23 disclosure statement and preparing forms that are clear and
24 easy to complete.

25 B. The [~~secretary of state~~] public accountability

.205610.2

underscored material = new
[bracketed material] = delete

1 board shall seek first to ensure voluntary compliance with the
2 provisions of the Financial Disclosure Act. A person who
3 violates that act unintentionally or for good cause shall be
4 given ten days' notice to correct the matter [~~before fines are~~
5 ~~imposed. Referrals for civil enforcement of the Financial~~
6 ~~Disclosure Act shall be pursued only after efforts to secure~~
7 ~~voluntary compliance with that act have failed]."~~

8 SECTION 39. Section 10-16A-6 NMSA 1978 (being Laws 1993,
9 Chapter 46, Section 44, as amended) is amended to read:

10 "10-16A-6. INVESTIGATIONS--~~[BINDING ARBITRATION]~~
11 ~~HEARING--FINES--ENFORCEMENT.--~~

12 A. [~~The secretary of state may conduct thorough~~
13 ~~examinations of statements and initiate investigations to~~
14 ~~determine whether the Financial Disclosure Act has been~~
15 ~~violated.~~] Any person who believes that the Financial
16 Disclosure Act has been violated may file a written complaint
17 with the [~~secretary of state~~] public accountability board. The
18 [~~secretary of state~~] board shall adopt procedures for
19 processing complaints and notifications of violations.

20 B. If the [~~secretary of state~~] public
21 accountability board determines that a violation has occurred
22 for which a penalty should be imposed, the [~~secretary of state~~]
23 board shall so notify the person charged and impose the
24 penalty. If the person charged disputes the [~~secretary of~~
25 ~~state's~~] board's determination, the person charged may request

.205610.2

underscored material = new
[bracketed material] = delete

1 ~~[binding arbitration.]~~

2 G. ~~The arbitration decision shall be decided by a~~
3 ~~single arbitrator selected within ten days by the person~~
4 ~~against whom the penalty has been imposed from a list of five~~
5 ~~arbitrators provided by the secretary of state. No arbitrator~~
6 ~~may be a person subject to the Financial Disclosure Act,~~
7 ~~Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators~~
8 ~~shall be considered to be independent contractors, not public~~
9 ~~officers or employees, and shall not be paid per diem and~~
10 ~~mileage] a hearing. The hearing shall be conducted by an~~
11 ~~independent hearing officer appointed pursuant to the~~
12 ~~Administrative Hearings Office Act.~~

13 ~~[D.]~~ C. The ~~[arbitrator]~~ hearing officer shall
14 conduct the hearing within thirty days of the request and may
15 take any action [the secretary of state is] authorized [to
16 take] by the Financial Disclosure Act. The [arbitrator]
17 hearing officer shall state the reasons for [his] the decision
18 in a written document that shall be a public record. [The
19 decision shall be final and binding.] The decision shall be
20 issued and filed with the board within thirty days of the
21 conclusion of the hearing. [Unless otherwise provided for in
22 this section, or by rule or regulation adopted by the secretary
23 of state, the procedures for the arbitration shall be governed
24 by the Uniform Arbitration Act. No arbitrator shall be subject
25 to liability for actions taken pursuant to this section.

.205610.2

underscored material = new
[bracketed material] = delete

1 ~~E. Any~~ D. A person who files a statement or
2 report after the deadline imposed by the Financial Disclosure
3 Act, or ~~any~~ a person who files a false or incomplete
4 statement or report, ~~is~~ shall be liable for and shall pay to
5 the ~~secretary of state~~ public election fund, at or from the
6 time initially required for the filing, fifty dollars (\$50.00)
7 per day for each regular working day after the time required
8 for the filing of the statement or report until the complete
9 report is filed, up to a maximum of five thousand dollars
10 (\$5,000).

11 ~~[F. The secretary of state may refer a matter to~~
12 ~~the attorney general or a district attorney for a civil~~
13 ~~injunctive or other appropriate order or enforcement.]"~~

14 SECTION 40. Section 10-16A-8 NMSA 1978 (being Laws 1995,
15 Chapter 153, Section 25) is amended to read:

16 "10-16A-8. ENFORCEMENT--CIVIL PENALTIES.--~~[A.]~~ If the
17 ~~secretary of state~~ public accountability board reasonably
18 believes that a person committed, or is about to commit, a
19 violation of the Financial Disclosure Act, the ~~secretary of~~
20 ~~state~~ board shall ~~refer the matter to the attorney general or~~
21 ~~a district attorney for enforcement.~~

22 ~~B. The attorney general or a district attorney may]~~
23 institute a civil action in district court if a violation has
24 occurred or to prevent a violation of ~~any~~ a provision of the
25 Financial Disclosure Act. Relief may include a permanent or

.205610.2

underscored material = new
[bracketed material] = delete

1 temporary injunction, a restraining order or any other
2 appropriate order, including an order for a civil penalty of
3 two hundred fifty dollars (\$250) for each violation not to
4 exceed five thousand dollars (\$5,000)."

5 SECTION 41. Section 13-1-177 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 150, as amended) is amended to read:

7 "13-1-177. AUTHORITY TO SUSPEND OR DEBAR.--

8 A. The ~~[state purchasing agent or a central~~
9 ~~purchasing office]~~ public accountability board, after
10 consultation with the using agency, may suspend a person from
11 consideration for award of contracts if the ~~[state purchasing~~
12 ~~agent or central purchasing office]~~ public accountability
13 board, after reasonable investigation, finds that a person has
14 engaged in conduct that constitutes cause for debarment
15 pursuant to Section 13-1-178 NMSA 1978.

16 B. The term of a suspension pursuant to this
17 section shall not exceed three months; however, if a person,
18 including a bidder, offeror or contractor, has been charged
19 with a criminal offense that would be a cause for debarment
20 pursuant to Section 13-1-178 NMSA 1978, the suspension shall
21 remain in effect until the criminal charge is resolved and the
22 person is debarred or the reason for suspension no longer
23 exists.

24 C. The ~~[state purchasing agent or a central~~
25 ~~purchasing office]~~ public accountability board, after

.205610.2

underscored material = new
[bracketed material] = delete

1 reasonable notice to the person involved, shall have authority
2 to [~~recommend to the governing authority of a state agency or a~~
3 ~~local public body the debarment of~~] debar a person for cause
4 from consideration for award of contracts, other than contracts
5 for professional services. The debarment shall not be for a
6 period of more than three years. The authority to debar shall
7 be exercised by the [~~governing authority of a state agency or a~~
8 ~~local public body~~] public accountability board in accordance
9 with rules that shall provide for reasonable notice and a fair
10 hearing prior to debarment.

11 D. As used in this section, the terms "person",
12 "bidder", "offeror" and "contractor" include principals,
13 officers, directors, owners, partners and managers of the
14 person, bidder, offeror or contractor."

15 SECTION 42. Section 13-1-178 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 151, as amended) is amended to read:

17 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME
18 LIMIT.--

19 A. The causes for debarment or suspension occurring
20 within three years of the date final action on a procurement is
21 taken include but are not limited to the following:

22 (1) criminal conviction of a bidder, offeror
23 or contractor for commission of a criminal offense related to
24 obtaining unlawfully or attempting to obtain a public or
25 private contract or subcontract, or related to the unlawful

.205610.2

underscored material = new
~~[bracketed material] = delete~~

1 performance of such contract or subcontract;

2 (2) civil judgment against a bidder, offeror
3 or contractor for a civil violation related to obtaining
4 unlawfully or attempting to obtain a public or private contract
5 or subcontract, or related to the unlawful performance of such
6 contract or subcontract;

7 (3) conviction of a bidder, offeror or
8 contractor under state or federal statutes related to
9 embezzlement, theft, forgery, bribery, fraud, falsification or
10 destruction of records, making false statements or receiving
11 stolen property or for violation of federal or state tax laws;

12 (4) conviction of a bidder, offeror or
13 contractor under state or federal antitrust statutes relating
14 to the submission of offers;

15 (5) criminal conviction against a bidder,
16 offeror or contractor for any other offense related to honesty,
17 integrity or business ethics;

18 (6) civil judgment against a bidder, offeror
19 or contractor for a civil violation related to honesty,
20 integrity or business ethics;

21 (7) civil judgment against a bidder, offeror
22 or contractor pursuant to the Unfair Practices Act;

23 (8) violation by a bidder, offeror or
24 contractor of contract provisions, as set forth in this
25 paragraph, of a character that is reasonably regarded by the

.205610.2

underscored material = new
[bracketed material] = delete

1 ~~[state purchasing agent or a central purchasing office]~~ public
2 accountability board to be so serious as to justify suspension
3 or debarment action, including:

4 (a) willful failure to perform in
5 accordance with one or more contracts; or

6 (b) a history of failure to perform or
7 of unsatisfactory performance of one or more contracts;
8 provided that this failure or unsatisfactory performance has
9 occurred within a reasonable time preceding the decision to
10 impose debarment; and provided further that failure to perform
11 or unsatisfactory performance caused by acts beyond the control
12 of the contractor shall not be considered to be a basis for
13 debarment;

14 (9) any other cause that the ~~[state purchasing~~
15 ~~agent or a central purchasing office]~~ public accountability
16 board determines to be so serious and compelling as to affect
17 responsibility as a contractor; or

18 (10) for a willful violation by a bidder,
19 offeror or contractor of the provisions of the Procurement
20 Code.

21 B. As used in this section, the terms "bidder",
22 "offeror" and "contractor" include principals, officers,
23 directors, owners, partners and managers of the bidder, offeror
24 or contractor."

25 SECTION 43. Section 13-1-196 NMSA 1978 (being Laws 1984,

.205610.2

underscored material = new
[bracketed material] = delete

1 Chapter 65, Section 169) is amended to read:

2 "13-1-196. CIVIL PENALTY.--Any person, firm or
3 corporation that knowingly violates any provision of the
4 Procurement Code is subject to a civil penalty of not more than
5 one thousand dollars (\$1,000) for each procurement in violation
6 of any provision of the Procurement Code. The [~~attorney
7 general or the district attorney in the jurisdiction in which
8 the violation occurs~~] public accountability board is empowered
9 to bring a civil action for the enforcement of any provision of
10 the Procurement Code. Any penalty collected under the
11 provisions of this section shall be credited to the general
12 fund of the political subdivision in which the violation
13 occurred and on whose behalf the suit was brought."

14 SECTION 44. Section 14-2-12 NMSA 1978 (being Laws 1993,
15 Chapter 258, Section 9) is amended to read:

16 "14-2-12. ENFORCEMENT.--

17 A. An action to enforce the Inspection of Public
18 Records Act may be brought by:

19 (1) the [~~attorney general or the district
20 attorney in the county of jurisdiction~~] public accountability
21 board; or

22 (2) a person whose written request has been
23 denied.

24 B. A district court may issue a writ of mandamus or
25 order an injunction or other appropriate remedy to enforce the

.205610.2

underscored material = new
[bracketed material] = delete

1 provisions of the Inspection of Public Records Act.

2 C. The exhaustion of administrative remedies shall
3 not be required prior to bringing any action to enforce the
4 procedures of the Inspection of Public Records Act.

5 D. The court shall award damages, costs and
6 reasonable [~~attorneys'~~] attorney fees to any person whose
7 written request has been denied and who is successful in a
8 court action to enforce the provisions of the Inspection of
9 Public Records Act."

10 SECTION 45. Section 34-10-2.1 NMSA 1978 (being Laws 1977,
11 Chapter 289, Section 1) is amended to read:

12 "34-10-2.1. JUDICIAL STANDARDS COMMISSION--DUTIES--
13 SUBPOENA POWER.--

14 A. Pursuant to the judicial standards commission's
15 authority granted by Article 6, Section 32 of the constitution
16 of New Mexico, any justice, judge or magistrate of any court
17 may be disciplined or removed for willful misconduct in office,
18 persistent failure or inability to perform the judge's duties
19 or habitual intemperance, or may be retired for a disability
20 that seriously interferes with the performance of the
21 justice's, judge's or magistrate's duties and that is, or is
22 likely to become, of a permanent character. The judicial
23 standards commission is granted the same authority to regulate
24 the conduct and character of court-appointed commissioners and
25 judicial hearing officers while acting in a judicial capacity.

.205610.2

underscored material = new
[bracketed material] = delete

1 B. With respect to the officials listed in
2 Subsection A of this section, the judicial standards commission
3 shall:

4 (1) investigate all charges, complaints and
5 allegations as to willful misconduct in office, persistent
6 failure or inability to perform [~~a judge's~~] official duties or
7 habitual intemperance, [~~of any justice, judge or magistrate of~~
8 ~~any court, and when~~] if the commission deems necessary, and
9 hold a hearing on the charges, complaints or allegations
10 concerning the discipline or removal of [~~such judicial officer~~]
11 the official;

12 (2) investigate and, if the commission deems
13 necessary, hold hearings on any charge, complaint or allegation
14 that [~~a justice, judge or magistrate~~] an official listed in
15 Subsection A of this section has suffered a disability that is
16 seriously interfering with the performance of [~~his~~] the
17 official's duties [~~which~~] and that is, or is likely to become,
18 of a permanent character;

19 (3) if the commission deems it necessary or
20 convenient, appoint three masters, who are justices or judges
21 of courts of record, to hear and take evidence in any matter
22 arising under Paragraph (1) or (2) of this subsection who shall
23 report their findings to the commission; and

24 (4) after a hearing deemed necessary pursuant
25 to Paragraph (2) of this subsection or after considering the

underscoring material = new
[bracketed material] = delete

1 record and the findings and report of the masters, if the
2 commission finds good cause, [~~it shall~~] recommend to the
3 supreme court the discipline, removal or retirement of the
4 [~~justice, judge or magistrate~~] official.

5 ~~[B.]~~ C. In any investigation or hearing held under
6 the provisions of this section, the commission [~~shall have the~~
7 ~~power to~~] may administer oaths and, with the concurrence of a
8 majority of the members of the commission, [~~it may~~] petition a
9 district court to subpoena witnesses, compel their attendance
10 and examine them under oath or affirmation and require the
11 production of any books, records, documents or other evidence
12 it may deem relevant or material to an investigation upon a
13 showing of probable cause."

14 **SECTION 46. TEMPORARY PROVISION--COMPILER'S**
15 **INSTRUCTION.--**The New Mexico compilation commission shall
16 rename Chapter 2, Article 15 NMSA 1978 "Legislative Ethics
17 Committee".

18 **SECTION 47. REPEAL.--**Sections 2-15-1 through 2-15-6,
19 2-15-10 and 10-16-14 NMSA 1978 (being Laws 1993, Chapter 46,
20 Sections 46 through 51 and 55 and Laws 1967, Chapter 306,
21 Section 14, as amended) are repealed.

22 **SECTION 48. APPLICABILITY.--**The provisions of the Public
23 Accountability Act apply to conduct that occurs on or after
24 January 1, 2019.

25 **SECTION 49. EFFECTIVE DATE.--**

.205610.2

underscoring material = new
~~[bracketed material]~~ = delete

1 A. The effective date of the provisions of Section 23
2 of this act is July 1, 2017.

3 B. The effective date of the provisions of Section 13
4 of this act is July 1, 2018.

5 C. The effective date of the provisions of Sections 1
6 through 12, 14 through 22, 24 through 45, 47 and 48 of this act
7 is July 1, 2019.