

HOUSE BILL 138

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Elias Barela

AN ACT

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

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 16 of this act may be cited as the "State Ethics  
2 Commission Act".

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

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

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

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

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

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

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

24 G. "government contractor" means a person who has a  
25 contract with a public agency or who has submitted a

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1 competitive sealed proposal or competitive sealed bid for a  
2 contract with a public agency;

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

5 I. "lobbying" means attempting to influence:

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

11 (2) an official action;

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

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

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

24 (3) an employee of the state or a political  
25 subdivision of the state, specifically designated by an elected

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

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

11 (5) a legislator or legislative staff member;

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

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

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

24 K. "official action" means a decision, action or  
25 nonaction of a public official or public agency in a rulemaking

1 or other matter, except an adjudicatory proceeding;

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

4 M. "public agency" means any department,  
5 commission, council, board, committee, agency or institution of  
6 the executive or legislative branch of government of the state  
7 or any instrumentality of the state, including the New Mexico  
8 mortgage finance authority, the New Mexico finance authority,  
9 the New Mexico exposition center authority, the New Mexico  
10 hospital equipment loan council and the New Mexico renewable  
11 energy transmission authority; as of January 1, 2013, "public  
12 agency" includes a public school district and a charter school;

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

17 O. "public official" means a person elected to an  
18 office of the executive or legislative branch of the state or a  
19 person appointed to a public agency; as of January 1, 2013,  
20 "public official" includes a local school board member, a local  
21 superintendent of a school district and a member of the  
22 governing authority of a charter school; and

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

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1           Section 3. [NEW MATERIAL] STATE ETHICS COMMISSION  
2           CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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

6                       (1) two commissioners appointed by the house  
7                       of representatives democratic caucus by a majority vote of the  
8                       members;

9                       (2) two commissioners appointed by the house  
10                      of representatives republican caucus by a majority vote of the  
11                      members;

12                     (3) two commissioners appointed by the senate  
13                     democratic caucus by a majority vote of the members;

14                     (4) two commissioners appointed by the senate  
15                     republican caucus by a majority vote of the members; and

16                     (5) three commissioners appointed by the  
17                     governor, one of whom shall be a democrat and one a republican,  
18                     and a third shall be a registered voter who is neither a  
19                     democrat nor a republican.

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

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

25           D. Commissioners shall be appointed for staggered

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1 terms of four years beginning July 1, 2010. The initial  
2 commissioners shall draw lots to determine which three  
3 commissioners serve an initial term of two years, which four  
4 commissioners serve an initial term of three years and which  
5 four commissioners serve an initial term of four years;  
6 thereafter, all commissioners shall serve four-year terms.  
7 Members shall serve until their successors are appointed and  
8 qualified.

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

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

18 G. The commission shall elect annually a  
19 chairperson, vice chairperson and other officers it deems  
20 necessary.

21 H. Eight commissioners constitute a quorum for the  
22 transaction of business. No action shall be taken by the  
23 commission unless at least eight members concur.

24 I. A commissioner may be removed only for  
25 incompetence, neglect of duty or malfeasance in office. A

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

8 Section 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--  
9 LIMITATIONS.--

10 A. To qualify for appointment to the commission, a  
11 person shall:

12 (1) be a resident of New Mexico; and

13 (2) have been a member of the same political  
14 party for at least three years prior to appointment or shall  
15 not have been a member of any political party for at least  
16 three years prior to appointment.

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

24 C. During a commissioner's tenure, a commissioner  
25 shall not:

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

3 (2) be a public employee, government  
4 contractor or lobbyist.

5 D. A commissioner who changes political party  
6 affiliation shall resign immediately.

7 E. For a period of one calendar year following a  
8 commissioner's tenure or following the resignation or removal  
9 of a commissioner, the commissioner shall not:

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

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

16 Section 5. [NEW MATERIAL] COMMISSION--DUTIES AND  
17 POWERS.--

18 A. The commission shall:

19 (1) receive and investigate complaints  
20 alleging ethics violations against public officials, public  
21 employees, government contractors and lobbyists;

22 (2) hold hearings in appropriate cases to  
23 determine whether there has been an ethics violation;

24 (3) develop, adopt and promulgate the  
25 procedural rules necessary for it to implement and administer

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1 the provisions of the State Ethics Commission Act;

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

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

8 (6) employ an executive director, who shall be  
9 an attorney; and

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

14 B. The commission may:

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

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

22 (3) issue advisory opinions to public  
23 officials, public employees, government contractors and  
24 lobbyists in accordance with the provisions of the State Ethics  
25 Commission Act;

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

7 (5) offer annual ethics training to public  
8 officials, public employees, government contractors, lobbyists  
9 and other interested persons.

10 Section 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
11 APPOINTMENT--DUTIES AND POWERS.--

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

19 B. The director shall:

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

22 (2) perform investigations on behalf of the  
23 commission;

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

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

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

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

8 C. The director may:

9 (1) hire a general counsel for the commission  
10 and additional personnel as may be necessary to carry out the  
11 duties of the commission;

12 (2) enter into contracts and agreements  
13 approved by the commission; and

14 (3) administer oaths and take depositions  
15 subject to the Rules of Civil Procedure for the District  
16 Courts.

17 D. For a period of one calendar year immediately  
18 following the director's employment with the commission, the  
19 director shall not:

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

22 (2) accept employment or otherwise provide  
23 services to a respondent, unless the director accepted  
24 employment or provided services prior to the filing of a  
25 complaint against the respondent.

1           Section 7. [NEW MATERIAL] RECUSAL--DISQUALIFICATION.--

2           A. A commissioner shall recuse from and not  
3 participate in a commission proceeding in which the  
4 commissioner has a conflict of interest. The commissioner  
5 shall state the reason for the recusal.

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

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

16           D. If four or more commissioners have recused  
17 themselves or are disqualified from participating in a  
18 proceeding, the remaining commissioners shall appoint temporary  
19 commissioners to participate in that proceeding. Appointments  
20 of temporary commissioners shall be made by the remaining  
21 commissioners in accordance with the political party  
22 affiliation requirements and the qualifications of Sections 3  
23 and 4 of the State Ethics Commission Act.

24           E. The commission shall promulgate rules for the  
25 recusal and disqualification of members and for the appointment

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1 of temporary commissioners.

2 Section 8. [NEW MATERIAL] ADVISORY OPINIONS.--

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

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

7 (2) identify a specific set of circumstances  
8 involving an ethics issue;

9 (3) be issued within sixty days of receipt of  
10 the request unless the commission notifies the requester of a  
11 delay in issuance and continues to notify the requester every  
12 thirty days until the advisory opinion is issued; and

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

15 B. A request for an advisory opinion shall be  
16 confidential and not subject to the provisions of the  
17 Inspection of Public Records Act.

18 C. Unless amended or revoked, an advisory opinion  
19 shall be binding on the commission in any subsequent commission  
20 proceedings concerning a person who acted in good faith and in  
21 reasonable reliance on the advisory opinion.

22 Section 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--  
23 SUBPOENAS.--

24 A. A complaint of an alleged ethics violation  
25 committed by a public official, public employee, government

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1 contractor or lobbyist may be:

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

4 (2) initiated by the commission upon receipt  
5 of evidence deemed sufficient by the commission.

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

16 "The complainant agrees to be bound by  
17 the confidentiality rules of the State  
18 Ethics Commission and other provisions of  
19 the State Ethics Commission Act."

20 C. The chairperson of the commission shall sign a  
21 complaint initiated by the commission, and the complaint shall  
22 set forth in detail the specific charges against the public  
23 official, public employee, government contractor or lobbyist  
24 and the factual allegations that support the charges.

25 D. The director shall promptly bring all complaints

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1 before the commission and make recommendations to the  
2 commission as to whether the conduct alleged in a complaint is  
3 within the jurisdiction of the commission and warrants  
4 investigation.

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

10 F. If the commission decides to proceed with an  
11 investigation, the director shall investigate and promptly  
12 notify the respondent that a complaint has been filed and of  
13 the specific allegations in the complaint.

14 G. A public official or public employee who is a  
15 respondent shall be entitled to representation by the risk  
16 management division of the general services department;  
17 provided, however, that if the respondent is found to have  
18 committed an ethics violation, the respondent shall reimburse  
19 the division for the respondent's equitable share of reasonable  
20 attorney fees and costs.

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



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

11 Section 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME  
12 LIMITATIONS.--

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

23 B. Upon dismissal or a decision to continue an  
24 investigation of a complaint, the commission shall notify the  
25 complainant and respondent in writing of its action. The

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1 commission shall not publicly disclose its action or  
2 notification except upon the request of the respondent.

3 Section 11. [NEW MATERIAL] REPORT--HEARING--FINDINGS AND  
4 CONCLUSIONS--DISCLOSURE OF ETHICS VIOLATION.--

5 A. The director shall provide a written report of  
6 the investigation to the commission and to the respondent and  
7 complainant. The director shall provide the respondent with  
8 reasonable written notice of the date, time and place of the  
9 commission hearing.

10 B. At the hearing, the commission has the power to  
11 administer oaths. The respondent has the right to be  
12 represented by counsel and to present evidence and testimony  
13 and examine and cross-examine witnesses. The respondent shall  
14 be afforded due process at the hearing.

15 C. After hearing and consideration of all the  
16 evidence, if the commission finds by clear and convincing  
17 evidence that the respondent's conduct constituted an ethics  
18 violation, the commission shall issue a written report that  
19 shall include findings of fact and conclusions of law. The  
20 commission shall publicly disclose the written report and  
21 provide it, along with all evidence collected during its  
22 investigation, to the respondent, the attorney general and the:

23 (1) appropriate legislative body if the  
24 respondent is a member of the legislature;

25 (2) house of representatives if the respondent

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1 is a public official elected to an office of the executive  
2 branch of the state;

3 (3) respondent's appointing authority if the  
4 respondent is an appointed public official;

5 (4) appropriate public agency if the  
6 respondent is a public employee;

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

10 (6) respondent's employer and clients and the  
11 secretary of state if the respondent is a lobbyist;

12 (7) public education department if the  
13 respondent is a member of a local school board or of the  
14 governing authority of a state-chartered charter school; or

15 (8) local school board if the respondent is a  
16 member of the governing authority of a locally chartered  
17 charter school.

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

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1 E. Notwithstanding the provisions of the Open  
2 Meetings Act, commission hearings held pursuant to this section  
3 are closed to the public. The commission shall promulgate  
4 rules establishing procedures for hearings.

5 Section 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

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

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

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

16 C. disclosure is ordered by a court; or

17 D. the respondent files with the commission a  
18 written waiver of confidentiality.

19 Section 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--

20 REFERRAL.--If the commission finds at any time that the  
21 respondent's conduct may amount to a criminal violation, the  
22 commission shall immediately refer the matter to the attorney  
23 general or an appropriate district attorney. The commission  
24 shall provide the attorney general or district attorney with  
25 all evidence collected during its investigation that may be

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1 used in a criminal proceeding. Nothing in this section  
2 prevents the commission from taking any action otherwise  
3 authorized by the State Ethics Commission Act or deciding to  
4 hold a matter in abeyance pending resolution of any criminal  
5 charges.

6 Section 14. [NEW MATERIAL] LIMITATIONS ON JURISDICTION.--

7 A. The commission shall not accept or review  
8 complaints concerning conduct that occurred more than three  
9 years prior to the day the complaint is received by the  
10 commission.

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

23 C. The commission shall not investigate allegations  
24 of misconduct involving campaign advertisements.

25 Section 15. [NEW MATERIAL] PROHIBITED ACTIONS.--

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1           A. A person shall not take or threaten to take any  
2 retaliatory, disciplinary or other adverse action against  
3 another person who in good faith:

4                   (1) files a complaint with the commission  
5 alleging an ethics violation against a public official, public  
6 employee, government contractor or lobbyist; or

7                   (2) provides testimony, records, documents or  
8 other information to the commission during an investigation or  
9 at a hearing conducted pursuant to the State Ethics Commission  
10 Act.

11           B. Nothing in the State Ethics Commission Act  
12 precludes civil actions or criminal sanctions for libel,  
13 slander or other civil or criminal claims against a person who  
14 files a false claim under that act.

15           Section 16. [NEW MATERIAL] CONFIDENTIALITY--PENALTY.--

16           A. A person who discloses any confidential  
17 complaint, report, file, record or communication in violation  
18 of the State Ethics Commission Act is guilty of a misdemeanor  
19 and upon conviction shall be punished by a fine of not more  
20 than one thousand dollars (\$1,000) or by imprisonment for not  
21 more than one year or both.

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

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1 Act.

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

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

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

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

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

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

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

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

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

16 F. Meeting notices shall include an agenda  
17 containing a list of specific items of business to be discussed  
18 or transacted at the meeting or information on how the public  
19 may obtain a copy of such an agenda. Except in the case of an  
20 emergency, the agenda shall be available to the public at least  
21 twenty-four hours prior to the meeting. Except for emergency  
22 matters, a public body shall take action only on items  
23 appearing on the agenda. For purposes of this subsection, ~~[an]~~  
24 "emergency" refers to unforeseen circumstances that, if not  
25 addressed immediately by the public body, will likely result in

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1 injury or damage to persons or property or substantial  
2 financial loss to the public body.

3 G. The board, commission or other policymaking body  
4 shall keep written minutes of all its meetings. The minutes  
5 shall include at a minimum the date, time and place of the  
6 meeting, the names of members in attendance and those absent,  
7 the substance of the proposals considered and a record of any  
8 decisions and votes taken that show how each member voted. All  
9 minutes are open to public inspection. Draft minutes shall be  
10 prepared within ten working days after the meeting and shall be  
11 approved, amended or disapproved at the next meeting where a  
12 quorum is present. Minutes shall not become official until  
13 approved by the policymaking body.

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

16 (1) meetings pertaining to issuance,  
17 suspension, renewal or revocation of a license, except that a  
18 hearing at which evidence is offered or rebutted shall be open.  
19 All final actions on the issuance, suspension, renewal or  
20 revocation of a license shall be taken at an open meeting;

21 (2) limited personnel matters; provided that  
22 for purposes of the Open Meetings Act, "limited personnel  
23 matters" means the discussion of hiring, promotion, demotion,  
24 dismissal, assignment or resignation of or the investigation or  
25 consideration of complaints or charges against any individual

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1 public employee; provided further that this [~~subsection~~]  
2 paragraph is not to be construed as to exempt final actions on  
3 personnel from being taken at open public meetings, nor does it  
4 preclude an aggrieved public employee from demanding a public  
5 hearing. Judicial candidates interviewed by any commission  
6 shall have the right to demand an open interview;

7 (3) deliberations by a public body in  
8 connection with an administrative adjudicatory proceeding. For  
9 purposes of this paragraph, [~~an~~] "administrative adjudicatory  
10 proceeding" means a proceeding brought by or against a person  
11 before a public body in which individual legal rights, duties  
12 or privileges are required by law to be determined by the  
13 public body after an opportunity for a trial-type hearing.  
14 Except as otherwise provided in this section, the actual  
15 administrative adjudicatory proceeding at which evidence is  
16 offered or rebutted and any final action taken as a result of  
17 the proceeding shall occur in an open meeting;

18 (4) the discussion of personally identifiable  
19 information about any individual student, unless the student  
20 [~~his~~] or the student's parent or guardian requests otherwise;

21 (5) meetings for the discussion of bargaining  
22 strategy preliminary to collective bargaining negotiations  
23 between the policymaking body and a bargaining unit  
24 representing the employees of that policymaking body and  
25 collective bargaining sessions at which the policymaking body

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1 and the representatives of the collective bargaining unit are  
2 present;

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

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

15 (8) meetings for the discussion of the  
16 purchase, acquisition or disposal of real property or water  
17 rights by the public body;

18 (9) those portions of meetings of committees  
19 or boards of public hospitals where strategic and long-range  
20 business plans or trade secrets are discussed; [~~and~~]

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

24 (11) meetings of the state ethics commission  
25 relating to complaints or investigations of alleged ethics

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1 violations.

2 I. If any meeting is closed pursuant to the  
3 exclusions contained in Subsection H of this section [~~the~~  
4 ~~closure~~]:

5 (1) the closure, if made in an open meeting,  
6 shall be approved by a majority vote of a quorum of the  
7 policymaking body; the authority for the closure and the  
8 subject to be discussed shall be stated with reasonable  
9 specificity in the motion calling for the vote on a closed  
10 meeting; the vote shall be taken in an open meeting; and the  
11 vote of each individual member shall be recorded in the  
12 minutes. Only those subjects announced or voted upon prior to  
13 closure by the policymaking body may be discussed in a closed  
14 meeting; [~~and~~] or

15 (2) if a closure is called for when the  
16 policymaking body is not in an open meeting, the closed meeting  
17 shall not be held until public notice, appropriate under the  
18 circumstances, stating the specific provision of the law  
19 authorizing the closed meeting and stating with reasonable  
20 specificity the subject to be discussed is given to the members  
21 and to the general public.

22 J. Following completion of any closed meeting, the  
23 minutes of the open meeting that was closed or the minutes of  
24 the next open meeting if the closed meeting was separately  
25 scheduled shall state that the matters discussed in the closed

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1 meeting were limited only to those specified in the motion for  
2 closure or in the notice of the separate closed meeting. This  
3 statement shall be approved by the public body under Subsection  
4 G of this section as part of the minutes."

5 Section 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF  
6 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By  
7 January 1, 2013, the state ethics commission shall submit a  
8 report to the legislature and the governor regarding the  
9 extension of commission jurisdiction to elected and appointed  
10 officials and employees of political subdivisions of the state.  
11 The report shall include and make recommendations on:

12 A. a detailed plan formulated by the commission for  
13 implementation of an extension of its jurisdiction, including a  
14 proposed time line;

15 B. the estimated number of additional employees and  
16 the amount and type of resources needed by the commission to  
17 carry out its powers and duties if its jurisdiction were  
18 extended;

19 C. estimated budget increases and the estimated  
20 annual budget for the commission if its jurisdiction were  
21 extended; and

22 D. any changes needed to existing law.

23 Section 19. SEVERABILITY.--If any part or application of  
24 this act is held invalid, the remainder or its application to  
25 other situations or persons shall not be affected.

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1           Section 20.   APPLICABILITY.--The provisions of the State  
2 Ethics Commission Act apply to conduct that occurs on or after  
3 July 1, 2010.

4           Section 21.   EFFECTIVE DATE.--

5                A.   The effective date of the provisions of Sections  
6 1 through 7 and 12 through 20 of this act is July 1, 2010.

7                B.   The effective date of the provisions of Sections  
8 8 through 11 of this act is January 1, 2011.

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