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HOUSE BILL 43

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

INTRODUCED BY

Mary Helen Garcia

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 STATE  
OFFICIALS, STATE EMPLOYEES, GOVERNMENT CONTRACTORS AND  
LOBBYISTS FOR ETHICS VIOLATIONS; PROVIDING FOR INVESTIGATIONS  
AND HEARINGS; GRANTING SUBPOENA POWERS; REQUIRING  
CONFIDENTIALITY; PROHIBITING RETALIATION; PROVIDING PENALTIES;  
MAKING AN APPROPRIATION.

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

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

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

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

10 B. "campaign contribution" means a gift,  
11 subscription, loan, advance or deposit of money or other thing  
12 of value, including the estimated value of an in-kind  
13 contribution, that is made to or received by a candidate for  
14 state office pursuant to the Campaign Reporting Act, including  
15 payment of a debt incurred in an election campaign, but  
16 "campaign contribution" does not include the value of services  
17 provided without compensation or unreimbursed travel or other  
18 personal expenses of persons who volunteer a portion or all of  
19 their time on behalf of a candidate or political committee;

20 C. "commission" means the state ethics commission;

21 D. "commissioner" means a member of the commission;

22 E. "complainant" means a person who files an ethics  
23 complaint with the commission;

24 F. "director" means the executive director of the  
25 commission;

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1           G. "ethics violation" means an action that is a  
2 violation of the Gift Act; the Governmental Conduct Act; the  
3 Procurement Code; the Lobbyist Regulation Act; the Financial  
4 Disclosure Act; the Voter Action Act; Chapter 1, Article 19  
5 NMSA 1978, including the Campaign Reporting Act; or any code of  
6 ethics adopted pursuant to those laws or Section 5 of the State  
7 Ethics Commission Act;

8           H. "government contractor" means a person who has a  
9 contract with a state agency or who has submitted a competitive  
10 sealed proposal or competitive sealed bid for a contract with a  
11 state agency;

12           I. "legislative body" means the house of  
13 representatives or the senate;

14           J. "lobbying" means attempting to influence:

15                   (1) a decision related to any matter to be  
16 considered or being considered by the legislative branch of  
17 state government or any legislative committee or to any  
18 legislative matter requiring action by the governor or awaiting  
19 action by the governor; or

20                   (2) an official action;

21           K. "lobbyist" means a person who is compensated for  
22 the specific purpose of lobbying; who is designated by an  
23 interest group or organization to represent it on a substantial  
24 or regular basis for the purpose of lobbying; or who, in the  
25 course of the person's employment, is engaged in lobbying on a

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1 substantial or regular basis. "Lobbyist" does not include:

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

4 (2) an elected or appointed officer of the  
5 state, a political subdivision of the state or an Indian  
6 nation, tribe or pueblo who is acting in the officer's official  
7 capacity;

8 (3) a state employee or an employee of a  
9 political subdivision of the state, specifically designated by  
10 an elected or appointed officer, who appears before a  
11 legislative committee or in a rulemaking proceeding only to  
12 explain the effect of legislation or a rule on that employee's  
13 agency or political subdivision; provided that the elected or  
14 appointed officer files the designation with the secretary of  
15 state and makes it available for public inspection;

16 (4) a designated member of the staff of an  
17 elected state official; provided that the elected state  
18 official files the designation with the secretary of state and  
19 makes it available for public inspection;

20 (5) a legislator or legislative staff member;

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

24 (7) a person who provides only oral or written  
25 public testimony in connection with a legislative committee or

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1 in a rulemaking proceeding and whose name and the interest on  
2 behalf of which the person testifies have been clearly and  
3 publicly identified; or

4 (8) a publisher, owner or employee of the news  
5 media while gathering or disseminating news or editorial  
6 comment to the general public in the ordinary course of  
7 business;

8 L. "official action" means a decision, action or  
9 nonaction of a state official or state agency in a rulemaking  
10 or other matter, except an adjudicatory proceeding;

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

13 N. "respondent" means a state official, state  
14 employee, government contractor or lobbyist who is the subject  
15 of a complaint filed with or by the commission;

16 O. "state agency" means any department, commission,  
17 council, board, committee, agency or institution of the  
18 executive or legislative branch of government of the state or  
19 any instrumentality of the state, including the New Mexico  
20 mortgage finance authority, the New Mexico finance authority,  
21 the New Mexico exposition center authority, the New Mexico  
22 hospital equipment loan council and the New Mexico renewable  
23 energy transmission authority;

24 P. "state employee" means an employee of a state  
25 agency; and

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1           Q. "state official" means a person elected or  
2 appointed to an office of the executive or legislative branch  
3 of state government.

4           Section 3. [NEW MATERIAL] STATE ETHICS COMMISSION  
5 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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

9                   (1) one commissioner appointed by the house of  
10 representatives democratic caucus by a majority vote of the  
11 members;

12                   (2) one commissioner appointed by the house of  
13 representatives republican caucus by a majority vote of the  
14 members;

15                   (3) one commissioner appointed by the senate  
16 democratic caucus by a majority vote of the members;

17                   (4) one commissioner appointed by the senate  
18 republican caucus by a majority vote of the members; and

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

23           B. No more than three commissioners shall be  
24 members of the same political party. The appointing  
25 authorities shall give due regard to geographic representation

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1 and to the cultural diversity of the state.

2 C. Each appointing authority shall file letters of  
3 appointment with the secretary of state.

4 D. Commissioners shall be appointed for staggered  
5 terms of four years beginning July 1, 2010. The initial  
6 commissioners shall draw lots to determine which two  
7 commissioners serve an initial term of two years, which two  
8 commissioners serve an initial term of three years and which  
9 three commissioners serve an initial term of four years;  
10 thereafter, all commissioners shall serve four-year terms.  
11 Commissioners shall serve until their successors are appointed  
12 and qualified.

13 E. A person shall not serve as a commissioner for  
14 more than two consecutive terms. A vacancy on the commission  
15 shall be filled by appointment by the original appointing  
16 authority for the remainder of the unexpired term.

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

22 G. The commission shall elect annually a  
23 chairperson, vice chairperson and other officers it deems  
24 necessary.

25 H. Four commissioners constitute a quorum for the

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1 transaction of business. No action shall be taken by the  
2 commission unless at least four members concur.

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

12 Section 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--  
13 LIMITATIONS.--

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

16 (1) be a resident of New Mexico;

17 (2) have been a member of the same political  
18 party for at least three years prior to appointment or shall  
19 not have been a member of any political party for at least  
20 three years prior to appointment; and

21 (3) not have been a state official, state  
22 employee or lobbyist for at least two years prior to  
23 appointment.

24 B. Before entering upon the duties of the office of  
25 commissioner, each commissioner shall review the State Ethics

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1 Commission Act and other laws and rules pertaining to the  
2 commission's responsibilities and to ethics and governmental  
3 conduct in New Mexico. Each commissioner shall take the oath  
4 of office as provided in Article 20, Section 1 of the  
5 constitution of New Mexico.

6 C. During a commissioner's tenure, a commissioner  
7 shall not:

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

10 (2) be a state employee, government contractor  
11 or lobbyist; or

12 (3) make a campaign contribution to or  
13 volunteer on behalf of a candidate or political committee.

14 D. A commissioner who changes political party  
15 affiliation shall resign immediately.

16 E. For a period of one calendar year following a  
17 commissioner's tenure or following the resignation or removal  
18 of a commissioner, the commissioner shall not:

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

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

25 Section 5. [NEW MATERIAL] COMMISSION--DUTIES AND

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1 POWERS.--

2 A. The commission shall:

3 (1) receive and investigate complaints  
4 alleging ethics violations against state officials, state  
5 employees, government contractors and lobbyists;

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

8 (3) develop, adopt and promulgate the  
9 procedural rules necessary for it to implement and administer  
10 the provisions of the State Ethics Commission Act;

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

14 (5) draft a proposed code of ethics for state  
15 officials and state employees and submit the proposed code to  
16 each elected state official and state agency for adoption;

17 (6) employ an executive director, who shall be  
18 an attorney; and

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

23 B. The commission may:

24 (1) initiate complaints alleging ethics  
25 violations against state officials, state employees, government

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1 contractors and lobbyists;

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

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

10 (4) compile, adopt, publish and make available  
11 to all state officials, state employees, government contractors  
12 and lobbyists an ethics guide that clearly and plainly explains  
13 the ethics requirements set forth in state law, including those  
14 that relate to conducting business with the state; and

15 (5) offer annual ethics training to state  
16 officials, state employees, government contractors, lobbyists  
17 and other interested persons.

18 Section 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--  
19 APPOINTMENT--DUTIES AND POWERS.--

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

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1 commission.

2 B. The director shall:

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

5 (2) perform investigations on behalf of the  
6 commission;

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

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

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

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

16 C. The director may:

17 (1) hire a general counsel for the commission  
18 and additional personnel as may be necessary to carry out the  
19 duties of the commission;

20 (2) enter into contracts and agreements  
21 approved by the commission; and

22 (3) administer oaths and take depositions  
23 subject to the Rules of Civil Procedure for the District  
24 Courts.

25 D. For a period of one calendar year immediately

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1 following the director's employment with the commission, the  
2 director shall not:

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

5 (2) accept employment or otherwise provide  
6 services to a respondent, unless the director accepted  
7 employment or provided services prior to the filing of a  
8 complaint against the respondent.

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

10 A. A commissioner shall recuse from and not  
11 participate in a commission proceeding in which the  
12 commissioner has a conflict of interest. The commissioner  
13 shall state the reason for the recusal.

14 B. If the propriety of a commissioner's  
15 participation in a particular matter is questioned on the  
16 grounds that the commissioner has a conflict of interest, the  
17 commission may disqualify that commissioner from participation  
18 in a commission proceeding.

19 C. A recused or disqualified commissioner shall not  
20 participate in any proceeding related to the matter from which  
21 the commissioner is recused or disqualified, and the  
22 commissioner shall be excused from that portion of a meeting at  
23 which the matter is discussed.

24 D. If three or more commissioners have recused  
25 themselves or are disqualified from participating in a

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1 proceeding, the remaining commissioners shall appoint temporary  
2 commissioners to participate in that proceeding. Appointments  
3 of temporary commissioners shall be made by the remaining  
4 commissioners in accordance with the political party  
5 affiliation requirements and the qualifications of Sections 3  
6 and 4 of the State Ethics Commission Act.

7 E. The commission shall promulgate rules for the  
8 recusal and disqualification of commissioners and for the  
9 appointment of temporary commissioners.

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

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

13 (1) be requested in writing by a state  
14 official, state employee, government contractor or lobbyist;

15 (2) identify a specific set of circumstances  
16 involving an ethics issue;

17 (3) be issued within sixty days of receipt of  
18 the request unless the commission notifies the requester of a  
19 delay in issuance and continues to notify the requester every  
20 thirty days until the advisory opinion is issued; and

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

23 B. A request for an advisory opinion shall be  
24 confidential and not subject to the provisions of the  
25 Inspection of Public Records Act.

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1 C. Unless amended or revoked, an advisory opinion  
2 shall be binding on the commission in any subsequent commission  
3 proceedings concerning a person who acted in good faith and in  
4 reasonable reliance on the advisory opinion.

5 Section 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--  
6 SUBPOENAS.--

7 A. A complaint of an alleged ethics violation  
8 committed by a state official, state employee, government  
9 contractor or lobbyist may be:

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

12 (2) initiated by the commission upon receipt  
13 of evidence deemed sufficient by the commission.

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

24 "The complainant agrees to be bound by  
25 the confidentiality rules of the State

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1 Ethics Commission and other provisions of  
2 the State Ethics Commission Act.".

3 C. The chairperson of the commission shall sign a  
4 complaint initiated by the commission, and the complaint shall  
5 set forth in detail the specific charges against the state  
6 official, state employee, government contractor or lobbyist and  
7 the factual allegations that support the charges.

8 D. The director shall promptly bring all complaints  
9 before the commission and make recommendations to the  
10 commission as to whether the conduct alleged in a complaint is  
11 within the jurisdiction of the commission and warrants  
12 investigation.

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

18 F. If the commission decides to proceed with an  
19 investigation, the director shall investigate and promptly  
20 notify the respondent that a complaint has been filed and of  
21 the specific allegations in the complaint.

22 G. A state official or state employee who is a  
23 respondent shall be entitled to representation by the risk  
24 management division of the general services department;  
25 provided, however, that if the respondent is found to have

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1 committed an ethics violation, the respondent shall reimburse  
2 the division for the respondent's equitable share of reasonable  
3 attorney fees and costs.

4 H. As part of an investigation, the director may  
5 administer oaths, interview witnesses and examine books,  
6 records, documents and other evidence reasonably related to the  
7 complaint. If the director determines that a subpoena is  
8 necessary to obtain the testimony of any person or the  
9 production of books, records, documents or other evidence, the  
10 director shall ask the commission to petition a district court  
11 to issue a subpoena under seal. With the concurrence of at  
12 least eight commissioners, the commission may petition a  
13 district court, under seal, to subpoena witnesses, compel their  
14 attendance and examine them under oath or affirmation and to  
15 require the production of any books, records, documents or  
16 other evidence that it deems relevant or material to an  
17 investigation. Any challenge to a subpoena shall be heard by  
18 the district court in a confidential proceeding.

19 Section 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME  
20 LIMITATIONS.--

21 A. If the commission has not scheduled a hearing  
22 concerning the disposition of a complaint within ninety days  
23 after the complaint is received or initiated by the commission,  
24 the director shall, as soon as practicable, report to the  
25 commission on the progress and status of the investigation.

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1 The commission may dismiss the complaint or instruct the  
2 director to continue investigating the complaint. Unless the  
3 commission dismisses the complaint, the director shall report  
4 to the commission every ninety days thereafter on the progress  
5 and status of the investigation.

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

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

13 A. The director shall provide a written report of  
14 the investigation to the commission and to the respondent and  
15 complainant. The director shall provide the respondent with  
16 reasonable written notice of the date, time and place of the  
17 commission hearing.

18 B. At the hearing, the commission has the power to  
19 administer oaths. The respondent has the right to be  
20 represented by counsel and to present evidence and testimony  
21 and examine and cross-examine witnesses. The respondent shall  
22 be afforded due process at the hearing.

23 C. After hearing and consideration of all the  
24 evidence, if the commission finds by clear and convincing  
25 evidence that the respondent's conduct constituted an ethics

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1 violation, the commission shall issue a written report that  
2 shall include findings of fact and conclusions of law. The  
3 commission shall publicly disclose the written report and  
4 provide it, along with all evidence collected during its  
5 investigation, to the respondent, the attorney general and the:

6 (1) appropriate legislative body if the  
7 respondent is a member of the legislature;

8 (2) house of representatives if the respondent  
9 is a state official elected to an office of the executive  
10 branch;

11 (3) respondent's appointing authority if the  
12 respondent is an appointed state official;

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

15 (5) state agency with which the respondent has  
16 a government contract if the respondent is a government  
17 contractor; or

18 (6) respondent's employer and clients and the  
19 secretary of state if the respondent is a lobbyist.

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

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1 to this subsection shall not be public except upon the request  
2 of the respondent.

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

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

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

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

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

18 C. disclosure is ordered by a court; or

19 D. the respondent files with the commission a  
20 written waiver of confidentiality.

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

22 REFERRAL.--If the commission finds at any time that the  
23 respondent's conduct may amount to a criminal violation, the  
24 commission shall immediately refer the matter to the attorney  
25 general or an appropriate district attorney. The commission

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1 shall provide the attorney general or district attorney with  
2 all evidence collected during its investigation that may be  
3 used in a criminal proceeding. Nothing in this section  
4 prevents the commission from taking any action otherwise  
5 authorized by the State Ethics Commission Act or deciding to  
6 hold a matter in abeyance pending resolution of any criminal  
7 charges.

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

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

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

25 C. The commission shall not investigate allegations

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1 of misconduct involving campaign advertisements.

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

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

6 (1) files a complaint with the commission  
7 alleging an ethics violation against a state official, state  
8 employee, government contractor or lobbyist; or

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

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

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

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

24 B. In addition to a penalty imposed pursuant to  
25 Subsection A of this section, a court may impose a civil

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1 penalty not to exceed twenty-five thousand dollars (\$25,000)  
2 for each violation of Section 12 of the State Ethics Commission  
3 Act.

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

6 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN  
7 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

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

21 B. All meetings of a quorum of members of any  
22 board, commission, administrative adjudicatory body or other  
23 policymaking body of any state agency, any agency or authority  
24 of any county, municipality, district or [any] political  
25 subdivision, held for the purpose of formulating public policy,

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

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

22 D. Any meetings at which the discussion or adoption  
23 of any proposed resolution, rule, regulation or formal action  
24 occurs and at which a majority or quorum of the body is in  
25 attendance, and any closed meetings, shall be held only after

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

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

18 F. Meeting notices shall include an agenda  
19 containing a list of specific items of business to be discussed  
20 or transacted at the meeting or information on how the public  
21 may obtain a copy of such an agenda. Except in the case of an  
22 emergency, the agenda shall be available to the public at least  
23 twenty-four hours prior to the meeting. Except for emergency  
24 matters, a public body shall take action only on items  
25 appearing on the agenda. For purposes of this subsection, ~~[an]~~

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1 "emergency" refers to unforeseen circumstances that, if not  
2 addressed immediately by the public body, will likely result in  
3 injury or damage to persons or property or substantial  
4 financial loss to the public body.

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

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

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

23 (2) limited personnel matters; provided that  
24 for purposes of the Open Meetings Act, "limited personnel  
25 matters" means the discussion of hiring, promotion, demotion,

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

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

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

23 (5) meetings for the discussion of bargaining  
24 strategy preliminary to collective bargaining negotiations  
25 between the policymaking body and a bargaining unit

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1 representing the employees of that policymaking body and  
2 collective bargaining sessions at which the policymaking body  
3 and the representatives of the collective bargaining unit are  
4 present;

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

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

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

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

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

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1                   (11) meetings of the state ethics commission  
2 relating to complaints or investigations of alleged ethics  
3 violations.

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

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

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

24                   J. Following completion of any closed meeting, the  
25 minutes of the open meeting that was closed or the minutes of

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1 the next open meeting if the closed meeting was separately  
2 scheduled shall state that the matters discussed in the closed  
3 meeting were limited only to those specified in the motion for  
4 closure or in the notice of the separate closed meeting. This  
5 statement shall be approved by the public body under Subsection  
6 G of this section as part of the minutes."

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

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

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

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

24 D. any changes needed to existing law.

25 Section 19. APPROPRIATION.--Five hundred thousand

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1 dollars (\$500,000) is appropriated from the general fund to the  
2 state ethics commission for expenditure in fiscal years 2010  
3 and 2011 to carry out the provisions of the State Ethics  
4 Commission Act. Any unexpended or unencumbered balance  
5 remaining at the end of fiscal year 2011 shall revert to the  
6 general fund.

7 Section 20. SEVERABILITY.--If any part or application of  
8 this act is held invalid, the remainder or its application to  
9 other situations or persons shall not be affected.

10 Section 21. APPLICABILITY.--The provisions of the State  
11 Ethics Commission Act apply to conduct that occurs on or after  
12 July 1, 2010.

13 Section 22. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Sections  
15 1 through 7 and 12 through 21 of this act is July 1, 2010.

16 B. The effective date of the provisions of Sections  
17 8 through 11 of this act is January 1, 2011.