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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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.

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
Commission Act".

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

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

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

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

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

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

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

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

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

3 I. "lobbying" means attempting to influence:

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

9 (2) an official action;

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

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

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

22 (3) a state employee or an employee of a
23 political subdivision of the state, specifically designated by
24 an elected or appointed officer, who appears before a
25 legislative committee or in a rulemaking proceeding only to

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

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

9 (5) a legislator or legislative staff member;

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

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

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

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

25 L. "political party" means a political party that

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1 has complied with the provisions of Section 1-7-2 NMSA 1978;

2 M. "respondent" means a state official, state
3 employee, government contractor or lobbyist who is the subject
4 of a complaint filed with or by the commission;

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

13 O. "state employee" means an employee of a state
14 agency; and

15 P. "state official" means a person elected to an
16 office of the executive or legislative branch of the state or a
17 person appointed to a state agency.

18 Section 3. [NEW MATERIAL] STATE ETHICS COMMISSION
19 CREATED--MEMBERSHIP--TERMS--REMOVAL.--

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

23 (1) two commissioners appointed by the house
24 of representatives democratic caucus by a majority vote of the
25 members;

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1 (2) two commissioners appointed by the house
2 of representatives republican caucus by a majority vote of the
3 members;

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

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

8 (5) three commissioners appointed by the
9 governor, one of whom shall be a democrat and one a republican,
10 and a third shall be a registered voter who is neither a
11 democrat nor a republican.

12 B. The appointing authorities shall give due regard
13 to geographic representation and to the cultural diversity of
14 the state.

15 C. Each appointing authority shall file letters of
16 appointment with the secretary of state.

17 D. Commissioners shall be appointed for staggered
18 terms of four years beginning July 1, 2010. The initial
19 commissioners shall draw lots to determine which three
20 commissioners serve an initial term of two years, which four
21 commissioners serve an initial term of three years and which
22 four commissioners serve an initial term of four years;
23 thereafter, all commissioners shall serve four-year terms.
24 Members shall serve until their successors are appointed and
25 qualified.

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1 E. A person shall not serve as a commissioner for
2 more than two consecutive terms. A vacancy on the commission
3 shall be filled by appointment by the original appointing
4 authority for the remainder of the unexpired term.

5 F. The commission shall meet as necessary to carry
6 out its duties pursuant to the State Ethics Commission Act.
7 Commissioners are entitled to receive per diem and mileage as
8 provided in the Per Diem and Mileage Act and shall receive no
9 other compensation, perquisite or allowance.

10 G. The commission shall elect annually a
11 chairperson, vice chairperson and other officers it deems
12 necessary.

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

16 I. A commissioner may be removed only for
17 incompetence, neglect of duty or malfeasance in office. A
18 proceeding for the removal of a commissioner may be commenced
19 by the commission or by the attorney general upon the request
20 of the commission. The New Mexico supreme court has exclusive
21 jurisdiction over proceedings to remove commissioners, and its
22 decision shall be final. A commissioner shall be given notice
23 of hearing and an opportunity to be heard before the
24 commissioner is removed.

25 Section 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--
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1 LIMITATIONS.--

2 A. To qualify for appointment to the commission, a
3 person shall:

- 4 (1) be a resident of New Mexico; and
5 (2) have been a member of the same political
6 party for at least three years prior to appointment or shall
7 not have been a member of any political party for at least
8 three years prior to appointment.

9 B. Before entering upon the duties of the office of
10 commissioner, each commissioner shall review the State Ethics
11 Commission Act and other laws and rules pertaining to the
12 commission's responsibilities and to ethics and governmental
13 conduct in New Mexico. Each commissioner shall take the oath
14 of office as provided in Article 20, Section 1 of the
15 constitution of New Mexico.

16 C. During a commissioner's tenure, a commissioner
17 shall not:

- 18 (1) seek or hold an elective public office, an
19 appointed public position or an office in a political party; or
20 (2) be a state employee, government contractor
21 or lobbyist.

22 D. A commissioner who changes political party
23 affiliation shall resign immediately.

24 E. For a period of one calendar year following a
25 commissioner's tenure or following the resignation or removal

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1 of a commissioner, the commissioner shall not:

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

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

8 Section 5. [NEW MATERIAL] COMMISSION--DUTIES AND
9 POWERS.--

10 A. The commission shall:

11 (1) receive and investigate complaints
12 alleging ethics violations against state officials, state
13 employees, government contractors and lobbyists;

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

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

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

22 (5) draft a proposed code of ethics for state
23 officials and state employees and submit the proposed code to
24 each elected state official and state agency for adoption;

25 (6) employ an executive director, who shall be

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1 an attorney; and

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

6 B. The commission may:

7 (1) initiate complaints alleging ethics
8 violations against state officials, state employees, government
9 contractors and lobbyists;

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

14 (3) issue advisory opinions to state
15 officials, state employees, government contractors and
16 lobbyists in accordance with the provisions of the State Ethics
17 Commission Act;

18 (4) compile, adopt, publish and make available
19 to all state officials, state employees, government contractors
20 and lobbyists an ethics guide that clearly and plainly explains
21 the ethics requirements set forth in state law, including those
22 that relate to conducting business with the state; and

23 (5) offer annual ethics training to state
24 officials, state employees, government contractors, lobbyists
25 and other interested persons.

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1 Section 6. [NEW MATERIAL] EXECUTIVE DIRECTOR--

2 APPOINTMENT--DUTIES AND POWERS.--

3 A. The commission shall appoint an executive
4 director who shall be knowledgeable about state ethics laws and
5 who shall be appointed without reference to party affiliation
6 and solely on the grounds of fitness to perform the duties of
7 the office. The director shall hold office from the date of
8 appointment until such time as the director is removed by the
9 commission.

10 B. The director shall:

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

13 (2) perform investigations on behalf of the
14 commission;

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

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

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

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

24 C. The director may:

25 (1) hire a general counsel for the commission

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1 and additional personnel as may be necessary to carry out the
2 duties of the commission;

3 (2) enter into contracts and agreements
4 approved by the commission; and

5 (3) administer oaths and take depositions
6 subject to the Rules of Civil Procedure for the District
7 Courts.

8 D. For a period of one calendar year immediately
9 following the director's employment with the commission, the
10 director shall not:

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

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

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

18 A. A commissioner shall recuse from and not
19 participate in a commission proceeding in which the
20 commissioner has a conflict of interest. The commissioner
21 shall state the reason for the recusal.

22 B. If the propriety of a commissioner's
23 participation in a particular matter is questioned on the
24 grounds that the commissioner has a conflict of interest, the
25 commission may disqualify that commissioner from participation

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1 in a commission proceeding.

2 C. A recused or disqualified commissioner shall not
3 participate in any proceeding related to the matter from which
4 the commissioner is recused or disqualified, and the
5 commissioner shall be excused from that portion of a meeting at
6 which the matter is discussed.

7 D. If four or more commissioners have recused
8 themselves or are disqualified from participating in a
9 proceeding, the remaining commissioners shall appoint temporary
10 commissioners to participate in that proceeding. Appointments
11 of temporary commissioners shall be made by the remaining
12 commissioners in accordance with the political party
13 affiliation requirements and the qualifications of Sections 3
14 and 4 of the State Ethics Commission Act.

15 E. The commission shall promulgate rules for the
16 recusal and disqualification of members and for the appointment
17 of temporary commissioners.

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

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

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

23 (2) identify a specific set of circumstances
24 involving an ethics issue;

25 (3) be issued within sixty days of receipt of

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1 the request unless the commission notifies the requester of a
2 delay in issuance and continues to notify the requester every
3 thirty days until the advisory opinion is issued; and

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

6 B. A request for an advisory opinion shall be
7 confidential and not subject to the provisions of the
8 Inspection of Public Records Act.

9 C. Unless amended or revoked, an advisory opinion
10 shall be binding on the commission in any subsequent commission
11 proceedings concerning a person who acted in good faith and in
12 reasonable reliance on the advisory opinion.

13 Section 9. [NEW MATERIAL] COMPLAINTS--INVESTIGATIONS--
14 SUBPOENAS.--

15 A. A complaint of an alleged ethics violation
16 committed by a state official, state employee, government
17 contractor or lobbyist may be:

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

20 (2) initiated by the commission upon receipt
21 of evidence deemed sufficient by the commission.

22 B. The complainant shall set forth in detail the
23 specific charges against the state official, state employee,
24 government contractor or lobbyist and the factual allegations
25 that support the charges and shall sign the complaint under

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1 penalty of false statement. The complainant shall submit any
2 evidence the complainant has that supports the complaint.
3 Evidence may include documents, records and names of witnesses.
4 The commission shall prescribe the forms on which complaints
5 are to be filed. The complaint form shall include a statement
6 above the signature line that provides the following:

7 "The complainant agrees to be bound by
8 the confidentiality rules of the State
9 Ethics Commission and other provisions of
10 the State Ethics Commission Act."

11 C. The chairperson of the commission shall sign a
12 complaint initiated by the commission, and the complaint shall
13 set forth in detail the specific charges against the state
14 official, state employee, government contractor or lobbyist and
15 the factual allegations that support the charges.

16 D. The director shall promptly bring all complaints
17 before the commission and make recommendations to the
18 commission as to whether the conduct alleged in a complaint is
19 within the jurisdiction of the commission and warrants
20 investigation.

21 E. The commission shall promptly dismiss complaints
22 that are frivolous, unfounded or outside the jurisdiction of
23 the commission. If the commission dismisses a complaint
24 pursuant to this subsection, the director shall promptly notify
25 the complainant and the respondent.

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1 F. If the commission decides to proceed with an
2 investigation, the director shall investigate and promptly
3 notify the respondent that a complaint has been filed and of
4 the specific allegations in the complaint.

5 G. A state official or state employee who is a
6 respondent shall be entitled to representation by the risk
7 management division of the general services department;
8 provided, however, that if the respondent is found to have
9 committed an ethics violation, the respondent shall reimburse
10 the division for the respondent's equitable share of reasonable
11 attorney fees and costs.

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

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1 the district court in a confidential proceeding.

2 Section 10. [NEW MATERIAL] STATUS OF INVESTIGATION--TIME
3 LIMITATIONS.--

4 A. If the commission has not scheduled a hearing
5 concerning the disposition of a complaint within ninety days
6 after the complaint is received or initiated by the commission,
7 the director shall, as soon as practicable, report to the
8 commission on the progress and status of the investigation.
9 The commission may dismiss the complaint or instruct the
10 director to continue investigating the complaint. Unless the
11 commission dismisses the complaint, the director shall report
12 to the commission every ninety days thereafter on the progress
13 and status of the investigation.

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

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

21 A. The director shall provide a written report of
22 the investigation to the commission and to the respondent and
23 complainant. The director shall provide the respondent with
24 reasonable written notice of the date, time and place of the
25 commission hearing.

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

6 C. After hearing and consideration of all the
7 evidence, if the commission finds by clear and convincing
8 evidence that the respondent's conduct constituted an ethics
9 violation, the commission shall issue a written report that
10 shall include findings of fact and conclusions of law. The
11 commission shall publicly disclose the written report and
12 provide it, along with all evidence collected during its
13 investigation, to the respondent, the attorney general and the:

14 (1) appropriate legislative body if the
15 respondent is a member of the legislature;

16 (2) house of representatives if the respondent
17 is a state official elected to an office of the executive
18 branch;

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

21 (4) appropriate state agency if the respondent
22 is a state employee;

23 (5) state agency with which the respondent has
24 a government contract if the respondent is a government
25 contractor; or

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

3 D. If, after consideration of all the evidence, the
4 commission does not find by clear and convincing evidence that
5 the respondent's conduct constituted an ethics violation, the
6 commission shall dismiss the complaint and provide notice of
7 the dismissal to the respondent and complainant no later than
8 five days after the finding is made. A notice issued pursuant
9 to this subsection shall not be public except upon the request
10 of the respondent.

11 E. Notwithstanding the provisions of the Open
12 Meetings Act, commission hearings held pursuant to this section
13 are closed to the public. The commission shall promulgate
14 rules establishing procedures for hearings.

15 Section 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--
16 All complaints, reports, files, records and communications
17 collected or generated by the commission or its director that
18 pertain to alleged ethics violations are confidential and not
19 subject to the provisions of the Inspection of Public Records
20 Act. Such complaints, reports, files, records or
21 communications shall not be disclosed unless:

22 A. disclosure is required pursuant to the
23 provisions of the State Ethics Commission Act;

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

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1 C. disclosure is ordered by a court; or

2 D. the respondent files with the commission a
3 written waiver of confidentiality.

4 Section 13. [NEW MATERIAL] CRIMINAL VIOLATIONS--
5 REFERRAL.--If the commission finds at any time that the
6 respondent's conduct may amount to a criminal violation, the
7 commission shall immediately refer the matter to the attorney
8 general or an appropriate district attorney. The commission
9 shall provide the attorney general or district attorney with
10 all evidence collected during its investigation that may be
11 used in a criminal proceeding. Nothing in this section
12 prevents the commission from taking any action otherwise
13 authorized by the State Ethics Commission Act or deciding to
14 hold a matter in abeyance pending resolution of any criminal
15 charges.

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

17 A. The commission shall not accept or review
18 complaints concerning conduct that occurred more than three
19 years prior to the day the complaint is received by the
20 commission.

21 B. The commission shall not take action on a
22 complaint filed or initiated against a candidate for a public
23 office covered by the State Ethics Commission Act on or after
24 the filing date for a primary election through election day of
25 the general election, except that the commission shall dismiss

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1 complaints that are frivolous, unfounded or outside the
2 jurisdiction of the commission. A complainant shall be
3 notified of this provision and shall be notified that the
4 complainant may refer any allegations of criminal conduct to
5 the attorney general or appropriate district attorney. The
6 respondent shall be notified that a complaint has been filed
7 and of the specific allegations in the complaint.

8 C. The commission shall not investigate allegations
9 of misconduct involving campaign advertisements.

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

11 A. A person shall not take or threaten to take any
12 retaliatory, disciplinary or other adverse action against
13 another person who in good faith:

14 (1) files a complaint with the commission
15 alleging an ethics violation against a state official, state
16 employee, government contractor or lobbyist; or

17 (2) provides testimony, records, documents or
18 other information to the commission during an investigation or
19 at a hearing conducted pursuant to the State Ethics Commission
20 Act.

21 B. Nothing in the State Ethics Commission Act
22 precludes civil actions or criminal sanctions for libel,
23 slander or other civil or criminal claims against a person who
24 files a false claim under that act.

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

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

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

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

14 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
15 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

16 A. In recognition of the fact that a representative
17 government is dependent upon an informed electorate, it is
18 declared to be public policy of this state that all persons are
19 entitled to the greatest possible information regarding the
20 affairs of government and the official acts of those officers
21 and employees who represent them. The formation of public
22 policy or the conduct of business by vote shall not be
23 conducted in closed meeting. All meetings of any public body
24 except the legislature and the courts shall be public meetings,
25 and all persons so desiring shall be permitted to attend and

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1 listen to the deliberations and proceedings. Reasonable
2 efforts shall be made to accommodate the use of audio and video
3 recording devices.

4 B. All meetings of a quorum of members of any
5 board, commission, administrative adjudicatory body or other
6 policymaking body of any state agency, any agency or authority
7 of any county, municipality, district or ~~[any]~~ political
8 subdivision, held for the purpose of formulating public policy,
9 including the development of personnel policy, rules,
10 regulations or ordinances, discussing public business or ~~[for~~
11 ~~the purpose of]~~ taking any action within the authority of or
12 the delegated authority of any board, commission or other
13 policymaking body are declared to be public meetings open to
14 the public at all times, except as otherwise provided in the
15 constitution of New Mexico or the Open Meetings Act. No public
16 meeting once convened that is otherwise required to be open
17 pursuant to the Open Meetings Act shall be closed or dissolved
18 into small groups or committees for the purpose of permitting
19 the closing of the meeting.

20 C. If otherwise allowed by law or rule of the
21 public body, a member of a public body may participate in a
22 meeting of the public body by means of a conference telephone
23 or other similar communications equipment when it is otherwise
24 difficult or impossible for the member to attend the meeting in
25 person, provided that each member participating by conference

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1 telephone can be identified when speaking, all participants are
2 able to hear each other at the same time and members of the
3 public attending the meeting are able to hear any member of the
4 public body who speaks during the meeting.

5 D. Any meetings at which the discussion or adoption
6 of any proposed resolution, rule, regulation or formal action
7 occurs and at which a majority or quorum of the body is in
8 attendance, and any closed meetings, shall be held only after
9 reasonable notice to the public. The affected body shall
10 determine at least annually in a public meeting what notice for
11 a public meeting is reasonable when applied to that body. That
12 notice shall include broadcast stations licensed by the federal
13 communications commission and newspapers of general circulation
14 that have provided a written request for such notice.

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

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1 F. Meeting notices shall include an agenda
2 containing a list of specific items of business to be discussed
3 or transacted at the meeting or information on how the public
4 may obtain a copy of such an agenda. Except in the case of an
5 emergency, the agenda shall be available to the public at least
6 twenty-four hours prior to the meeting. Except for emergency
7 matters, a public body shall take action only on items
8 appearing on the agenda. For purposes of this subsection, ~~[an]~~
9 "emergency" refers to unforeseen circumstances that, if not
10 addressed immediately by the public body, will likely result in
11 injury or damage to persons or property or substantial
12 financial loss to the public body.

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

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

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

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

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

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1 offered or rebutted and any final action taken as a result of
2 the proceeding shall occur in an open meeting;

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

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

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

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

25 (8) meetings for the discussion of the

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1 purchase, acquisition or disposal of real property or water
2 rights by the public body;

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

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

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

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

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

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

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

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

15 Section 18. TEMPORARY PROVISION--REPORT ON EXTENSION OF
16 STATE ETHICS COMMISSION JURISDICTION TO LOCAL GOVERNMENTS.--By
17 January 1, 2013, the state ethics commission shall submit a
18 report to the legislature and the governor regarding the
19 extension of commission jurisdiction to elected and appointed
20 officials and employees of political subdivisions of the state.
21 The report shall include and make recommendations on:

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

25 B. the estimated number of additional employees and

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

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

7 D. any changes needed to existing law.

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

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

14 Section 21. EFFECTIVE DATE.--

15 A. The effective date of the provisions of Sections
16 1 through 7 and 12 through 20 of this act is July 1, 2010.

17 B. The effective date of the provisions of Sections
18 8 through 11 of this act is January 1, 2011.