

NEW MEXICO STATE ETHICS COMMISSION

Commission Meeting Minutes of October 30, 2019, 8:15am-11:30am
Morgan Hall, State Land Office

1. Call to order and roll call: The meeting was called to order by Commissioner Carruthers. The roll was called. The following Commissioners were present:

Stuart Bluestone, Commissioner
Garrey Carruthers, Commissioner
Dr. Judy Villanueva, Commissioner
Frances Williams, Commissioner
Jeffrey Baker, Commissioner (arrived after initial roll call)
Ronald Solimon, Commissioner (arrived after initial roll call)

2. Approval of Agenda: Commissioner Bluestone moved to approve the agenda, Commissioner Williams seconded. The motion was approved unanimously.

3. Approval of October 4, 2019 Commission Meeting Minutes: Commissioner Bluestone moved to approve the minutes, Commissioner Williams seconded. The motion was passed unanimously.

4. Presentation on the office, network security, and voicemail security: Director Farris introduced Mr. Joseph Baros, Department of Finance and Administration Chief Information Officer. Mr. Baros presented on the establishment and security of the network and servers that the Ethics Commission will use. Mr. Baros explained that the Department of Information Technology (DoIT) will install the Commission's network; that the Commission's internet will run through the UNM network before being diverted to DoIT's network via a switch in the server closet; and DoIT will maintain and provide for the security of the Commission's information on DoIT servers. Mr. Baros explained that there is no fail safe guarantee from hacking attempts. Mr. Baros also explained that external hard drives could be used to increase information security and that DoIT might offer additional security services involving encryption, if the Commission desires. Mr. Baros also explained that DoIT will be responsible for the installation, maintenance, and security of the Commission's telephone and voicemail (VoIP) lines.

5. Presentation and approval of the Commission's FY20 supplemental budget request: Mr. Farris reviewed the FY20 supplemental budget request for \$385,000 that was submitted to the Department of Finance and Administration State Budget Division Analyst, Diego Jimenez, and the Legislative Finance Committee staff member, Alison Nichols. Mr. Farris explained that the FY20 supplemental budget request was prepared in collaboration with Department of Finance and Administration Administrative Services Division staff and was based on an extrapolation of the FY21 budget request for the final three months in FY20. Mr. Farris explained that the supplemental budget request would be for funds for two additional personnel members and contracts for hearing officers, investigators, and other professional services, such as website and case-management-web-application services. The Commission unanimously approved the FY20 supplemental budget request for \$385,000.

6. Secretary of State's (SOS) Presentation: Secretary Maggie Toulouse Oliver, accompanied by her lead staff members, introduced themselves to the Commission. The SOS delegation included Deputy Secretary Sharon Pino, Elections Director Mandy Vigil, Dillon Lang, and Tonya Herring.

a. The SOS's presentation began by listing the various acts upon which the SOS and SEC have joint jurisdiction. This included the Campaign Reporting Act (CRA), the Lobbyist Regulation Act (LRA), the Voter Action Act (VAA) and the Financial Disclosure Act (FDA). Secretary Toulouse Oliver explained that the Board of Elections is responsible for the administration of those statutes and has a staff of eleven members. Dillon Lang was the primary presenter for the SOS.¹

b. Mr. Lang first spoke to the CRA, providing an outline of the Act and the process for addressing complaints and investigations. Commissioner Bluestone said he was concerned that all the complaints under the CRA may be referred by the SOS directly to the SEC. Mr. Farris said that, ideally, only those "external" complaints that the SOS deems in need of SEC investigation should be referred. Mr. Farris further stated that there are currently 703 candidates for election, approximately 22,000 state workers and approximately 32,000 contractors who are under the jurisdiction of the SEC. Secretary Toulouse Oliver noted that one of the biggest challenges related to political action committees is maintaining contact with the committees. Mr. Lang and Ms. Vigil explained that the SOS tries to keep the contact information updated, but often times their outreach is into a void. Commissioner Bluestone asked if the percentage of political opposition complaints is fairly high. Mr. Lang said it was. Commissioner Bluestone asked how information is provided to the public. Mr. Lang responded that the online public record is the focus.

c. Mr. Lang proceeded to discuss the LRA. He said it was similar in process to the CRA. One shortcoming is that there is no distinction between compensated and uncompensated lobbyists, and that that information is not captured. He said the SOS is working on a new system that will differentiate between the two groups. Mr. Lang gave a short presentation on the VAA, noting that it is a sparsely worded statute. He then moved to the FDA. With respect to the FDA, Mr. Farris said it was important to note that the SEC had the authority to initiate civil litigation. Commissioner Carruthers said that the lack of financial disclosure filing requirements for the SEC appointees is an issue. Commissioner Williams said that a discussion needs to take place in the future, suggesting a requirement that SEC appointees provide disclosure statements.

d. Commissioner Williams asked about mandatory harassment training for elected officials. Secretary Toulouse Oliver replied that the Legislative Council Service provides mandatory training to legislative staff and legislators. Commissioner Villanueva asked the Secretary if she could provide areas she thought most in need of work between the two offices. Deputy Secretary of State Pino responded, saying that one major difference is that the SOS makes all complaints public immediately upon receiving them, while the SEC has confidentiality

¹A copy of the SOS's presentation is appended hereto.

requirements. Mr. Farris said that this might create a difficult circumstance as the SOS will have the initial review of the complaint and thus it will be public prior to being referred to the SEC.

7. Public Comment: No member of the public in attendance had a comment.
8. The meeting was adjourned at 11:30 a.m.



SOS Administration and Enforcement of Election Statutes

October 30, 2019

New Mexico Office of the Secretary of State

Agenda and Summary Layout

1. SOS current administration and enforcement of:
 - a. Campaign Reporting Act
 - b. Lobbyist Reporting Act
 - c. Voter Action Act
 - d. Financial Disclosure Act
2. SOS education and outreach practices for the Acts
3. Questions

1-19-34.8. State Ethics Commission

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act; and

(2) the state ethics commission **shall share jurisdiction to investigate and adjudicate complaints**, or any aspect of a complaint, with the secretary of state as formalized through an agreement. *The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the agreement.*

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act.

Shared Jurisdiction Between SOS and SEC

- Campaign Reporting Act, NMSA 1978, §§ 1-19-1 through 1-19-37;
- Lobbyist Reporting Act, NMSA 1978, §§ 2-11-1 through 2-11-9;
- Voter Action Act, NMSA 1978, §§ 1-19A-1 through 1-19A-17; and
- Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 through 10-16A-8.



Campaign Practices Act

Campaign Finance Updates – SB 3 (35 pages)

- Replaces contribution limits for all candidates and PACs to **\$5,000** limit for all candidates in primary and general elections, except for gubernatorial candidates and Legislative Caucus Committees. NMSA 1978, § 1-19-34.7(A).
 - Limits for contributions to gubernatorial candidates shall be **twice the limit** for other candidates. NMSA 1978, § 1-19-34.7(B).
- **Exempts** from contribution limits contributions to political committees that only make independent expenditures and contributions to political committees that are deposited in a segregated bank account that may only be used for independent expenditures. NMSA 1978, § 1-19-34.7(I).
- Must include the *occupation*, name and type of business, as applicable, of any individual or entity making contributions of two hundred dollars (**\$200**) or more in the aggregate per election. Was previously \$500 threshold.

Legislative Caucus Committees – SB 3

Added a definition of “legislative caucus committee” and includes a legislative caucus committee in the definition of “political committee”

- The registered Caucus Committees are: New Mexico Senate Democrats, New Mexico House Republican Campaign Committee, the Brian Egolf Speaker Fund, and PAC-22
- Limits a political party caucus to one legislative caucus committee in each chamber of the legislature
- Caucus Committee PACs can raise 5 times the individual limits (\$25,000)

“Prohibited Period” 407 update

It is unlawful during the prohibited period for any agent on behalf of, *a candidate for, or a governor, lieutenant governor, state legislator, the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor* to knowingly solicit a contribution governed by the Campaign Reporting Act.

- For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature and ending on adjournment of the regular or special session.

SOS Challenges In Enforcing the CRA

- Only have reliable procedure to enforce internal compliance issues
- Limited in authority and resources to conduct investigations and Arbitrations for external complaints
 - Must take report at face value
 - Must make determinations without the power to compel relevant documents
- Current electronic filing system does not allow for cross-referencing, or other auditing functions for SOS to easily administer.
- No consequential remedy against PACs who have been found in violation.
- No effective method to collect outstanding fines or arbitration awards

PLEASE SELECT ONE:

New Registration

Information Update

Date: _____

A. COMMITTEE NAME: _____

For Acronyms (spell out full committee name): _____

Mailing Address (P.O. Box or street address): _____

City: _____ State: _____ Zip: _____

Telephone 1: _____ Telephone 2: _____ Email Address: _____

Statement of Purpose: (Provide specific purpose for which the Political Committee was organized) _____

B. TYPE OF COMMITTEE (please select one):

Contribution or Coordination

Independent Expenditure

Legislative Caucus Committee

Mixed (Independent & Contribution/Coordination)

Other (Please explain below.)

C. SPONSORING ORGANIZATION(S): (if any)

D. ASSOCIATED ORGANIZATION(S): (if any)

E. TREASURER: (A committee must appoint and maintain a treasurer.)

Full Name of Committee Treasurer: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone 1: _____ Telephone 2: _____ EmailAddress: _____

PAC Registration Form

D. BANK: (Full name of Bank and/or financial institution.)

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

CERTIFICATION

I hereby swear or affirm under penalty of law that all the information on this form is true, correct and complete to the best of my knowledge.

Signature of Treasurer or appointed officer

Subscribed and sworn to before me this _____ day of _____, 20__ by _____

(Notary Public)

My commission expires: _____

Administering the CRA – Who Reports

- Political Committees, Political Parties, Legislative Caucus Committees:
 - It is unlawful for a political committee to receive or make any contribution or expenditure for a political purpose without being registered with SOS. NMSA 1978, § 1-19-26.1(A).
- Candidates or Campaign Committees:
 - Who have filed a declaration of candidacy for a covered office; or
 - Has received contributions or made expenditures of more than (\$1,000)
 - (Nonstatewide office)
 - Has received contributions or made expenditures of more than (\$3,000)
 - (Statewide office)
- All reporting individuals shall file with the secretary of state reports of expenditures and contributions and statements of no activity when required by the Campaign Reporting Act in an electronic format prescribed by the secretary of state.

New Electronic Filing System April 2020

- SOS to unveil new Campaign Finance Information System
- Easier to file or amend Campaign Reports
- Easier to track deadlines and noncompliant filers
 - Given a list of flagged individuals or PACs with questionable reports
 - Cross-referencing between all reporting entities
- Online filing and registration
- Easier to attain voluntary compliance
- Easier for members of the public to find reports or financial disclosures
 - Analyze the data
- One system to file all forms and information for the covered Acts

Campaign Finance Reporting Filing Dates

NMSA 1978, § 1-19-29

- Non-election year Biannual campaign report due:
 - Second Monday in April and October a report of all expenditures
- Election year (Mandatory Reports)
 - no later than the second Monday in April (April 13)
 - no later than the second Monday in May (May 11)
 - no later than the second Monday in September (September 14)
 - no later than the second Monday in October (October 13)
 - no later than the Thursday before a primary or general election (x2)
 - no later than the thirtieth day after a primary election
 - no later than January 7 after a general election
- Election Year – after Tuesday before an election (24 hour Supplemental Report)
 - Non-statewide of over (\$1,000)
 - Statewide of over (\$3,000)

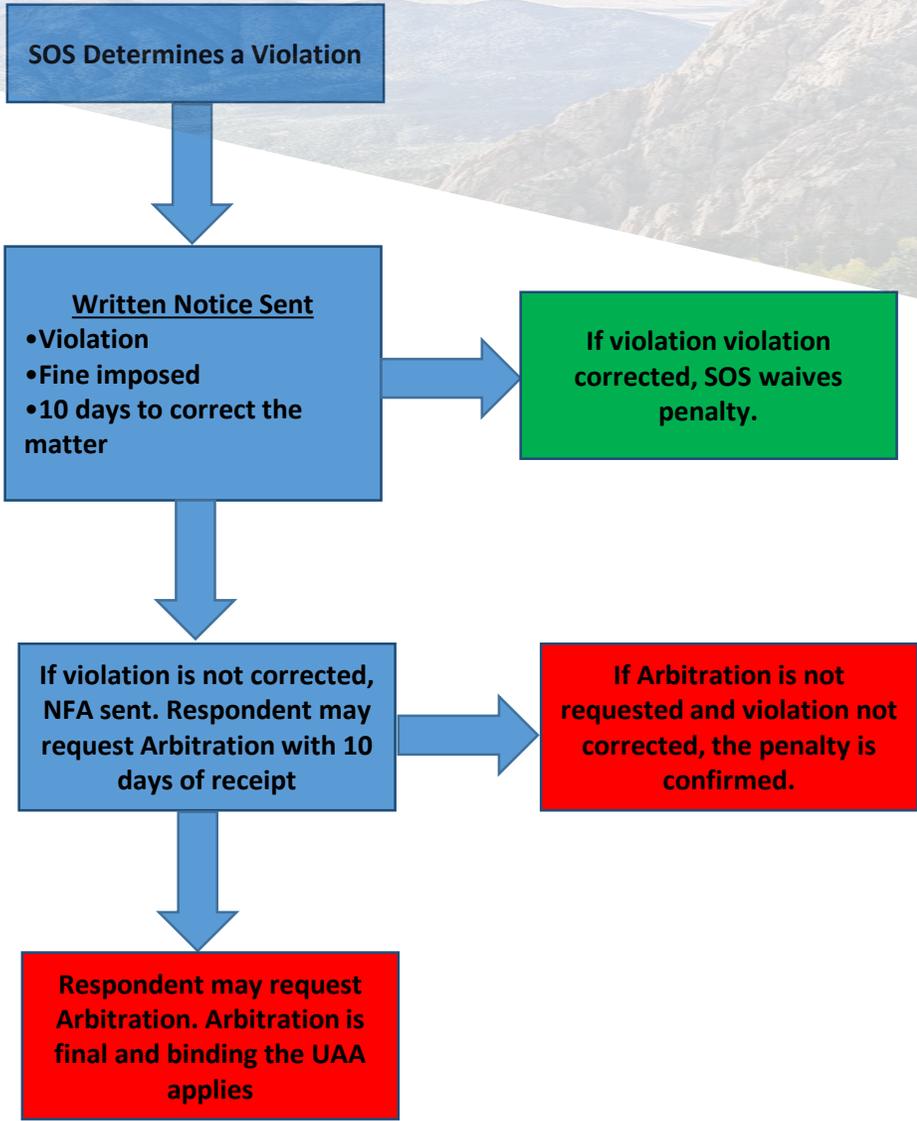
Statutory Complaint Procedure

NMSA 1978, Section 1-19-34.4

- The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act.
- If the secretary of state determines that a provision of that act has been violated, the SOS provides written notice and informs the reporting individual that he has *ten working days* to correct the matter and to provide *a written explanation*, under penalty of perjury, stating any reason why the violation occurred.
- If a timely explanation is filed the secretary of state may by a written notice of final action *partially or fully waive any fine* imposed for any late, incomplete or false report or statement of exception.
- If no correction made or waiver granted, a written notice of final action shall be sent by certified mail.

The Arbitration Process

- The Arbitration is conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state.
 - Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act may serve as an arbitrator.
- The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose.
 - The arbitrator shall state the reasons for his decision in a written document.
 - The decision shall be final and binding.
 - The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided, the procedures for the arbitration shall be governed by the Uniform Arbitration Act.
 - No arbitrator shall be subject to liability for actions taken pursuant to this section.



Penalties for Candidates

- Any candidate who fails or refuses to file a report of expenditures and or to pay a penalty imposed by the secretary of state shall not :

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

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

(3) shall not be permitted to *file a declaration of candidacy or nominating petition for any future election* until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

- * No equivalent “stick” if PAC is in violation of CRA or assessed a fine

Civil Penalties of CRA – § 1-19-34.6

- If the SOS reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

Criminal Penalties of CRA – § 1-19-36

- Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both.
- May be enforced by the Attorney General or the District Attorney

Internal Compliance Violations

Late or Missing Reports

- Two types of internal compliance violations:
 - Late/unfiled campaign finance reports – do not refer to SEC
 - False or incomplete information uncovered in SOS Audit – refer discrepancies
- If a Campaign Finance Report contains false or incomplete information or is filed after any deadline imposed by the CRA, the responsible reporting individual shall be liable for and shall pay to the SOS fifty dollars (\$50.00) per working day for each day until the report is filed, up to a maximum of five thousand dollars (\$5,000).

Internal Compliance Violations Late or Missing Reports

- SOS has an established procedure in seeking voluntary compliance
 - Initial letter, 10-day letter, Notice of Final Action
 - CFIS generated letters
 - Arbitration
- Need support in collecting fines awarded through Arbitration or as provided by law
 - All sums collected for the fines shall be deposited in the state general fund.

Most Recent Campaign Finance Report Stats

- Non-election year Second Biannual Campaign Report:
 - October 15th Campaign Finance Report (2nd Biannual Report)
 - 703 subject to file Campaign Finance Reports
- Initial compliance Letter
 - 171 reporting individuals were sent initial compliance letter
- 10-day letter
 - 77 still have not filed their 2nd Biannual Report
 - Candidates who have not filed: 57
 - PACs who have not filed: 20

Internal Compliance Violations

Internal Audit False or Misleading Reports

- The SOS conducts an audit of at least 10% of all campaign finance reports.
 - at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance. NMSA 1978, § 1-19-32.1(A).
- A reporting individual shall be notified in writing if a discrepancy is found and shall be permitted to file a written explanation for the discrepancy within 10 working days of the date of the notice.
 - The notice, penalty, and arbitration provisions set forth in Section 1-19-34.4
- The SOS shall prepare an annual report of any unresolved discrepancies found after examination of the random sample. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36.

ELECTIONS, ETHICS, AND VOTER COMPLAINT FORMS

NEW MEXICO OFFICE OF THE SECRETARY OF STATE

Ethics Division, Bureau of Elections
325 Don Gaspar, Suite 300 | Santa Fe, New Mexico 87501
(505) 827-3600 or Toll Free 1 (800) 477-3632

Complaint under the State Ethics Commissions Act

10-16G-2(D) states:

“Complaint” means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury before a notary public that the information in the complaint, and any attachment provided with the complaint, are true and accurate.”

By my signature below, I verify that the allegations contained in this complaint, along with the attachments and exhibits hereto, are true and correct to the best of my knowledge and belief, and that I believe the allegations herein violate New Mexico election and/or ethics law.

COMPLAINANT’S INFORMATION (Person/organization filing out this complaint)

Name or Organization: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Email: _____
Preferred method of written communication: _____

RESPONDENT’S INFORMATION (Person/organization complainant is being filed against)

Name or Organization: _____
Contact Person: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Attached hereto are _____ pages which reasonably describe the actions or inactions which I believe violate New Mexico election or ethics law, or HAVA. I have included a description of what action will resolve my concern.

Complainant’s signature: _____ **Date:** _____

If you are an individual with a disability who needs assistance completing this form, please contact the Ethics Division.

External Complaints

- Official external complaints not generated by SOS filed on SOS complaint form
- Contents of External Complaints:
 - A campaign finance report contains false or incomplete information
 - Improper use of campaign funds - § 1-19-29.1
 - Over contribution limits – not easily determinable
 - Regulated industry solicitations prohibited - § 1-19-4.2
 - Contributions in one name given for another prohibited - § 1-19-34.3
 - Advertising violations
 - “Prohibited period” soliciting - § 1-19-34.1
- Black-out period for filing complaints:
 - Any person may file a written complaint with the SOS any time prior to 90 days after an election, except that no complaints from the public may be filed within eight days prior to an election.
- 120 day turnaround for complaint

External Complaints – Potential Outcomes

Three outcomes for SOS for External Complaints

- 1) No violation
- 2) SOS unable to determine a violation
- 3) Violation occurred

External Complaints No Violation

- External complaint in which SOS determines no violation
 - Failure to state a claim
 - Local government violations
 - Not an election code violation
 - GCA violations → forward to SEC
 - No *per se* violation
 - County clerk staff endorsing a candidate

External Complaints

SOS Unable To Determine A Violation

- External complaint in which SOS unable to determine a violation
 - Most common outcome of external complaints filed with SOS
- After SOS review, cannot not make a clear determination
 - Inquiry letter sent to Responder (15 days to respond)
 - Response received from Responder
 - No detailed determination made by SOS
 - Need investigation/fact finding

External Complaints

SOS Determines Violation

- External complaint in which SOS determines a violation of CRA
 - After SOS review, SOS makes a clear determination of a violation
 - Inquiry letter sent to Responder
 - Response received from Responder
 - Detailed determination made by SOS
 - Notice of Final Action issued:
 - 1) Request voluntary compliance
 - 2) Referral to:
 - AG (civil violation)
 - DA or AG (criminal violation)
 - 3) Arbitration, if unsuccessful in seeking voluntary compliance

External Complaint Support

- Any external complaint where investigation is needed:
 - A Campaign Finance Report contains false or incomplete information
 - Improper spending of campaign funds § 1-19-29.1
 - Over contribution limits – not easily determinable
 - Regulated industry solicitations prohibited - § 1-19-4.2
 - Contributions in one name given for another prohibited - § 1-19-34.3.
 - Advertising violations
 - “Prohibited period” soliciting - § 1-19-34.1
- Any complaint where violation is found and are unsuccessful in seeking voluntary compliance

Lobbyist Reporting Act

Legislative Update

Lobbyist Reporting Act - SB 191 (6 pages)

Lobbyists must report all expenditures. Every expenditure accounted for

- Prior bill left ambiguity for expenditures below \$100 threshold
- Now all expenditures will be reported in the aggregate.
 - Expenditures less than \$100 reported as
 - Meals and/or beverages
 - Other entertainment expenditure
 - Other expenditures
 - Expenditures more than \$100 reported with amount spent and description

SOS Challenges In Enforcing the LRA

- Electronic filing system does not track deadlines for reports or other compliance information such as who needs to file
 - Only file if they are compensated. Don't have a means to track this.
- Limited in authority and resources to conduct investigations and Arbitrations for external complaints.
- Current electronic filing system does not allow for cross-referencing, or other automated compliance functions for SOS to easily administer
- No consequential remedy against Lobbyists who have been found in violation
- No effective method to collect outstanding fines or arbitration awards

Lobbyist Registration Form

To register, complete this Registration Form and submit it with an Authorization Form from each employer and a filing fee of \$50.00 per employer. If your services for lobbying are voluntary (except for reimbursement of personal expenses) you do not need to submit a registration fee.

For each individual or entity that has employed you to lobby during this calendar year, provide the full name and address of the employer. This registration expires on December 31st of the registration year. If you are employed or retained by other employers after your initial registration, complete a Supplemental Registration Form together with an Authorization Form and a \$50.00 filing fee.

Expenditures and Contributions: If you make political contributions or incur expenditures during this calendar year, you will be required to file reports according to the regular lobbyist reporting schedule. A report is due if there are expenditures or contributions during a reporting period.

Part 1: Lobbyist Personal Information:

Registration Year _____

Last Name First Name Middle Name

Permanent Business Address City State Zip Telephone #

Business Address while Lobbying City State Zip Telephone #

Lobbyist Email Address

Part 2: Lobbyist Employer Information:

(Individuals, Businesses, Organizations or other Entities which have authorized you to lobby)

Employer #1: _____
Full Name of Employer (Individual or Entity)
Date services begin

Business Address or P.O. Box City State Zip Telephone #

Will you be making any expenditures & contributions? Yes No

Will you be compensated for lobbying? Yes No

Lobbyist Registration Form

Part 3: Harassment Training:

(the following information is voluntary)

Do you or your authorized employer(s) have policies in place related to preventing harassment? Yes No

Have you received training on harassment since the adjournment of the last legislative session? Yes No

Part 5: Signature of Lobbyist:

I hereby certify under the penalty of law that all the information provided is true, complete and correct to the best of my knowledge.

Attested this _____ day of _____, 20_____

Signature of Lobbyist

Printed Name

Lobbyist and Employer Reporting Filing Dates

NMSA 1978, § 2-11-3

January prior to each regular session, a lobbyist must register for each lobbyist employer

- **Mandatory Reports**

- no later than January 15
- no later than the first Wednesday after the first Monday in May
- no later than the first Wednesday after the first Monday in October

- **Supplemental Reports**

- within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more Statewide or over (\$3,000)
- A lobbyist's employer who also engages in lobbying shall also comply with the provisions of this section.

SOS Procedures in Administering the Lobbyist Regulation Act

Voluntary Compliance is key:

The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state.

Statutory Complaint Procedure

- The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act.
- If the secretary of state determines that a provision of that act has been violated, the secretary of state shall provide notice and inform the person that he has *ten working days to provide a written explanation*, under penalty of perjury, stating any reason the violation occurred.
- If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed.
- Arbitration procedure is the same except does not need to be performed within 30 days of the request.
- Any person who files a report after the deadline or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day.

External Complaints

- Any complaint where investigation is needed:
 - Contingent fees prohibited – § 2-11-8
 - Restrictions on campaign activities and contributions – § 2-11-8.1
- Any complaint where violation is found and SOS is unsuccessful in seeking voluntary compliance

Voter Action Act – Public Financing

Legislative Update

Voter Action Act – SB 4 (18 pages)

- Removes any funding for an uncontested general election.
- Repeals provisions that pertain to seed money and matching funds
- Added electronic payments to the acceptable forms of payment for qualifying contributions to the public election fund;
- Changed the prohibited uses of money specified to allow a certified candidate to use public election fund money for joint advertisements or services with other certified candidates;

SOS Challenges In Enforcing the VAA

- Role of SOS is based on prescribing the forms and certifying applicant candidates.
- Limited in authority and resources to conduct investigations and conduct Arbitrations for complaints not relating to initial certification.
- Current electronic filing system does not allow for cross-referencing, or other auditing functions for SOS to easily administer.
- Sparsely worded statute on procedure

2020 VOTER ACTION ACT
APPLICANT CANDIDATE DECLARATION OF INTENT

Office of the New Mexico Secretary of State
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Telephone: (800) 477-3632 or (505) 827-3600

Applicant Candidate Information:

Full Name (Please print)	
P.O. Box or Street Address	Email Address
City, State, Zip	Telephone #
Party Affiliation Office Sought	

Applicant Candidate Statement:

I the undersigned, state that I have complied with and will continue to comply with the requirements of the contribution and expenditure limits set forth in the Voter Action Act ("ACT"), Sections 1-19A-1 to 1-19A-17, NMSA 1978. I further state that I will comply with all other requirements set forth in the ACT and all administrative rules issued by the Office of the New Mexico Secretary of State.

CERTIFICATION

I hereby swear or affirm under penalty of law that all the information on this form is true, correct and complete to the best of my knowledge.

Attested this _____ day of _____, 20 _____

Candidate

NOTARY INFORMATION

State of: _____ County of: _____

Subscribed and sworn to before me this _____ day of _____, 20 _____, by _____.

(SEAL)

Notary

My commission expires: _____

Voter Action Act Forms

2020 VOTER ACTION ACT
QUALIFYING CONTRIBUTION RECEIPT

Pursuant to Section 1-19A-2 (I) NMSA 1978 five dollar (\$5) contributions in the form of cash, check or money order and made payable to the Public Election Fund in support of the Applicant Candidate, are accepted during the qualifying period below:

Pursuant to Section 1-19A-2 (J) NMSA 1978, the qualifying period is as follows:

Primary or both Primary and General Election: October 1, 2019 – March 17, 2020.
General Election: January 1, 2020 – June 25, 2020.

Pursuant to Section 1-19A-2 (H) NMSA 1978, qualifying contributions must be made by a registered voter who is eligible to vote for the Office of Public Regulation Commissioner or Judicial Office that the Applicant Candidate is seeking.

Applicant Candidate Information:

Full Name (Please print)	Office Sought
--------------------------	---------------

Contributor Information:

Full Name (Please print)
Street Address (as it appears on Voter Registration)
City, State, Zip

Check Cash Money Order

Contributor

ACKNOWLEDGEMENT

I hereby affirm under penalty of law that the above contribution was obtained through efforts made with the candidate's knowledge and approval. I further affirm that the above contributor is to the best of my knowledge a qualified elector of this state.

Qualifying Contribution Collector

Voter Action Act - Chapter 1, Article 19A

- Applicant candidates shall file qualifying contributions with the SOS during the qualifying period according to procedures developed by the secretary. In developing these procedures, the secretary shall use existing campaign reporting procedures and deadlines whenever practical.
- Certified candidates shall report all contributions and expenditures according to the campaign reporting schedule specified in the Campaign Reporting Act

Voter Action Act Administration

A person shall not be eligible to become an applicant candidate if the person has accepted contributions totaling more than one hundred dollars (\$100) from any one contributor during the election cycle in which the person is running for office, except if:

- (1) the contributions were for a candidacy for an office other than a covered office and no money was raised for or expended on any campaign-related activity for a covered office during the time those contributions were made;
- (2) the person does not solicit or accept contributions for a candidacy for an office other than a covered office or for the purpose of supporting or opposing a ballot measure or another candidate after the person declares candidacy for a covered office or becomes an applicant candidate;
- (3) the person places all campaign account money that was collected before the person became an applicant candidate in a segregated bank account and does not transfer any money into or out of that account for the duration of the person's campaign for a covered office; and
- (4) the person agrees that, if elected to the covered office, the person will transfer all money in the campaign account to the fund.

Appeals Under The VAA

- A person aggrieved may appeal to the secretary within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;
- Within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the secretary shall hold a hearing whereby:
 - (1) the appellant has the burden of providing evidence to demonstrate that the secretary's decision was improper; and
 - (2) the secretary shall rule on the appeal within three days after the completion of the hearing;
- The parties in dispute may appeal the decision of the secretary by commencing an action in district court.

VAA Penalties

A person who violates a provision of the VAA is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to *return to the fund all amounts distributed to the candidate* from the fund.

A person who *willfully or knowingly* violates the provisions of the VAA or *knowingly* makes a false statement in a report required by that act is guilty of a fourth degree felony and, if the person is a certified candidate, shall return to the fund all money distributed to that candidate.

If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine and *transmit the finding to the attorney general for criminal prosecution.*

External Complaints

- Any complaint where civil investigation is needed:
 - Candidate becomes ineligible because of an unpermitted contribution
 - Any complaint alleging knowing or willing violating the VAA
- Any complaint where violation is found and SOS is unsuccessful in seeking voluntary compliance.
- SOS would follow complaint process for candidate applicant being denied certification by the SOS. § 1-19A-6.

Financial Disclosure Act

- The Financial Disclosure Act, NMSA 1978, §10-16A-1 to 10-16A-8, requires the disclosure of specific financial interests by certain individuals.
- The term “financial interest” is defined as “interest held by an individual or his/her spouse that is (1) an ownership interest in business; or (2) any employment or prospective employment for which negotiations have already begun.”

Financial Disclosure Changes – HB 407 (425 pages)

- Financial Disclosures - only need to file once per calendar year
 - A person holding a legislative or statewide office shall file with the secretary of state a financial disclosure statement during the month of January every year that the person holds public office.
- County clerks have 3 days to forward FDS to SOS if filed with Declaration
- State Ethics Commission enforce Financial Disclosures violations starting in 2020

SOS Challenges In Enforcing the FDA

- No electronic filing system to track deadlines for FDS or other automated compliance information.
- Limited in authority and resources to conduct investigations and Arbitrations.
 - Content of FDS taken at face value
- SOS unaware of many of the filers and filing FDS can be discretionary
- No effective method to collect outstanding fines or arbitration awards

Financial Disclosure Act – Who Files

A person holding a legislative or statewide office shall file with the SOS a FDS during the month of January every year.

- A candidate for legislative or statewide office who has not already filed a FDS.
- A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee shall file FDS within thirty days of appointment and during the month of January every year thereafter that the person holds public office.
- Every employee who is not otherwise required but who has a financial interest that he believes or has reason to believe may be affected by his official act or actions.

New Complaint Procedure - § 10-16A-6

- The state ethics commission and the SOS may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. *Any person who believes that act has been violated may file a written complaint with the state ethics commission.* The commission shall adopt procedures for processing complaints and notifications of violations.
 - If the *state ethics commission* determines that a violation has occurred for which a penalty should be imposed, the *commission shall so notify* the person charged and the person charged may request binding *arbitration*.
 - *The arbitrator may take any action the state ethics commission is authorized to take*
- *Enforcement of this act will be conducted by SEC, no longer SOS

NMSA 1978, § 10-16A-5 (2020) - Education

- A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.
 - *Updated forms, notice in confirmation letters received by governors office, training of political parties and county clerks.*
- B. *Referrals to the state ethics commission for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.*

FDS Amendments

The SOS is interested in receiving feedback from the SEC in ways to improve the FDS, to make compliance and administration more efficient.

1. REPORTING INDIVIDUAL – Contact Information		
Please provide all information requested in the space below.		
Last Name	First Name	Middle
Residence Address		Email Address
City	State	Zip
Mailing Address (if different from above)		
City	State	Zip
2. REPORTING INDIVIDUAL – Current Filing Status		Date assumed office (for current term):
Please check the appropriate box and fill in <u>all</u> requested information as it is applicable on today's date.		<i>or</i> Date of current appointment/employment:
<input type="checkbox"/> CANDIDATE FOR:	Office:	
<i>or</i>	District (if applicable):	
<input type="checkbox"/> INCUMBENT IN:		
<input type="checkbox"/> APPOINTED TO:	Board or Commission (subject to Senate Confirmation):	
<input type="checkbox"/> EMPLOYEE OF:	State agency:	
3. REPORTING INDIVIDUAL - Employer Information		
Employer	Employer's Phone Number	
P.O. Box or Street Address of Employer	City	State Zip
Title or Position held by reporting individual	Nature of business or occupation	
4. SPOUSE OF REPORTING INDIVIDUAL – Employer Information		
Last Name	First Name	Middle
Name of Spouse's Employer		
Address of Spouse's Employer		
City	State	Zip
Spouse's title or position held	Nature of business or occupation	

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)

Sources of Gross Income over \$5,000.00*

**For the list of all sources, see page 4.*

In the space provided below, indicate **all** sources of gross income of **more than** \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.

Please note: Only the source(s) of income need to be reported. You do not need to report the amount received. If 'other', please include a brief description.

Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):

6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization

If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:

Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):

7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying

If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:

Client name & address:	Represented by: <i>List the name of the reporting individual's firm or spouse's firm.</i>

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate

Real estate owned in New Mexico (other than personal residence):

Owner	County	General Description

9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business

Business Interests over \$10,000.00

List any other business interests in New Mexico of \$10,000 or more in the space provided:

Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE

Board Membership

Memberships held by reporting individual or their spouse on boards of for-profit businesses in New Mexico:

Name of business:	Board member (list the name of the reporting individual or spouse):

11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Professional License(s)

Professional licenses held in New Mexico:

Type of license:	Individual holding license (list the name of the reporting individual or spouse):

12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE

Goods and/or Services Provided to State Agencies

State agencies to which the reporting individual or their spouse provided goods or services to in **excess of \$5,000** during the prior calendar year:

State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):

13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE

State Agency Representation

List each state agency before which you or your spouse represented or assisted a client during the past year:

(do not include courts)

State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):

14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – General Information

Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:

**Pursuant to NMSA 1978 § 10-16A-3 (C), income sources include: law practice or consulting operation or similar businesses, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and all "other" sources including a description of the sources.*

I hereby swear or affirm under penalty of perjury that the foregoing information is true, correct and complete to the best of my knowledge.

Signature: _____ Date: _____

SEC Role in FDS

- The proper filing office for complaints of FDA is SEC
- Any complaint where civil investigation is needed
 - Contents of disclosure – § 10-16A-3
- Any internal compliance violation is found by SOS and referred to SEC

Penalties:

- A person who files to be a candidate for a legislative or statewide office who fails or refuses to file a FDS shall not be qualified by proper filing officer as a candidate.

SOS Resources Dedicated For Training on CRA, LRA, VAA, FDA

- In person and webinars offered to Lobbyists, Campaign Finance Report filers under CRA and SBCRA
- Trainings to Political Party Leaders
- Issue Campaign Finance Guide
- Issue 2020 Candidate Guide
- Harassment training to Lobbyists
- Prescribe the forms to file reports and register
- Website provides helpful links and filing date information
- All employees may troubleshoot CFIS questions for filers
- Specialized trainings upon requests

Questions?



Contact Information



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