



STATE ETHICS COMMISSION
MEETING

December 4, 2020

PUBLIC MATERIALS PACKET

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STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
 Jeffrey L. Baker, Member
 Stuart M. Bluestone, Member
 Hon. Garrey Carruthers, Member
 Ronald Solimon, Member
 Dr. Judy Villanueva, Member
 Frances F. Williams, Member

Friday, December 4, 2020, 9:00 a.m. to 2:00 p.m.

Zoom Meeting

Location: Virtual Meeting Via Zoom

Join Zoom meeting through internet browser:

<https://us02web.zoom.us/j/89655782035?pwd=ZVVzb2JEOXN5M0ZhSVFHL2l6QVFiQT09>

Online Meeting Passcode: **1GsXpc**

Join Zoom meeting telephonically: 669 900 9128

Telephone Passcode: 770522

Online Meeting ID: 896 5578 2035

COMMISSION MEETING

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of October 2, 2020 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Approval of proposed code of ethics for state agencies, 1.8.4. NMAC
(Farris) | Yes |
|--|-----|

- | | |
|--|-----|
| 5. Amendment to Resolution 4, Investigations of referrals and informal complaints and initiation of civil actions
(<i>Farris</i>) | Yes |
| 6. Approval of 2020 annual report
(<i>Farris</i>) | Yes |
| 7. Resolution 6, authorization of staff action during 2021 legislative session
(<i>Farris</i>) | Yes |
| 8. Commissioner per diem reimbursements for virtual attendance
(<i>Farris & George</i>) | Yes |

Upon applicable motion, Commission goes into Executive Session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) & 10-15-1(H)(7) (attorney client privilege pertaining to litigation)

- | | |
|---|--|
| 9. Discussions regarding Administrative Complaints
(<i>Farris & Boyd</i>) | |
| a. Administrative Complaint No. 2020-007 | |
| b. Administrative Complaint No. 2020-031 | |
| c. Administrative Complaint No. 2020-033 | |
| 10. Discussion of Council for a Competitive New Mexico and Campaign Reporting Act
(<i>Farris & Boyd</i>) | |
| 11. Discussion of <i>State v. Gutierrez, et al.</i> (N.M. Sup. Ct.) | |

Upon applicable motion, Commission returns from Executive Session

-
- | | |
|---|-----|
| 12. Actions on Administrative Complaints
(<i>Farris</i>) | Yes |
| a. Administrative Complaint No. 2020-007 | |
| b. Administrative Complaint No. 2020-031 | |
| c. Administrative Complaint No. 2020-033 | |
| 13. Authorizations regarding Council for a Competitive New Mexico | Yes |
| 14. Public comment*
(<i>In anticipation of the upcoming legislative session, the Commission invites public comment regarding amendments to the statutes within its jurisdiction. Please send corresponding written materials, if any,</i> | No |

to Sonny.Haquani@state.nm.us before Nov. 26, 2020)

15. Commission authorizations regarding specific legislation, if any, upon receiving public comment
(Farris) Yes
16. Determination of next meeting
(Lang) No
17. Adjournment

For inquires or special assistance, please contact Sonny Haquani at Ethics.Commission@state.nm.us

SEC Office
800 Bradbury Dr. SE,
Suite 215
Albuquerque, NM 87106



Hon. William F. Lang
Jeff Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ron Solimon
Judy Villanueva
Frances F. Williams

STATE ETHICS COMMISSION

Commission Meeting Minutes of October 2, 2020 | 9:00pm-2:00pm

Virtually Via Zoom

[View Recording Here](#)

[SUBJECT TO RATIFICATION BY COMMISSION]

1. CALL TO ORDER AND ROLL CALL:

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner (joined shortly after minutes were approved)
Hon. Garrey Carruthers, Commissioner
Ron Solimon, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
Hon. William Lang, Chair

2. APPROVAL OF AGENDA:

- **Amending:** Chair Lang moved to add one item to the agenda: to authorize Commission staff to participate as amicus curiae in *State v. Gutierrez, et al.*, which is currently before the New Mexico Supreme Court. Commissioner Villanueva seconded the motion. Hearing no discussion, Chair Lang conducted a roll-call vote. Commissioner Bluestone was not present at this time due to technical difficulties. All other Commissioners voted in the affirmative, and the agenda was amended unanimously.
- **Approving:** Chair Lang sought a motion to approve the agenda as amended. Commissioner Carruthers moved to approve the agenda. Commissioner Baker seconded. Chair Lang conducted a roll-call vote. Commissioner Bluestone was not present at this time due to technical difficulties. All other Commissioners voted in the affirmative, and the agenda was approved unanimously.

3. APPROVAL OF SEPTEMBER 14, 2020 COMMISSION MEETING MINUTES:

- Chair Lang sought a motion to approve the minutes of the September 14, 2020 meeting. Commissioner Carruthers moved to approve the minutes; Commissioner Baker seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. Commissioner Bluestone was not present at this time due to technical difficulties. All other Commissioners voted in the affirmative, and the minutes were approved unanimously.

4. PRESENTATION TO COMMISSION BY ESPAÑOLA MAYOR JAVIER SÁNCHEZ

- Mayor Sánchez provided an overview of the types of governmental ethics issues that occur at the local level and made a case for the Legislature to expand the Commission’s jurisdiction to local-government officials.

5. PRESENTATION BY NEW MEXICO ETHICS WATCH (NMEW)

- Kathleen Sabo and Tony Ortiz provided a presentation on the Financial Disclosure Act (FDA) and the Lobbyist Regulation Act (LRA).
- Ms. Sabo and Mr. Ortiz discussed their work through NMEW to review and improve these laws and discussed several specific recommendations for improving the FDA and the LRA.

6. ADVISORY OPINION 2020-07

- General Counsel Walker Boyd provided an overview of Advisory Opinion 2020-07.
- Chair Lang sought a motion to issue Advisory Opinion 2020-07 as written. Commissioner Bluestone moved to issue the Advisory Opinion; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the Advisory Opinion was issued unanimously.

7. ADVISORY OPINION 2020-08

- Executive Director Jeremy Farris provided an overview of Advisory Opinion 2020-08.
- Chair Lang sought a motion to issue Advisory Opinion 2020-08 as written. Commissioner Carruthers moved to issue the Advisory Opinion; Commissioner Williams seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the Advisory Opinion was issued unanimously.

BEGINNING OF PUBLIC RULE HEARING (NMSA 1978, § 14-4-5.3 & 1.24.25.13 NMAC)

8. PRESENTATION OF WRITTEN PUBLIC COMMENTS

- Executive Director Farris presented written public comments received regarding amendments to 1.8.1.9-10 NMAC (informal advisory opinions) and 1.8.1.16 NMAC (Commission meetings) and proposed 1.8.4 NMAC (code of ethics).
- Director Farris requested that Chair Lang admit the written public comments as exhibits in the rulemaking record. Chair Lang admitted the written public comments into the rulemaking record. Director Farris requested that Chair Lang admit Commission-staff substitute versions for 1.8.1.9-10 NMAC (informal advisory opinions) and 1.8.1.16 NMAC (Commission meetings) and proposed 1.8.4 NMAC (code of ethics) into the rulemaking record. Chair Lang admitted the Commission-staff substitute versions into the rulemaking record.

9. PUBLIC COMMENT

- Members of the public were given an opportunity to provide comments on amendments to Rules 1.8.1.9-10 (informal advisory opinions) and 1.8.1.16 (Commission meetings) and proposed Rule 1.8.4 (code of ethics).
- **Gabrielle Ibanez-Guzman** provided comments related to the proposal of Somos Un Pueblo Unido to the Commission to include provisions in the model code to protect the sensitive personal information from disclosure.
- **No other public comments were made.**

END OF PUBLIC RULE HEARING & CONTINUATION OF COMMISSION MEETING FOR ACTIONS ON RULES AND OTHER MATTERS (1.24.25.14(D) NMAC)

10. ADOPTION OF AMENDMENTS TO TITLE 1, CHAPTER 8, PART 1 NMAC (INFORMAL ADVISORY OPINIONS AND COMMISSION MEETINGS)

- Director Farris presented the amendments to Title 1, Chapter 8, Part 1 NMAC, and asked for a motion to adopt the rules as a Commission's substitute for 1.8.1 NMAC, pending further revision by motion.
- Chair Lang sought a motion to adopt the substitute for 1.8.1 NMAC. Commissioner Carruthers moved; Commissioner Bluestone seconded the motion. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the motion was passed unanimously.
- Director Farris presented the proposed amendments to 1.8.1 NMAC.
- Commissioner Bluestone discussed 1.8.1.9(A)(4) and moved to strike subparagraph (4) from the proposed rule. Commissioner Carruthers seconded the motion. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the motion was passed unanimously.
- Commissioner Bluestone discussed 1.8.1.15(A) NMAC and moved: (i) to remove the provision that, as a default requirement, Commissioners must meet in person and instead (ii) to revise the rule to provide that "An individual Commissioner may attend a physical Commission meeting through telephone or web conference" and continuing with the proviso on Commissioner identification. Commissioner Baker seconded the motion. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the motion was passed unanimously.

11. ADOPTION OF PROPOSED TITLE 1, CHAPTER 8, PART 4 (CODE OF ETHICS)

- Chair Lang sought a motion to adopt 1.8.4 NMAC for discussion and amendment. Commissioner Williams moved to adopt 1.8.4 as stated; Commissioner Carruthers seconded the motion. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion was passed unanimously.
- Commissioners Baker and Bluestone discussed adding more clarity to 1.8.4.7(O), the definition of "Sensitive Personal Information." After further discussion, Chair Lang sought a motion to amend 1.8.4.7(O) to provide that "Sensitive Personal Information means confidential identifying information such as social security numbers or individual tax identification numbers, a person's place and date of birth, person's status as a recipient of public assistance or as a crime victim, and a person's sexual orientation, physical or mental disability, immigration status or national origin, or religion." Commissioner Bluestone moved to amend the rule 1.8.4.7(O) as stated above; Commissioner Carruthers seconded. Hearing no further discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion was passed unanimously.
- After a discussion of additional sections in 1.8.4.10 NMAC, Chair Lang suggested discontinuing discussion of the remaining sections of the proposed rule and to postpone voting to on further amendments until after the staff make considered revisions. The Commissioners agreed and ceased work on the proposed 1.8.4 NMAC.

12. EXECUTIVE SESSION

Chair Lang sought a motion to enter executive session under NMSA 1978, §§ 10-15-1(H)(3) (administrative adjudicatory proceedings) & 10-15-1(H)(7) (attorney-client privilege pertaining to litigation). Commissioner Carruthers moved to enter executive session; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the Commissioners entered an executive session. The following matters were discussed in executive session:

- Administrative Case No. 2020-032
- Participation of the Commission as amicus curiae in *State v. Gutierrez*
- The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session, except that Commissioner Bluestone requested an update on Administrative Case No. 2020-07 and Director Farris provided that update. After concluding its discussion of these matters, the Commission resumed public session upon an applicable motion.

13. ACTIONS ON ADMINISTRATIVE CASES

- Administrative Case 2020-032: Chair Lang sought a motion to dismiss administrative complaint 2020-032 for lack of jurisdiction. Commissioner Bluestone moved to dismiss the complaint as stated above; Commissioner Williams seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and the complaint was dismissed for lack of jurisdiction.

14. APPROVAL OF COMMISSION STAFF PARTICIPATION IN *STATE V. GUTIERREZ, ET AL. AS AMICUS CURIAE*

- Chair Lang sought a motion to authorize the staff to seek and prepare for amicus participation in *State v. Gutierrez, et al.* Commissioner Carruthers moved to authorize the staff as stated above; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the motion passed.

15. DETERMINATION OF NEXT MEETING

- The Commissioners agreed to meet next on December 4, 2020.

16. PUBLIC COMMENTS

Members of the public were invited to provide comments to the Commission. No additional public comment was offered.

17. ADJOURNMENT

Chair Lang sought a motion to adjourn. Commissioner Carruthers moved to adjourn; Commissioner Williams seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the meeting was adjourned.

[SUBJECT TO RATIFICATION BY COMMISSION]

State Ethics Commission
Proposed Code of Ethics (1.8.4 NMAC)
December 4, 2020

Notes:

- At the October 2, 2020 meeting, the Commission reviewed and come to consensus on the language below from 1.8.4.1 through 1.8.4.9. The Commission still needs to approve language in 1.8.4.10 through 1.8.4.17.
 - **Red text** below indicates changes that were made to this document before or during the October 2, 2020 meeting.
 - **Blue text** below indicates changes recommended by Commissioner Bluestone after the October 2, 2020 meeting.
-

1.8.4.1 NMAC (“Proposed Code of Ethics”): This proposed rule will create a proposed code of ethics for public officials and public employees, to be submitted to each elected public official and public agency for adoption, pursuant to Paragraph (4) of Subsection B of Section 10-16G-5 NMSA 1978. The proposed code of ethics will compile in a single rule the ethics provisions of state laws and rules governing the conduct of state officers and employees. Topics to be addressed in the proposed code include the definition of and restrictions on: conflicts of interest, acceptance of gifts, business relations with employees or regulated entities, procurement issues, limitations on former employees, public access to records and meetings of state bodies, allowable political activity and ethical conduct in the workplace, among other subjects.

The proposed 1.8.4 NMAC is as follows:

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 4 CODE OF ETHICS

1.8.4.1 ISSUING AGENCY: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.
 [1.8.4.1 NMAC-N, xx/xx/2020]

1.8.4.2 SCOPE: This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other institutions and instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies’ control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such as contractors.
 [1.8.4.2 NMAC-N, xx/xx/2020]

1.8.4.3 STATUTORY AUTHORITY: Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

[1.8.4.3 NMAC-N, xx/xx/2020]

1.8.4.4 DURATION: Permanent.

[1.8.4.4 NMAC-N, xx/xx/2020]

1.8.4.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.4.5 NMAC-N, xx/xx/2020]

1.8.4.6 OBJECTIVE: The objective of this part is to provide the executive and legislative branch agencies of state government and other institutions and instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency's officers and employees, the violation of which could form the basis for discipline by the adopting agency, **including dismissal, demotion or suspension, in accordance with state law.**

[1.8.4.6 NMAC-N, xx/xx/2020]

1.8.4.7 DEFINITIONS: The following terms apply to this part unless their context clearly indicates otherwise:

A. "Agency" or "this Agency" means the agency that has adopted this proposed code of ethics.

B. "Business" means any **person, company or other organization that buys, sells or provides goods or services, including non-governmental or not-for-profit organizations.**

C. "Code" means this proposed code of ethics.

D. "Commission" means the State Ethics Commission.

E. "Confidential information" has the same meaning as defined by Subsection B of Subsection 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, namely, **information that by law or practice is not available to the public.**

F. "Family member" means a first-degree, second-degree or third-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

G. "Financial interest" means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.

H. "Gift" has the same meaning as defined by Subsection B of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

- (2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;
- (3) compensation for services rendered or capital invested that is:
 - (a) normal and reasonable in amount;
 - (b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;
 - (c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and
 - (d) not otherwise prohibited by law;
- (4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;
- (5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;
- (6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;
- (7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;
- (8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;
- (9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or
- (10) a retirement gift.

I. “Immediate family member” means a first-degree or second-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

J. “Indirectly” means to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance.

K. “Market value” means the amount for which a good or service can be sold on the relevant market.

L. “Official act” means any act or omission to act that would not be possible but for the actor’s official position or state employment.

M. “Public officer or employee” means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

N. “Restricted donor” has the same meaning as defined by Subsection D of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, a person who:

- (1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;
- (2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee’s official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

O. "Sensitive personal information" means confidential identifying information such as: social security numbers or individual tax identification numbers, a person's place and date of birth, a person's status as a recipient of public assistance or as a crime victim, and a person's sexual orientation, physical or mental disability, immigration status, religion, or national origin.

P. "Shall" means must, and **"must"** means shall.

Q. "Substantial financial interest" means an ownership interest that is greater than twenty percent.

R. Any other terms shall be defined for purposes of this rule as they are defined in Section 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.

[1.8.4.7 NMAC-N, xx/xx/2020]

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:

A. This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

B. The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission's website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this Code. If this Code does not resolve the issue, further guidance might be found in the Commission's separately published commentary.

[1.8.4.8 NMAC-N, xx/xx/2020]

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS: This Code is based on, and should be interpreted to advance, the following principles of public ethics:

A. Honest services. An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

B. Proportionality. When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

C. Impartiality and fairness. The conduct of an officer or employee shall **be impartial and fair, and shall** never be guided by:

(1) personal, family or financial interests;

(2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or

(3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

D. Consistency. Like cases shall be treated alike. An officer or employee shall behave consistently with the agency's normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has acted in similar circumstances unless there is a rational basis for the change.

E. Diligence. An officer or employee shall ensure that every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

F. Respect. An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

G. Transparency. The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

H. Fallibility and openness to change. Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.

[1.8.4.9 NMAC-N, xx/xx/2020]

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

A. Outside employment.

(1) Duty to avoid conflicts from outside employment. An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

(2) Disclosure of outside employment. An officer or employee having permissible outside employment shall:

(a) file with the employee's supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

(b) the disclosure statement shall include the name of the officer or employee, the name and general nature of the business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer's or employee's public duties;

(c) in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee's work with the business.

B. Disclosure of potential conflicts of interest and disqualification.

(1) Disclosure of financial interests.

(a) Mandatory financial disclosure by officers and agency heads.

An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

(b) Disclosure of financial interests: contents; when filed. The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within thirty days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual's spouse, for the prior calendar year:

- (i) current employer and the nature of the business or occupation, including self-employment information;
 - (ii) all sources of gross income over \$5,000, identified by one of the following general category descriptions that disclose the nature of the income: law practice or consulting operation or similar business, 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 the category "other," with a general description of the other income source;
 - (iii) real estate owned in the state other than the personal residence;
 - (iv) other business interests of \$10,000 or greater value in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;
 - (v) memberships on boards of for-profit businesses in New Mexico;
 - (vi) New Mexico professional licenses held;
 - (vii) sales to state agencies exceeding \$5,000 for the prior year;
- and
- (viii) state agencies before which clients were represented or assisted during the prior year.

(c) **Officers and employees required to disclose potentially conflicting financial interests; when filed.** An officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

(d) **Financial disclosure statements are public records.** All disclosures required under this subsection are public records.

(2) **Disqualification from acts affecting financial interests.**

~~(a)~~ An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer's or employee's financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.

~~(b) An officer or employee of this agency is not disqualified from taking an official action under 1.8.4.10(B)(2)(a) NMAC if the benefit of the official act to the officer's or employee's financial interest is proportionately equal to or less than the benefit to the general public.~~

(3) **Disclosure of non-profit board memberships.** An officer or employee of this agency shall disclose within 30 days of taking office and each January thereafter all memberships on non-profit boards.

C. Business with regulated entities.

(1) **Sales to regulated persons.** An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

(2) **No acceptance of job or contract offers from regulated entities.** An officer or employee of this agency may not accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

(3) **Ordinary transactions at market rates allowed.** Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

D. Accepting or Giving Gifts.

(1) **Gifts from restricted donors.**

(a) An officer or employee of this agency may not, directly or indirectly, solicit a gift from a restricted donor.

(b) An officer or employee of this agency may not, directly or indirectly accept, and must decline, an unsolicited gift with a market value in excess of \$250 from a restricted donor or any other person who offers the gift because of the donee's status as an officer or employee of this agency. No more than one such gift or gifts having a total value of \$250 may be accepted by the same officer or employee within a single calendar year, and any such gift must be disclosed as required by 1.8.4.10(D)(5) NMAC.

(2) **Gifts and business from subordinates.** An officer or employee of this agency may not, directly or indirectly:

(a) accept a gift from an employee having a lower **grade** or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

(b) solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

(3) **Soliciting gifts for charities.** An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

(4) **Declining permissible gifts.** An officer or employee of this agency shall consider declining an otherwise permissible gift, if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

(a) the gift has a high market value;

(b) the timing of the gift creates the appearance that the donor is seeking to influence an official action;

(c) the gift **is** offered by a person or business entity who has interests that **may be substantially affected by** the performance or nonperformance of the officer or employee's duties; and

(d) acceptance of the gift would provide the donor with significantly disproportionate access **to an officer or employee.**

(5) **Disclosure of offers or gifts from restricted donors.** If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency ~~unintentionally~~ receives a gift of any value from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

(6) **Certain donations of private funds prohibited.** No officer or employee of this agency may give:

(a) a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

(b) a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.

(7) **Certain donations of public funds prohibited.** No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

(a) is a service appreciation award of de minimis value; or

(b) does not violate the Anti-Donation Clause, **Section 14 of Article 9 of the New Mexico Constitution.**

E. Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.

(1) An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

F. Timekeeping, reimbursement, and use of state property.

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

G. Procurement.

(1) **Fair and equitable treatment of persons involved in public procurement.** An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) **Maximizing the value of public funds.** An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) **Conflicts of interest prohibited; Intra-agency waiver.**

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(d) This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.

(e) The requirement to make public disclosure pursuant to subparagraphs (c) and (d) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.

(4) Due diligence by agency.

(a) **Participation by person submitting bid or proposal.** An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) **Campaign contribution disclosure and prohibition.** An officer or employee of this agency who participates, directly or indirectly, in procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) discloses all campaign contributions, where such contributions in the aggregate exceed \$250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

H. Former officers and employees.

(1) **Contracting.** This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency ~~within two years of the date of the officer's or employee's separation from this agency, or if the contract or action has a value of \$1,000 or more and is the direct result of the officer or employee's official act; or~~

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This

subparagraph applies regardless of ~~the value of the contract or action, or~~ the length of time since the officer or employee left the agency.

(c) Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.

(2) Restrictions on former officers or employees representing a person in the person's dealings with this agency.

(a) A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b) A former officer or employee of this agency may not, for ~~one~~ two years after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.

[1.8.4.10 NMAC-N, xx/xx/2020]

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

A. An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

B. An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.

[1.8.4.11 NMAC-N, xx/xx/2020]

1.8.4.12 POLITICAL ACTIVITY

A. An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

B. An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

C. An officer or employee of this agency may not serve as an officer of a political organization.

D. An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected office, political party, or other partisan political organization.

E. An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

F. An employee whose salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency is covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] and, therefore, may not be a candidate for a partisan political elective office.

G. An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

(2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and

(3) being a candidate in an election for or holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.
[1.8.4.12 NMAC-N, xx/xx/2020]

1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION

A. An officer or employee of this agency shall not use or disclose confidential information acquired by virtue of the officer's or employee's position with the agency for the officer's or employee's or another person's private gain.

B. An officer or employee of this agency shall not disclose to anyone outside the agency sensitive personal information acquired by virtue of the officer's or employee's position with the agency unless disclosure is required by law, necessary to carry out the functions of the agency or expressly authorized by the person whose information would be disclosed.
[1.8.4.13 NMAC-N, xx/xx/2020]

1.8.4.14 NEPOTISM

A. This agency shall not permit the hiring, promotion, or direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

B. For the purposes of subsection A of this section:

(1) First-degree relatives include an individual's parents, siblings, and children.

(2) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(3) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles, great aunts, and first cousins.

[1.8.4.14 NMAC-N, xx/xx/2020]

1.8.4.15 SEXUAL HARASSMENT

A. Officers and employees of this agency shall refrain from sexual harassment of any other employee or any other person having business with this agency.

B. Examples of sexual harassment include, but are not limited to:

- (1) sexual innuendo or sexually oriented verbal abuse;
- (2) sexual jokes, sexist jokes, vulgar jokes or abusive sexual teasing;
- (3) unwanted physical contact such as hugging, patting, stroking or grabbing body parts;
- (4) statements or acts of a sexual nature about a person's physical attributes or sexual activity;
- (5) displaying sexually suggestive pictures, objects or materials;
- (6) using disparaging, demeaning or sexist terms to refer to any person;
- (7) making obscene gestures or suggestive/insulting sounds;
- (8) indecent exposure; and
- (9) suggesting or demanding sexual favors or activity in relation to any condition of employment.

C. Officers and employees of this agency shall investigate all instances of alleged sexual harassment and sexual assault and take prompt and appropriate action, and make every effort to remove sexual harassment and sexual assault from the workplace.

[1.8.4.15 NMAC-N, xx/xx/2020]

1.8.4.16 SUBSTANCE ABUSE

A. This agency shall appoint a substance abuse coordinator as required by Subsection A of 1.7.8.10 NMAC, who shall be responsible for the agency's drug and alcohol abuse program under 1.7.8 NMAC.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the drug and alcohol testing duties required by 1.7.8 NMAC.

[1.8.4.16 NMAC-N, xx/xx/2020]

1.8.4.17 ENFORCEMENT AND INTERPRETATION

A. Violations of the provisions of this code of conduct shall constitute cause for dismissal, demotion or suspension as provided by Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.

B. This agency shall [circulate this code of conduct to all agency officers and employees, require signed acknowledgements that all the agency officers and employees have read this code](#), and establish a written internal complaint procedure by which employees can seek to remedy violations of the provisions of this agency's code of conduct.

C. Agency complaint procedures shall:

- (1) provide the respondent to a complaint notice of the complaint and an opportunity to be heard;
- (2) be made available to all officers and employees of the agency;
- (3) ensure that officers and employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal;
- (4) ensure that adjudication of internal agency complaints accord with due process; and
- (5) utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships among officers and employees.

D. If an agency adopts a code of conduct that mirrors provisions set forth in 1.8.4 NMAC, then any officer or employee of the adopting agency may request an advisory opinion from the state ethics commission regarding the interpretation or application of any adopted code provision pursuant to Subsection A of Section 8 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

E. Any remedy or discipline available through internal agency complaint procedures established under this provision does not preclude other remedies or sanctions available at law. [1.8.4.17 NMAC-N, xx/xx/2020]

1.8.4.15 ~~ETHICAL CONDUCT IN THE WORKPLACE~~

- A.** ~~An officer or employee of this agency with supervisory responsibility shall:~~
- ~~(1) manage the hiring of new employees fairly and equitably;~~
 - ~~(2) diligently investigate allegations of misconduct;~~
 - ~~(3) refrain from unsolicited private business dealings with supervised employees, either directly or indirectly; and~~
 - ~~(4) ensure all visitors and staff can access this agency's services.~~
- B.** ~~An officer or employee of this agency shall:~~
- ~~(1) treat colleagues with respect;~~
 - ~~(2) learn about what behavior constitutes harassment, and make efforts to remove it from the workplace;~~
 - ~~(3) report violations of this code of ethics or other laws to responsible authorities within this agency or to the Commission; and~~
 - ~~(4) learn how to recognize, report and prevent substance abuse among this agency's personnel.~~
- [1.8.4.13 NMAC-N, xx/xx/2020]

History of 1.8.4 NMAC: [RESERVED]

STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
 Jeffrey L. Baker, Member
 Stuart M. Bluestone, Member
 Hon. Garrey Carruthers, Member
 Ronald Solimon, Member
 Judy Villanueva, Member
 Frances F. Williams, Member

**Resolution No. 4: Investigations of Referrals and
 Informal Complaints and Initiation of Civil Actions**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION
 (“Commission”) met virtually, on December 4, 2020, at 9:00 a.m.;

~~WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION~~
 (“Commission”) met in regular session at the UNM Science and Technology Park,
 851 University SE, Suite 200, Albuquerque, NM, on April 3, 2020, at 9:00 a.m.;

WHEREAS, the Commission has the power to investigate violations of the ethics laws pursuant to the State Ethics Commission Act, the Governmental Conduct Act, the Financial Disclosure Act, the Gift Act, the Campaign Reporting Act, the Procurement Code, and the Voter Action Act, *see* NMSA 1978, §§ 1-19-34.8(A), 1-19A-15.1(A), 10-16-14, 10-16-18(B), 10-16A-6, 10-16A-8, 10-16B-5 10-16G-10(J), 10-16G-13(C), and 13-1-196.1 (2019);

WHEREAS, the Commission desires to adopt a policy that ensures the fair and uniform handling and disposition of its investigation of potential violations of ethics laws referenced above, and to ensure that a referral for impeachment or the initiation of a civil action is based on evidence that, if credited, would be sufficient to impeach or to award civil relief;

NOW, THEREFORE, BE IT RESOLVED by the New Mexico State Ethics Commission adopts the following **Policy for Investigations of Referrals and Informal Complaints and Initiation of Civil Actions**:

1. Authority.

{1} The State Ethics Commission investigates and enforces violations of the Ethics Laws in two ways: (1) upon receiving a sworn complaint alleging violations against a respondent, *see* NMSA 1978, § 10-16G-10(A)-(K); or (2) by “fil[ing] a court action to enforce the civil compliance provisions” of the State Ethics Laws. *See* NMSA 1978, § 10-16G-9(F). In other words, the Commission has the authority to investigate and adjudicate reactively (in response to a sworn complaint) or proactively on its own initiative.

{2} Provisions of the State Ethics Commission Act, the Governmental Conduct Act, the Gift Act, the Campaign Reporting Act, and the Voter Action Act confirm the Commission’s independent authority to investigate violations those acts outside of the Administrative Complaint process:

{3} State Ethics Commission Act

NMSA 1978, Section 10-16G-10(J) permits the commission to “petition the [district] court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation.” Section 10-16G-13(C) further provides that “complaints, reports, files, records and communications collected *or generated* by the commission, hearing officer, general counsel or director that pertain to alleged violations” are confidential.

{4} Governmental Conduct Act

- Under NMSA 1978, § 10-16-14(A), “The state ethics commission may investigate suspected violations of the Governmental Conduct Act.”
- Under NMSA 1978, § 10-16-14(C), “If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature.”
- Under NMSA 1978, § 10-16-14(E), “Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be

enforced by the state ethics commission. . . . Enforcement actions may include seeking civil injunctive or other appropriate orders.”

- Under NMSA 1978, § 10-16-14(E), “The state ethics commission may institute a civil action in district court . . . if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).”

{5} Financial Disclosure Act

- Under NMSA 1978, § 10-16A-6(A), “The state ethics commission and the secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated.”
- Under NMSA 1978, § 10-16A-6(F), “The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.”
- Under NMSA 1978, § 10-16A-8(B), “The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).”

{6} Gift Act

- Under NMSA 1978, § 10-16B-5(A), “The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated.”

{7} Campaign Reporting Act

- Under NMSA 1978, § 1-19-34.8(A), “the state ethics commission shall have jurisdiction to investigate . . . a [written] complaint alleging

a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act[.]”

{7} Voter Action Act

- Under NMSA 1978, § 1-19A-15.1(A), “the state ethics commission shall have jurisdiction to investigate . . . a [written] complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of that act[.]”

{8} Procurement Code

- Under NMSA 1978, § 13-1-196.1, “[t]he state ethics commission may investigate complaints against a contractor who has a contract with a state agency or a person who has submitted a competitive sealed proposal or a competitive sealed bid for a contract with a state agency. The state ethics commission may impose the civil penalties authorized in Sections 13-1-196 through 13-1-198 NMSA 1978 pursuant to the provisions of those sections.”

These statutes and others make it clear that the Commission has authority to initiate its own investigations of potential ethics violations, petition the district court to issue subpoenas in furtherance of an investigation, and, where appropriate, file an action in the district court to enforce the relevant provisions of the statutes within its jurisdiction.

2. Objective.

{1} This Policy’s objective is the fair and uniform handling and disposition of alleged violations of ethics laws received by the Commission that are not in the form of either (i) an administrative complaint or (ii) a referral within the scope of a joint powers agreement that is treated as an administrative complaint.

3. Limitations.

{1} This Policy applies to the Commission, Executive Director, General Counsel, other Commission staff, and Commission contractors. It does not give any enforceable rights to others.

4. Definitions.

{1} As used in this Policy,

- a. “Administrative complaint” means an allegation of an actual or potential violation of ethics laws in a sworn and notarized complaint, as fully described in NMSA 1978, Section 10-16G-2(D) (2019).
- b. “Commission” means the State Ethics Commission.
- c. “Commission staff” refers to the State Ethics Commission’s executive director or authorized agents. It does not include the general counsel.
- d. “Ethics laws” means the anti-donation clause and state statutes within the Ethics Commission’s jurisdiction.
- e. “Government agency” means an instrumentality of the United States or an agency of a state, county, or municipal government.
- f. “Person” means any natural person or organization that is not a government agency.
- g. “Referral” means any allegation of an actual or potential violation of ethics laws received by the Commission or its staff from a government agency.
- h. “Informal complaint” means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

{2} All other terms used in this policy are given the definition provided by the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019) or ordinary usage.

5. Administrative complaints; referrals.

{1} Administrative complaints will be handled in the manner set forth in the State Ethics Commission Act and the Commission’s regulations for administrative complaints and adjudications. *See* §§ 10-16G-9 to -16; 1.8.3 NMAC. A referral that sufficiently identifies (i) the complainant; (ii) the respondent; and (iii) the factual basis for alleged violations of the Ethics laws **may** will be treated as an administrative complaint, even if it is not sworn and notarized. *See* NMSA 1978, §§ 1-19-34.8(A)(2); 1-19A-15.1(A)(2); 2-11-8.3(A)(2); 10-16A-6(E) (permitting referrals of complaints received by other state agencies); **see also 1.8.3.9(A)(5)** (“The commission may proceed with any complaint, irrespective of whether the complaint is notarized, that is forwarded to the commission by another state agency, or by the legislature or a legislative committee . . . according to the terms

of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body . . .”). All other referrals will be handled in the same manner as informal complaints pursuant to the terms of this Policy.

{2} An administrative complaint that is voluntarily dismissed by the complainant before the Commission has an opportunity to act on the complaint may be handled as an informal complaint pursuant to the terms of this Policy.

6. Assessments by Commission staff.

{1} **Assessments.** Commission staff may assess whether a referral or an informal complaint alleges violations of laws that are (i) within the Commission’s jurisdiction and (ii) supported by sufficient evidence to support a sworn affirmation that a violation of the laws within the Commission’s jurisdiction has occurred. During an assessment, Commission staff may seek information, proactively or in response to investigative leads, relating to activities constituting violations of the ethics laws. Assessments may result in (i) a request for the Commission’s approval to commence a civil action; (ii) an investigation pursuant to terms of this Policy; or (iii) a determination of no further action.

{2} **Policy.** Detecting and preventing violations of ethics laws is preferable to allowing violations to occur. Hence, assessments may be undertaken proactively with such objectives as detecting violations of ethics laws and obtaining information on individuals, groups, or organizations of possible investigative interest, without prior approval by the Commission.

{3} **Executive Director approval.** Before initiating or approving an assessment, the Executive Director must determine whether (i) the assessment is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin, religion, other protected status of the subject, or a subject’s political party membership or political affiliation; and (ii) the assessment is an appropriate use of personnel and financial resources.

{4} **Scope.** In making an assessment, Commission staff may seek and review information that is available to the public. For example, Commission staff may review public social media accounts and news media. Commission staff may also issue written requests for records under the Inspection of Public Records Act. In making an assessment, Commission staff may not interview witnesses, monitor communications, engage in undercover operations, or utilize compulsory process, other than written requests for records under the Inspection of Public Records Act.

{5} Memorandum. Regardless of whether an assessment results in a request for the Commission’s approval to commence a civil action, an investigation, or no further action by the Commission staff, the Executive Director or his or her designee shall memorialize the results of the assessment.

{6} Notice to referring agency or informal complainant. The Executive Director may provide a written notice to the referring agency or informal complainant about the outcome of the Commission staff’s assessment.

{7} No assessments based on protected conduct or status. Although a potential violation of the ethics laws need not be supported by a factual predication in order to merit an assessment by Commission staff, Commission staff should not perform an assessment based on arbitrary or groundless speculation. An assessment also may not be performed based solely on conduct that is protected by the First Amendment or on subject’s race, ethnicity, national origin, religion, or other status protected under State or federal law. Nor may an assessment be performed based solely on a subject’s political party membership.

7. Investigations.

{1} Investigations. Commission staff may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has or in the immediate future will violate the ethics laws. Investigations may result in (i) a request for the Commission’s approval to commence a civil action; or (ii) a determination of no further action.

{2} Policy. Under the State Ethics Commission Act, “[t]he commission may file a court action to enforce the civil compliance provisions of [the Ethics laws].” *See* NMSA 1978, § 10-16G-9(F) (2019). When a referral or informal complaint is supported by an articulable factual basis, Commission staff may investigate to determine whether there is enough evidence for the Commission to initiate a civil action under Section 10-16G-9(F). A civil action initiated under Section 10-16G-9(F) does not require a sworn complaint or a final order from the Commission; in initiating such a complaint, the Commission is asking the district court to adjudicate alleged violations of the ethics laws. This Policy is designed to ensure that the Commission’s decision to initiate a civil action is fair and impartial. In addition, a quorum of the Commission may instruct the Commission’s staff to investigate a matter within the Commission’s jurisdiction.

{3} Executive Director and General Counsel approval. Prior to initiating an investigation, Commission staff must obtain approval from the Executive Director

and General Counsel. In deciding whether to approve the initiation of an investigation, the Executive Director and the General Counsel must approve written findings that (i) a sufficient factual predicate exists to support an investigation; (ii) the proposed investigation is a reasonable use of Commission resources and personnel; and (iii) a formal complaint from the source of the referral or informal complaint is unlikely to be obtained or notice to the subject of the investigation is highly likely to result in the destruction of relevant evidence.

{4} Scope. In performing an investigation, Commission staff may take any action available to the Commission staff when making an assessment, interview witnesses, and, pursuant to the approval of a quorum of Commissioners, petition a district court for leave to serve subpoenas. *See* NMSA 1978, § 10-16G-10(J) (2019).

{5} Memorandum. Regardless of whether an investigation results in a civil action or in no further action by the Commission, the Executive Director or his or her designee shall summarize the results of an investigation in a confidential memorandum and send the summary to the Commission.

{6} Notice to referring agency or informal complainant. The Executive Director may provide a written notice to the referring agency or informal complainant about the outcome of the Commission staff's investigation.

8. Notice to Commission and Commission Chair

{1} The Executive Director shall alert the Commission Chair about the initiation of an investigation. The Executive Director shall also inform the Commission about investigations at Commission meetings in closed session.

9. Civil actions or referral for impeachment proceedings.

{1} Commission approval. To initiate a civil action under Section 10-16G-9(F) or to refer a matter for impeachment proceedings under Section 10-16-14(C), the Executive Director shall obtain approval from a quorum of Commissioners pursuant to Section 10-16G-3(H).

{2} Request for Commission approval; contents. In seeking approval from the Commission to initiate a civil action alleging violations of the ethics laws, the Executive Director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the Commission to refer a matter to the house of representatives for impeachment proceedings, the Executive Director shall provide a written explanation of the

factual basis for the proposed referral and explain why a referral under Section 10-16-14(C) is appropriate.

Adopted by the New Mexico State Ethics Commission this ~~3rd day of April 2020~~
4th day of December 2020.

The Hon. William F. Lang
New Mexico State Ethics Commission
Chair

(History: Adopted April 3, 2020; Amended December 4, 2020)

STATE ETHICS
COMMISSION



2020
ANNUAL
REPORT

To New Mexico Legislature
& Governor Michelle Lujan Grisham

[Draft]

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OPENING MESSAGE

December __, 2020

On behalf of the State Ethics Commission, I am very pleased to offer the first annual report of the Commission's activities. Under statute, the State Ethics Commission "shall . . . submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor."

The first State Ethics Commissioners were appointed on July 1, 2019. Over the past 18 months, the Commission has made much progress toward achieving its constitutional and statutory mandates. The Commission has achieved a full complement of Commissioners, conducted 15 open meetings, and hired staff. With staff assistance, the Commission has:

- opened an office in UNM's Science and Technology Park in Albuquerque;
- adopted rules of procedure for ethics complaints;
- drafted a proposed code of ethics for state officers and employees;
- adjudicated 36 administrative complaints;
- issued 8 advisory opinions;
- participated in appellate cases regarding the Governmental Conduct Act;
- enforced disclosures required by the Campaign Reporting Act against a "dark money" political action committee; and
- provided continuing legal education and ethics trainings to audiences around the state.

In short, from a statutory blueprint and an initial appropriation, we have built a nascent but already meaningful agency in New Mexico government. The Commission is an outpost of government where a spirit of bipartisanship and a shared concern for accountable and honest government guides the mission and work.

On behalf of the Commissioners, I want to thank the New Mexico Legislature and the Governor for their continued support of the Commission. Public trust takes years of work by each branch of government to build and preserve and can be too easily lost. Like those New Mexicans who worked over 40 years for the Commission's creation, we believe that the State Ethics Commission will play a central part in ensuring ethical and accountable government in New Mexico.

Respectfully,

Hon. William F. Lang (Ret.)

Chair, New Mexico State Ethics Commission, on behalf of State Ethics Commissioners Jeffrey L. Baker, Stuart M. Bluestone, Garrey Carruthers, Ronald Solimon, Judy Villanueva, and Frances Williams.

COMMISSION MEMBERS

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Initial term expires: June 30, 2022

Jeffrey L. Baker, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Brian Egolf

Initial term expires: June 30, 2023

Hon. Garrey Carruthers, Member

Appointing authority: Minority Floor Leader of the Senate, Stuart Ingle

Initial term expires: June 30, 2023

Ronald Solimon, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: August 10, 2024

Dr. Judy Villanueva, Member

Appointing authority: Minority Floor Leader of the House, James Townsend

Initial term expires: June 30, 2021

Frances F. Williams, Member

Appointing authority: President Pro Tempore of the Senate, Mary Kay Papen

Initial term expires: June 30, 2021

INTRODUCTION & HISTORY

In the 2018 general election, New Mexicans voted to adopt Article V, Section 17 of the New Mexico Constitution, which established the independent and bipartisan State Ethics Commission. New Mexico became the 45th state to create an independent ethics commission.

The Commission is the product of over 40 years of work by Governors, state legislators, advocacy organizations, and other New Mexicans fighting for accountable government. Gubernatorial task forces in 1992, under Governor Bruce King, and in 2006, under Governor Bill Richardson, proposed an independent ethics commission as the keystone of wider legislative reform.

In 2017, the Legislature passed a joint resolution to amend the New Mexico Constitution to create an independent ethics commission. The House of Representatives unanimously passed this joint resolution (66-0), and the Senate passed it on a vote of 30-9. The legislation gave the New Mexico electorate the final decision on whether to create an independent ethics commission.

In November 2018, over 75% of New Mexican voters voting on the ballot question elected to amend the Constitution to add Article V, Section 17, creating an independent ethics commission. The new Constitutional provision provides for the Commission's seven-member composition and directs the process for the appointment of the Commissioners. N.M. Const. Art. V, § 17(A). It also empowers the Commission to adjudicate alleged violations of, and issue advisory opinions regarding, ethical standards and reporting requirements for "state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts" and for such other jurisdiction as provided by law. N.M. Const. Art. V, § 17(B). Finally, the state Constitution empowers the Commission with investigatory powers, as provided by law, and enables the Commission to "have such other powers and duties and administer or enforce such other acts as further provided by law." N.M. Const. Art. V, § 17(C).

In the following 2019 legislative session, the Legislature unanimously enacted enabling legislation, Senate Bill 668 (Laws 2019), which created the State Ethics Commission Act, providing for additional structure for the Commission and delegating to the Commission a specific set of powers. Senate Bill 668 also amended the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, the Financial Disclosure Act, and the Gift Act, delegating additional adjudicatory and enforcement powers to the Commission. Governor Michelle Lujan Grisham signed Senate Bill 668 into law on March 28, 2019.

Shortly after the enactment of the Commission's enabling legislation, the Governor appointed the Commission's first chair (Hon. William F. Lang), and the legislative leadership in the House and Senate appointed the first set of legislatively appointed Commissioners (Stuart Bluestone, Hon. Dr. Garrey Carruthers, Dr. Judy Villanueva, and Frances Williams). Chief Justice Judith K. Nakamura swore in the initial Commissioners on July 1, 2019 in the Capitol Rotunda.

In the next six weeks, the Commission met both in Santa Fe and Las Cruces to determine a process for the selection of the two remaining Commissioners. Dozens of New Mexicans applied; the Commission conducted a full day of interviews; and selected the remaining two

Commissioners: Jeffrey L. Baker and Ronald Solimon. On August 14, 2019, in the New Mexico Supreme Court, Chief Justice Nakamura administered the oath to Commissioners Baker and Solimon.

The Commission then hired a temporary staff member, Matthew Baca, and subsequently advertised, accepted applications for, interviewed, and hired an Executive Director, Jeremy Farris, on November 1, 2020. Dr. Farris hired the General Counsel, Walker Boyd, and the other members of the Commission's staff. In December 2019, the Commission held rulemaking hearings for its general rules, rules regarding Commissioner recusal, and rules of procedure for administrative cases. On January 1, 2020, the Commission promulgated those rules in the New Mexico Administrative Code, and, under the State Ethics Commission Act, the Commission's jurisdiction for administrative matters and delegated enforcement powers took effect.

ORGANIZATION

Commissioners

The State Ethics Commission is comprised of seven commissioners. The State Ethics Commission Act sets forth a procedure for appointing commissioners that ensures a bi-partisan independent commission.

The Commission has a unique appointment process. The Speaker of the House of Representatives, the Minority Floor Leader of the House, the President Pro Tempore of the Senate, and the Minority Floor Leader of the Senate each appoint one Commissioner. The four legislatively appointed Commissioners then appoint two additional Commissioners. Finally, the Governor appoints the Commission's Chair, who must be a retired judge. No more than three Commissioners may be members of the same political party. Except for the initial Commissioners' initial terms, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms.

There are also statutory requirements regarding who may serve as a Commissioner. To qualify, a person must be a New Mexico voter; not have changed party registration in the five years preceding appointment; and not have been in the two years preceding appointment a public official, a public employee, a candidate, a lobbyist, a government contractor, or an office holder in a political party at the federal or state level.

Commission Staff

The administrative, legal, and investigative functions of the Commission are performed by the agency's staff. The State Ethics Commission Act creates two staff positions: the Executive Director and General Counsel. The Commission hires the Director, and the Director hires the General Counsel and all other staff. Each statutorily created office is subject to limited terms. Under the Act, the Director may serve for, at most, two six-year terms; the General Counsel may serve for, at most, two five-year terms. The Commission's current staff members are as follows:

Executive Director | Jeremy D. Farris

Jeremy D. Farris is the first State Ethics Commission Executive Director. He previously served as General Counsel to New Mexico's Department of Finance and Administration and practiced law at litigation firms in Atlanta, Georgia and Albuquerque, New Mexico. Jeremy clerked for the Honorable Julia S. Gibbons on the United States Court of Appeals for the Sixth Circuit; the Honorable Judith K. Nakamura on the New Mexico Supreme Court; and the Honorable James O. Browning on the United States District Court for the District of New Mexico. He holds a law degree from Harvard Law School, a doctorate and master's degree from the University of Oxford, where he was a Rhodes Scholar, and a Bachelor's of Science from the Georgia Institute of Technology.

General Counsel | Walker Boyd

Walker Boyd is the first State Ethics Commission General Counsel. He previously practiced law at Peifer, Hanson and Mullins, P.A., and clerked for the Honorable James A. Parker on the United States District Court for the District of New Mexico and the Honorable J. Miles Hanisee on the New Mexico Court of Appeals. He holds a law degree from the University

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of New Mexico, where he served as Editor in Chief of the New Mexico Law Review, and a Bachelor's of Arts from Vassar College.

Deputy General Counsel | Rebecca Branch

Rebecca, a native New Mexican, serves as the State Ethics Commission's Deputy General Counsel. She previously served as Deputy Director of Litigation and Deputy Director of Consumer Protection at the Office of the New Mexico Attorney General. She also was with the Office of the Superintendent of Insurance as Legal Counsel. Rebecca began her legal career at the Branch Law Firm. She holds a law degree from University of Denver, Sturm School of Law and a Bachelor of Arts in History from Alfred University.

Finance and Administration Director | Wendy George

Wendy serves as the State Ethics Commission Director of Finance and Administration. She previously served as Budget Manager to New Mexico's Department of Finance and Administration and has over five years of governmental financial experience within the agency. She also has corporate financial and compliance experience working for Wells Fargo and Ameriprise Financial in Minneapolis, MN. She holds a Bachelor's of Science in Business Management from Cardinal Stritch University.

Director of Communications | Sonny C. Haquani

Sonny serves as the State Ethics Commission's Communications Director. Prior to joining Commission staff, Sonny served as a Community Liaison for the City of Albuquerque's Office of Equity and Inclusion. Previously Sonny has served as Board Chairman of IBSG, an International business and global affairs think tank at the University of New Mexico's Anderson School of Management. In partnership with the Anderson School, Sonny was the Executive Editor and co-author of *Outside the Margins: The Bluebook on the Global Refugee Crisis*. Sonny holds a Bachelor's of Arts in International Studies and Political Science from the University of New Mexico.

Legal Summer Clerks | Lane Towery & Annie Swift

During the summer of 2020, the Commission invited two law students from the University of New Mexico School of Law to participate in Commission's work. Lane Towery (currently in his 3L year) and Annie Swift (currently in her 2L year) performed various legal research and drafting projects related to the Commission's proposed code of ethics for state agencies and legislative recommendations regarding the Campaign Reporting Act and the Voter Action Act. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of UNM Law students to the Commission's legal work through summer clerkships.

FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in net position for the fiscal year ending June 30, 2020.

STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE BUDGET AND ACTUAL YEAR ENDED JUNE 30, 2020

(Amounts in dollars)

	<u>Budget</u>	<u>Actual</u>	Variance - Favorable (Unfavorable)
Revenues:			
General Revenue			
Appropriation	\$ 700,000	\$ 700,000	\$ -
Total Revenues	<u>700,000</u>	<u>700,000</u>	<u>-</u>
Expenditures:			
Personal Services and Fringe Benefits	344,055	271,597	72,458
Contractual Services	189,961	159,090	30,871
Other Costs	165,984	99,154	66,830
Total Expenses	<u>700,000</u>	<u>529,841</u>	<u>170,159</u>
Excess (Deficiency) of Revenues Over Expenditures	<u>\$ -</u>	<u>\$ 170,159</u>	<u>\$ (170,159)</u>
Fund Reversions – 2020		<u>\$ (170,159)</u>	
Net Change in Fund Balance		<u>\$ -</u>	

In accordance with the Government Auditing Standards, CliftonLarsonAllen LLP (CLA), has completed an audit of the State Ethics Commission's financial statements ending July 30, 2020. The firm has issued an **unmodified** auditor's report confirming no material weakness(es), significant deficiency(ies), nor noncompliance material to the financial statements were identified. In CLA's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and the major general fund as of June 30, 2020, the respective changes in financial position and budgetary comparison of the general fund for the year then ended in accordance with accounting principles generally accepted in the United States. The full report on the State Ethics Commission's Financial Statements and Supplementary Information can be found at www.sec.state.nm.us/about.

OPERATIONS

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The Commission has five major operational functions: (i) the investigation and adjudication of administrative complaints filed with the Commission; (ii) the issuance of advisory opinions; (iii) the civil enforcement of New Mexico's ethics laws in state court; (iv) the issuance of a model code of ethics for state agencies; and (v) the development and provision of ethics and governmental conduct trainings for legislators, state agencies, and local public bodies. Below is a profile of the Commission's progress in its opening year across these five functions and a report of the Commission's workload.

Administrative Complaints

On January 1, 2020, the Commission promulgated its rules of procedure for administrative cases, at 1.8.3. NMAC. The Commission has also established its [Proceedings Portal](#), a web-based case management and docketing system for parties to Commission administrative matters and their attorneys.

The Commission's adjudication of administrative complaints is divided across four roles. The Executive Director determines jurisdiction. The General Counsel determines whether the allegations of a complaint are supported by probable cause. A hearing officer decides motions to dismiss for failure to state a claim for which relief can be granted and, in appropriate cases, holds hearings and issues findings of fact and conclusions of law. The Commission sits as an appellate body, reviewing hearing officer determinations if and when appealed. The Commission currently has a Memorandum of Understanding with the Administrative Hearings Office for hearing officer services. The Commission also has a professional services contract with the Honorable Edward L. Chávez, retired Justice of the New Mexico Supreme Court, for hearing officer services.

Below is a profile of the Commission's administrative caseload.

Data on complaints as of **11/25/2020**.

Complaints Filed	Cases Closed
36	33

Administrative Cases by Quarter

Q1 (January – March) Total New Filed: (6/6)	Governmental Conduct Act: 3 Anti-Donation Clause: 1 Other: 2
Q2 (April – June) Total New Filed: (12/18)*	Governmental Conduct Act: 11† Financial Disclosure Act: 7 State Ethics Commission Act: 8 Procurement Code: 1

<p>Q3 (July – September) Total New Filed: (13/31)</p>	<p>Governmental Conduct Act: 12 Financial Disclosure Act: 9 State Ethics Commission Act: 10 Anti-Donation Clause: 1 Procurement Code: 1</p>
<p>Q4 (October – December) Total New Filed: (5/36)</p>	<p>Governmental Conduct Act: 3 State Ethics Commission Act: 4 Campaign Reporting Act: 1 Voter Action Act: 1</p>

*Data presented (X,Y) where X, represents quarterly numbers and Y represents cumulative data.

† Data on alleged violations reflect the cumulative number of instances each quarter that complainants alleged a given law was allegedly violated.

Advisory Opinions

The State Ethics Commission may issue formal advisory opinions requested in writing by “a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.” NMSA 1978, § 10-16G-8(A)(1). Under the State Ethics Commission Act, requests for advisory opinions are confidential and not subject to disclosure under the Inspection of Public Records Act. Additionally, formal advisory opinions are binding on the Commission in any subsequent administrative proceeding concerning a person who acted in good faith and in reasonable reliance on an advisory opinion.

In November 2020, the Commission adopted a rule allowing persons subject to the Governmental Conduct Act to submit a request for an informal advisory opinion to the Director or General Counsel. Such requests are also confidential, but informal advisory opinions are not binding on the Commission unless and until the Commission votes to adopt the informal advisory opinion as a formal advisory opinion. Commission staff issued one informal advisory opinion under the Commission’s new rule.

Below is a profile of the advisory opinions the Commission issued in 2020.

GOVERNMENTAL CONDUCT ACT

Advisory Opinion 2020-01

Question: Does a state employee’s receipt of a monthly salary from a political campaign committee or political organization while employed and performing their regular public duties violate the Governmental Conduct Act?

Conclusion: No, absent facts showing that the state employee’s service was compromised as a result of his or her outside employment. [Click here to read the full opinion.](#)

Advisory Opinion 2020-02

Question: Does the Governmental Conduct Act prohibit a former state agency attorney from representing a nonprofit organization in the same matter that the state employee previously represented the state agency?

Conclusion: Yes. [Click here to read the full opinion.](#)

Advisory Opinion 2020-06

Question: Under the Governmental Conduct Act, may a cabinet secretary or another state employee work remotely from outside of the state on a permanent or near-permanent basis, when their job duties are ordinarily based in New Mexico.

Conclusion: Subsection 10-16-3(A) of the Governmental Conduct Act prohibits an out-of-state telework accommodation that either inhibits a state employee's duties or otherwise obstructs the public interest. Beyond this general statement, the Commission does not have enough information to provide an opinion as to whether the specific arrangements in the request violate the Governmental Conduct Act. [Click here to read the full opinion.](#)

GIFT ACT

Advisory Opinion 2020-03

Questions: (1) Does the Gift Act permit Holtec International to provide flights, meals, refreshments, and lodging to legislators as part of an educational tour of Holtec's nuclear generating station in Missouri? (2) Does the Campaign Reporting Act require the legislators to report Holtec's contributions as in-kind campaign contributions?

Conclusions: (1) Yes; (2) No. [Click here to read the full opinion.](#)

PROCUREMENT CODE

Advisory Opinion 2020-04

Question: Does the Procurement Code prohibit a person involved in a procurement award decision from discussing the contents of a proposal submitted in response to request for proposals prior to the award?

Conclusion: Yes. [Click here to read the full opinion.](#)

Advisory Opinion 2020-05

Question: Two companies, which are separately registered as suppliers to the State, share the same office address. Each company separately submitted an identical twenty-item bid in response to an invitation to bid. Do the identical bids of these two companies constitute price fixing or collusion or violate the Procurement Code?

Conclusion: Yes. [Click here to read the full opinion.](#)

Advisory Opinion 2020-07

Question: Can the non-state-employee members of the Council for Purchasing from Persons with Disabilities participate in the Council's vote to award State Use Act contracts to themselves or companies they own?

Conclusion: Self-dealing by non-state-employee Council members raises serious ethical concerns but does not violate the Governmental Conduct Act or the Procurement Code. If the Council wishes to prohibit a member from participating in a decision award a contract to the member or a company the member owns, the Council can amend its rules or recommend amendments to the Governmental Conduct Act or the Procurement Code. [Click here to read the full opinion.](#)

Advisory Opinion 2020-08

Question: Where a school district has awarded contracts for legal services to three law firms based upon competitive sealed proposals, does the Procurement Code allow a school district to procure legal services in excess of \$40,000 from a law firm that was not awarded a contract through the school district's competitive-sealed-proposal process?

Conclusion: Yes. [Click here to read the full opinion.](#)

Civil Enforcement & Litigated Matters

In addition to its quasi-judicial power to adjudicate administrative matters and issue advisory opinions, the Commission also has a discretionary executive power to pursue civil enforcement actions in state court to remedy violations of the ethics laws. In 2020, the Commission issued Resolution No. 4 that guides the Commission's authorization for civil enforcement actions. Under that guidance, when the Commission receives referrals from other state agencies such as the Office of the Attorney General and the Secretary of State's Office, or receives informal tips from private citizens, the Commission reviews and assess those matters to determine whether to proceed with a civil enforcement action. In 2020, the Commission was involved in the following litigated or civil enforcement matters:

(1) *State v. Gutierrez, et al.*

The State Ethics Commission filed a motion to participate as a friend of the court ("amicus curiae") and proposed amicus brief with the New Mexico Supreme Court in *State v. Gutierrez, et al.*, S-1-SC-38367 and S-1-SC-38368. The Commission's proposed amicus brief argues that Section 10-16-3 of the Governmental Conduct Act creates constitutionally enforceable duties on legislators, public officials, and public employees that prohibit them from using the powers and resources of public office to obtain personal benefits and from abusing their public offices. The Governmental Conduct Act also requires legislators, public officials, and public employees to disclose real and potential conflicts of interest and to avoid undue influence while in public service. The Commission's amicus brief explains (i) why Section 10-16-3 should be upheld from constitutional challenges; (ii) how, over time, the Commission will apply and clarify the Governmental Conduct Act through administrative proceedings; and (iii) how the Governmental Conduct Act plays a critical role in efforts across the state to address and deter public corruption and official misconduct.

The *Gutierrez* case involves four consolidated criminal appeals related to Section 10-16-3 of the Governmental Conduct Act. These four cases involve a former Doña Ana County Treasurer, the Sixth Judicial District Attorney, a former San Juan County magistrate judge, and a former Secretary of the New Mexico Taxation and Revenue Department. (In the last case, *State v. Padilla*, the Commission also filed an amicus brief in the Court of Appeals.) After the Court of Appeals consolidated the four cases and issued a single ruling, both the Office of the Attorney General and several of the defendants petitioned for the Supreme Court's review. The Supreme Court agreed to review the case, and briefing will continue through February 2021 (at the earliest). The Commission hopes that the Supreme Court will clarify that Subsections 10-16-3(A) through (C) of the Governmental Conduct Act create constitutionally enforceable duties for legislators, public officials, and public employees, thereby vindicating New Mexico's public corruption laws.

The State Ethics Commission seeks to participate in this case as a friend of the court and takes no position on the truth of the allegations in the criminal charges against the four defendants in the consolidated proceedings. To read the Commission's proposed amicus brief, filed with the Supreme Court in *State v. Gutierrez, et al.*, please [click here](#). To read the Commission's amicus brief filed with the Court of Appeals in *State v. Padilla*, please [click here](#).

(2) *State Ethics Commission v. Committee to Protect New Mexico Consumers*

On September 21, 2020, through a pre-filing settlement agreement, the Commission secured the pre-election disclosure of \$264,193.14 in expenditures on campaign advertisements supporting a ballot question that would change the composition of the Public Regulation Commission ("PRC"). The Committee to Protect New Mexico Consumers ("CPNMC") agreed to the disclosure following negotiations with the Commission after the Commission voted to authorize its staff attorneys to demand that CPNMC come into compliance with the Campaign Reporting Act by filing independent expenditure reports with the Secretary of State. If CPNMC refused, Commission staff would have initiated a civil action in state district court. Copies of CPNMC's independent expenditure report (filed with the Secretary of State) and samples of CPNMC's mailers can be viewed below as well as on the Commission's website at www.sec.state.nm.us.

[CPNMC Independent Expenditure Report \(filed with SOS, Sept. 18, 2020\)](#); [CPNMC Mailer #1](#); [CPNMC Mailer #2](#); [CPNMC Mailer #3](#); [CPNMC Mailer #4](#).

(3) *State Ethics Commission v. Council for a Competitive New Mexico.*

[To be completed pending Commission's Dec. 4, 2020 meeting.]

Model Code of Ethics

Under the State Ethics Commission Act, the Commission must "draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption." Over the course of 2020, the Commission assiduously worked on a proposed code of ethics, holding two rulemaking hearings regarding the

same. The Commission anticipates promulgating its proposed code of ethics as 1.8.4 New Mexico Administrative Code by the end of the year.

Below are links to the Commission's draft of the proposed code of ethics and the corresponding rulemaking record.

- [Proposed model code published in the New Mexico Register June 23, 2020](#)
- [Include hyperlink to rule, pending Dec. 4 Commission meeting]

To view a list of the pre-filed written public comments, [click here](#).

Trainings

Under the Governmental Conduct Act, the State Ethics Commission shall advise and seek to educate all persons required to perform duties under the Governmental Act—that is, all legislators and all elected or appointed officials or employees of a state agency or a local government agency who receives compensation or per diem—of those duties. Under the Governmental Conduct Act, the Commission has a responsibility to develop and provide to all legislators a minimum of two hours of ethics continuing education. Similarly, under the State Ethics Commission Act, the Commission is authorized to offer annual ethics trainings to public officials, public employees, government contractors, lobbyists and other interested persons. To this end, the Commission has contracted with Paul Biderman to develop Governmental Conduct Act training materials that Commission staff can deploy around the state. Also, during 2020, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For information on future trainings, visit: www.sec.state.nm.us/transparency/

- **December 14, 2020** – Ethics Presentation to Members of New Mexico Legislature (Director Farris and General Counsel Boyd).
- **December 8, 2020** – Ethics Presentation to County Commissioners (Director Farris and General Counsel Boyd).
- **October 16, 2020** – Public Law Section Administrative Law Institute: State Ethics Commission Rules of Procedure on Administrative Complaints. (Attorney CLE credit) (Director Farris).
- **September 15, 2020** – Filing and Litigating Complaints Before the State Ethics Commission. (Attorney CLE credit) (Director Farris and General Counsel Boyd).
- **June 5, 2020** – Filing and Litigating Complaints Before the State Ethics Commission. (Attorney CLE credit) (Director Farris and General Counsel Boyd).

In addition to providing CLE trainings, the Commission and its staff have undertaken a media outreach campaign during 2020, in regard to both the State Ethics Commission Act and, leading up to the 2020 General Election, the requirements of the Campaign Reporting Act. These efforts included the following:

Television and Radio

[New Mexico In Focus](#) (Mar. 2, 2020)

[Let's Talk NM \(KUNM\)](#) (Mar. 9, 2020)

[Report from Santa Fe](#) (Aug. 10, 2020)

Op-eds

[Candidates, Expenditures and Making Sense of it All](#) (Oct. 8, 2020)

[Combatting Dark Money in New Mexico Elections](#) (Oct. 25, 2020)

LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the First Session of the Fifty-Fifth Legislature. The Commission offers these recommendations in full awareness that the Covid-19 pandemic creates uncommon challenges for this session. As such, the Commission proposes two sets of recommended statutory amendments focused on improving the administration and enforcement of New Mexico's ethics laws. Corresponding discussion drafts of bills are attached to this Annual Report.

(1) State Ethics Commission Act

Under Section 10-16G-5(B)(5), as part of this Annual Report, the Legislature tasked the Commission to offer recommendations on “the scope of its powers and duties.” Over the past year of operations, the Commission has discussed three proposed amendments to the State Ethics Commission Act that would improve the Commission's adjudication of administrative complaints and enforcement of New Mexico's ethics laws.

First, in Sections 10-16G-2(D) and Section 10-16G-10(B), the Commission recommends removing the requirement that administrative complaints be notarized, while leaving the requirement that complaints must be signed and sworn under penalty of perjury. Notarization is anachronistic and is no longer required for written statements in New Mexico's Supreme Court or district courts. *See, e.g.*, Rule 1-011(B) NMRA; Rule 23-115. Notarization does little to ensure that complaints filed with the Commission are true and accurate, since a notary public is not required to verify a complaint and its contents before notarization occurs. Other provisions of the State Ethics Commission Act ensure complainants are held accountable for their allegations: specifically, the requirement that a complaint be signed under penalty of perjury and the provision that permits a complainant to be held liable for any defamatory statements contained in a complaint.

Second, in Section 10-16G-4(B), the Commission recommends adding a requirement that the State Ethics Commissioners file financial disclosures with the secretary of state for every year that a Commissioner serves on the Commission. Under current law, State Ethics Commissioners are not required to file a financial disclosure because they are not confirmed by the Senate. The Commission believes that because it is tasked with enforcing the Financial Disclosure Act, individual Commissioners should be required to comply with the Act as well.

Third, in Section 10-16G-9(F), the Commission recommends changing the word “respondent” to “defendant” to make clear that the Commission needs to file any lawsuit in the district court encompassing the county where the defendant resides. Section 9(F) currently suggests that the venue requirement applies only when the State Ethics Commission brings a lawsuit against someone who has been named as a respondent to an ethics complaint.

A current draft of the proposed amendments to the State Ethics Commission Act is available at Attachment 1 to this Annual Report.

(2) Campaign Reporting Act, Lobbyist Regulation Act, Voter Action Act, and Financial Disclosure Act (administration & enforcement provisions only)

The Campaign Reporting Act (CRA), Voter Action Act (VAA), and Lobbyist Regulation Act (LRA) each require the State Ethics Commission and the Secretary of State (SOS) to “make recommendations to the first session of the fifty-fifth legislature on any changes to [those Acts] necessary for the efficient administration and enforcement of the provisions of [those Acts].” NMSA 1978, §§ 1-19-34.8(B), 1-19A-15.1(B), and 2-11-8.3(B).

Under the CRA, VAA, and LRA, both the SOS and the Commission have responsibilities to enforce these statutes. After passage of Senate Bill 668 (2019), which delegated powers to the Commission, the two agencies entered joint powers agreements to provide for an interagency referral system to ensure that all statutory conditions on enforcement are satisfied. These joint powers agreements and the current statutes are not a long-term solution. Currently, there is so much process required by law that statutory violations cannot be timely enforced, much less in a way that makes enforcement efforts responsive to the CRA’s statutory purpose to provide the electorate with relevant information about the sources of campaign advertising before it votes.

The jointly proposed amendments seek to improve “the efficient administration and enforcement” of the CRA, VAA, and LRA. The proposed amendments’ objective is to separate the administration and enforcement of these statutes, while preserving the legislative concern for opportunities for voluntarily compliance. Under the proposed amendments, the SOS continues its role in the administration of the CRA, VAA, and LRA, and the Commission takes on adjudicatory and civil enforcement roles. The Campaign Legal Center has advised the Commission and the SOS that the new proposal would align New Mexico with how other states divide responsibilities between their respective secretaries of state and ethics commissions, where (like in New Mexico) the ethics commissions are empowered to enforce compliance with campaign and lobbying disclosure laws.

Last, the Commission also recommends similar changes to the Financial Disclosure Act (FDA). Currently, the FDA provides for arbitration *after* the Commission concludes a FDA violation – that is, after the conclusion of the Commission’s processes for jurisdictional review, review for probable cause, a hearing and hearing officer determination, and appellate review by the full Commission. The Commission’s administrative procedures provide ample due process for persons subject to the Financial Disclosure Act. Accordingly, the arbitration provisions currently in Section 10-16A-6(B) through (D) are vestigial and no longer necessary in view of the Commission’s administrative process to adjudicate financial disclosure claims. Furthermore, the Commission does not propose to change the education and voluntary compliance provisions in Section 10-16A-5, which also provide additional protection for persons subject to the Act.

A discussion draft of a bill amending the CRA, VAA, LRA, and FDA is available at Attachment 2 to this Annual Report.

(3) Additional Recommendations for Amendments to the Lobbyist Regulation Act

In addition, the Commission recommends the following amendments to the Lobbyist Regulation Act; however, in preparing for the upcoming legislative session with this special constraints owing to the current pandemic, the Commission, at present, does not intend to request from the Legislative Council Service a discussion draft of a bill that makes the following amendments. If a bill were introduced making one or more of those amendments, the Commission would express its support.

First, to slow the revolving door between government service and lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A. A former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after the conclusion of service as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.”

B. A lobbyist’s employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary as a lobbyist for a period of two calendar years after the person served as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.”

C. A person who violates a provision of this section is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

Second, to allow for transparency when the family member of a legislator is lobbying for a bill, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A. A legislator shall, before voting on a bill, disclose that the legislator’s family member is lobbying on a bill on which the legislator must vote.

B. As used in this section, “family member” means a spouse, daughter, son, parent or sibling.

Third, to increase transparency of lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

A lobbyist or lobbyist’s employer that is required to file an expenditure report, pursuant to the provisions of Section 2-11-6 NMSA 1978, shall file an additional report with the secretary of state within fourteen days following the conclusion of a legislative session. The report shall list the legislation on which the lobbyist or lobbyist’s employer lobbied and shall indicate whether the lobbyist or lobbyist’s employer supported, opposed or took another position on each piece of legislation.

[Draft]

Attachment 1

**PROPOSED AMENDMENTS
TO THE STATE ETHICS COMMISSION ACT
FOR THE
FIRST SESSION OF THE FIFTY-FIFTH LEGISLATURE**

10-16G-2. Definitions.

As used in the State Ethics Commission Act:

A. "commission" means the state ethics commission;

B. "commissioner" means a member of the commission;

C. "complainant" means a person who files a verified complaint with the commission;

D. "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 attachments provided with the complaint, are true and accurate;

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

F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act;

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code;

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

10-16G-4. Commissioners; qualifications; limitations.

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

(1) be a qualified elector of New Mexico;

(2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;

(3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in

such a manner as to make the member ineligible to serve on the commission; and

(4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

- (a) a public official;
- (b) a public employee;
- (c) a candidate;
- (d) a lobbyist;
- (e) a government contractor; or

(f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and file with the secretary of state a financial disclosure statement during the month of January every year that the commissioner serves on the commission.

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

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

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

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

- (1) a public employee;

(2) a candidate;

(3) a lobbyist;

(4) a government contractor; or

(5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

10-16G-9. Commission jurisdiction; compliance provisions.

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:

(1) the Campaign Reporting Act;

(2) the Financial Disclosure Act;

(3) the Gift Act;

(4) the Lobbyist Regulation Act;

(5) the Voter Action Act;

(6) the Governmental Conduct Act;

(7) the Procurement Code;

(8) the State Ethics Commission Act;

and

(9) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward

other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10 of the State Ethics Commission Act.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the defendant [respondent] resides.

10-16G-10. Complaints; investigations; subpoenas.

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and

the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed and sworn by the complainant [and notarized].

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding

of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the

commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

~~the secretary of state as formalized through an agreement. The~~ secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with ~~the~~ a formalized 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 Lobbyist Regulation Act necessary for the efficient administration and enforcement of the provisions of that act.

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_____ BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ETHICS; CLARIFYING ADMINISTRATIVE AND ENFORCEMENT DUTIES OF THE STATE ETHICS COMMISSION AND SECRETARY OF STATE WITH RESPECT TO THE CAMPAIGN REPORTING ACT, VOTER ACTION ACT, FINANCIAL DISCLOSURE ACT AND LOBBYIST REGULATION ACT.

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

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

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

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a non-election year, to

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1 determine compliance with the provisions of the Campaign
 2 Reporting Act. The examination may include an investigation of
 3 any discrepancies, including a cross-reference to reports filed
 4 by any other reporting individual. A reporting individual
 5 shall be notified in writing if a discrepancy is found in the
 6 report filed and shall be permitted to file a written
 7 explanation for the discrepancy within ten working days of the
 8 date of the notice. [~~The notice, penalty and arbitration~~
 9 ~~provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply~~
 10 ~~to examinations conducted under this section.~~]

11 B. After the date stated in the notice [~~of final~~
 12 ~~action~~] for submission of a written explanation, the secretary
 13 of state shall prepare an annual report of any unresolved
 14 discrepancies found after examination of the random sample
 15 provided for in Subsection A of this section. A copy of this
 16 report shall be transmitted to the state ethics commission and
 17 the attorney general for enforcement pursuant to the provisions
 18 of [~~Section~~] Sections 1-19-34.6 and 1-19-36 NMSA 1978. This
 19 report is a public record open to public inspection and subject
 20 to the retention and destruction provisions set forth in
 21 Section 1-19-32 NMSA 1978."

22 SECTION 2. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
 23 Chapter 46, Section 15, as amended) is amended to read:

24 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
 25 INVESTIGATIONS--~~[BINDING ARBITRATION]~~ REFERRALS FOR

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1 ENFORCEMENT.--

2 A. The secretary of state shall advise and seek to
 3 educate all persons required to perform duties under the
 4 Campaign Reporting Act of those duties. This includes advising
 5 all known reporting individuals at least annually of that act's
 6 deadlines for submitting required reports and statements of
 7 ~~[exception]~~ no activity. The ~~[secretary of state, in~~
 8 ~~consultation with the attorney general]~~ state ethics commission
 9 shall issue advisory opinions, when requested in writing to do
 10 so, on matters concerning that act. All prescribed forms
 11 prepared shall be clear and easy to complete.

12 B. The secretary of state may initiate
 13 investigations to determine whether any provision of the
 14 Campaign Reporting Act has been violated. Additionally, any
 15 person who believes that a provision of that act has been
 16 violated may file a written complaint with the ~~[secretary of~~
 17 ~~state any time prior to ninety days after an election, except~~
 18 ~~that no complaints from the public may be filed within eight~~
 19 ~~days prior to an election. The secretary of state shall adopt~~
 20 ~~procedures for issuing advisory opinions and processing~~
 21 ~~complaints and notifications of violations]~~ state ethics
 22 commission.

23 C. The secretary of state and the state ethics
 24 commission shall at all times seek to ensure voluntary
 25 compliance with the provisions of the Campaign Reporting Act.

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1 ~~[If the secretary of state determines that a provision of that~~
2 ~~act for which a penalty may be imposed has been violated, the~~
3 ~~secretary of state shall by written notice set forth the~~
4 ~~violation and the fine imposed and inform the reporting~~
5 ~~individual that he has ten working days from the date of the~~
6 ~~letter to correct the matter and to provide a written~~
7 ~~explanation, under penalty of perjury, stating any reason why~~
8 ~~the violation occurred. If a timely explanation is filed and~~
9 ~~the secretary of state determines that good cause exists to~~
10 ~~waive the fine imposed, the secretary of state may by a written~~
11 ~~notice of final action partially or fully waive any fine~~
12 ~~imposed for any late, incomplete or false report or statement~~
13 ~~of exception. A written notice of final action shall be sent~~
14 ~~by certified mail.~~

15 ~~D. Upon receipt of the notice of final action, the~~
16 ~~person against whom the penalty has been imposed may protest~~
17 ~~the secretary of state's determination, including an advisory~~
18 ~~opinion, by submitting on a prescribed form a written request~~
19 ~~for binding arbitration to the secretary of state within ten~~
20 ~~working days of the date of the notice of final action. Any~~
21 ~~fine imposed shall be due and payable within ten working days~~
22 ~~of the date of notice of final action. No additional fine~~
23 ~~shall accrue pending the issuance of the arbitration decision.~~
24 ~~Fines paid pursuant to a notice of final action that are~~
25 ~~subsequently reduced or dismissed shall be reimbursed with~~

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1 ~~interest within ten working days after the filing of the~~
2 ~~arbitration decision with the secretary of state. Interest on~~
3 ~~the reduced or dismissed portion of the fine shall be the same~~
4 ~~as the rate of interest earned by the secretary of state's~~
5 ~~escrow account to be established by the department of finance~~
6 ~~and administration.~~

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

16 ~~F. The arbitrator shall conduct the hearing within~~
17 ~~thirty days of the request for arbitration. The arbitrator may~~
18 ~~impose any penalty the secretary of state is authorized to~~
19 ~~impose. The arbitrator shall state the reasons for his~~
20 ~~decision in a written document that shall be a public record.~~
21 ~~The decision shall be final and binding. The decision shall be~~
22 ~~issued and filed with the secretary of state within thirty days~~
23 ~~of the conclusion of the hearing. Unless otherwise provided~~
24 ~~for in this section or by rule or regulation adopted by the~~
25 ~~secretary of state, the procedures for the arbitration shall be~~

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1 ~~governed by the Uniform Arbitration Act. No arbitrator shall~~
 2 ~~be subject to liability for actions taken pursuant to this~~
 3 ~~section]~~ Additionally, the state ethics commission shall give a
 4 person who violates that act unintentionally or for good cause
 5 ten days' notice to come into compliance before the commission
 6 takes any action on an alleged violation filed with or referred
 7 to the commission against that person.

8 ~~[G.]~~ D. The secretary of state may refer a matter
 9 to the state ethics commission, the attorney general or a
 10 district attorney for a civil injunctive or other appropriate
 11 order or to the attorney general or a district attorney for
 12 criminal enforcement."

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

15 "1-19-34.6. CIVIL PENALTIES.--

16 A. If the secretary of state reasonably believes
 17 that a person committed, or is about to commit, a violation of
 18 the Campaign Reporting Act, the secretary of state shall refer
 19 the matter to the state ethics commission, the attorney general
 20 or a district attorney for enforcement; provided, however, that
 21 this requirement does not apply if the secretary of state
 22 waives the imposition of a fine pursuant to Subsection D of
 23 Section 1-19-35 NMSA 1978.

24 B. With or without a referral from the secretary of
 25 state, the state ethics commission, the attorney general or

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1 district attorney may institute a civil action in district
 2 court for any violation of the Campaign Reporting Act or to
 3 prevent a violation of that act that involves an unlawful
 4 solicitation or the making or acceptance of an unlawful
 5 contribution. An action for relief may include a permanent or
 6 temporary injunction, a restraining order or any other
 7 appropriate order, including a civil penalty of up to one
 8 thousand dollars (\$1,000) for each violation not to exceed a
 9 total of twenty thousand dollars (\$20,000), and forfeiture of
 10 any contribution received as a result of an unlawful
 11 solicitation or unlawful contribution. Each unlawful
 12 solicitation and each unlawful contribution made or accepted
 13 shall be deemed a separate violation of the Campaign Reporting
 14 Act.

15 C. With or without a referral from the secretary of
 16 state, the state ethics commission, the attorney general or
 17 district attorney may institute a civil action in district
 18 court if a violation has occurred or to prevent a violation of
 19 any provision of the Campaign Reporting Act other than that
 20 specified in Subsection B of this section. Relief may include
 21 a permanent or temporary injunction, a restraining order or any
 22 other appropriate order, including an order for a civil penalty
 23 of up to one thousand dollars (\$1,000) for each violation not
 24 to exceed a total of twenty thousand dollars (\$20,000)."

25 SECTION 4. Section 1-19-34.8 NMSA 1978 (being Laws 2019,

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1 Chapter 86, Section 19) is amended to read:

2 "1-19-34.8. STATE ETHICS COMMISSION--JURISDICTION.--

3 A. On and after January 1, 2020:

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

8 (2) the ~~[state ethics commission shall share~~
9 ~~jurisdiction to investigate and adjudicate complaints, or any~~
10 ~~aspect of a complaint, with the secretary of state as~~
11 ~~formalized through an agreement. The]~~ secretary of state shall
12 forward complaints it receives alleging violations of the
13 Campaign Reporting Act to the state ethics commission in
14 accordance with ~~[the]~~ a formalized agreement.

15 B. The state ethics commission and the secretary of
16 state shall make recommendations to the ~~[first session of the~~
17 ~~fifty-fifth]~~ legislature on any changes to the Campaign
18 Reporting Act necessary for the efficient administration and
19 enforcement of the provisions of that act."

20 SECTION 5. Section 1-19-35 NMSA 1978 (being Laws 1979,
21 Chapter 360, Section 11, as amended) is amended to read:

22 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--
23 FAILURE TO FILE.--

24 A. Except for the report required to be filed and
25 delivered the Thursday prior to the election and any

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1 supplemental report, as required in Paragraph (5) of Subsection
2 B of Section 1-19-29 NMSA 1978, that is due prior to the
3 election, and subject to the provisions of Section 1-19-34.4
4 NMSA 1978, if a statement of no activity or a report of
5 expenditures and contributions contains false or incomplete
6 information or is filed after any deadline imposed by the
7 Campaign Reporting Act, the responsible reporting individual or
8 political committee, in addition to any other penalties or
9 remedies prescribed by the Election Code, shall be liable for
10 and shall pay to the secretary of state fifty dollars (\$50.00)
11 per day for each regular working day after the time required by
12 the Campaign Reporting Act for the filing of statements of no
13 activity or reports of expenditures and contributions until the
14 complete or true statement or report is filed, up to a maximum
15 of five thousand dollars (\$5,000).

16 B. If any reporting individual files a false,
17 intentionally incomplete or late report of expenditures and
18 contributions due on the Thursday prior to the election, the
19 reporting individual or political committee shall be liable and
20 pay to the secretary of state five hundred dollars (\$500) for
21 the first working day and fifty dollars (\$50.00) for each
22 subsequent working day after the time required for the filing
23 of the report until the true and complete report is filed, up
24 to a maximum of five thousand dollars (\$5,000).

25 C. If a reporting individual fails to file or files

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1 a late supplemental report of expenditures and contributions as
2 required in Paragraph (5) of Subsection B of Section 1-19-29
3 NMSA 1978, the reporting individual or political committee
4 shall be liable for and pay to the secretary of state a penalty
5 equal to the amount of each contribution received or pledged
6 after the Tuesday before the election that was not timely
7 filed.

8 D. If the secretary of state determines that a
9 provision of the Campaign Reporting Act for which a penalty may
10 be imposed has been violated, the secretary of state shall by
11 written notice set forth the violation and the fine that may be
12 imposed and inform the reporting individual that the individual
13 has ten working days from the date of the letter to correct the
14 matter and to provide a written explanation, under penalty of
15 perjury, stating any reason why the violation occurred. If a
16 timely explanation is filed and the secretary of state
17 determines that good cause exists to waive the imposition of
18 the fine, the secretary of state may by a written notice of
19 final action partially or fully waive the imposition of a fine
20 for any late, incomplete or false report or statement of
21 exception. A written notice of final action shall be sent by
22 certified mail. The secretary of state may file an appropriate
23 court action to remit outstanding fines for good cause or refer
24 unpaid fines for enforcement under Subsection A of Section
25 1-19-34.6 NMSA 1978.

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1 ~~[D-]~~ E. All sums collected for the penalty shall be
2 deposited in the state general fund. A report or statement of
3 no activity shall be deemed timely filed only if it is received
4 by the secretary of state by the date and time prescribed by
5 law.

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

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

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

19 ~~[F-]~~ G. Any candidate who loses an election and who
20 failed or refused to file a report of expenditures and
21 contributions or a statement of no activity or to pay a penalty
22 imposed by the secretary of state as required by the Campaign
23 Reporting Act shall not be, in addition to any other penalties
24 provided by law, permitted to file a declaration of candidacy
25 or nominating petition for any future election until the

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1 candidate satisfies all reporting requirements of that act and
2 pays all penalties owed."

3 SECTION 6. Section 1-19-36 NMSA 1978 (being Laws 1979,
4 Chapter 360, Section 12, as amended) is amended to read:

5 "1-19-36. PENALTIES.--

6 A. Any person who knowingly and willfully violates
7 any provision of the Campaign Reporting Act is guilty of a
8 misdemeanor and shall be punished by a fine of not more than
9 one thousand dollars (\$1,000) or by imprisonment for not more
10 than one year or both.

11 B. The Campaign Reporting Act may be enforced by
12 the state ethics commission, the attorney general or the
13 district attorney in the county where the candidate resides,
14 where a political committee has its principal place of business
15 or where the violation occurred."

16 SECTION 7. Section 1-19A-15.1 NMSA 1978 (being Laws 2019,
17 Chapter 86, Section 20) is amended to read:

18 "1-19A-15.1. STATE ETHICS COMMISSION--JURISDICTION.--

19 A. On and after January 1, 2020:

20 (1) the state ethics commission shall have
21 jurisdiction to investigate and adjudicate a complaint alleging
22 a civil violation of a provision of the Voter Action Act in
23 accordance with the provisions of ~~[that act]~~ the State Ethics
24 Commission Act; and

25 (2) the ~~[state ethics commission shall share~~

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1 ~~jurisdiction to investigate and adjudicate complaints, or any~~
 2 ~~aspect of a complaint, with the secretary of state as~~
 3 ~~formalized through an agreement. The] secretary of state shall~~
 4 forward complaints it receives alleging violations of the Voter
 5 Action Act to the state ethics commission in accordance with
 6 ~~[the] a formalized~~ agreement.

7 B. The state ethics commission and the secretary of
 8 state shall make recommendations to the ~~[first session of the~~
 9 ~~fifty-fifth]~~ legislature on any changes to the Voter Action Act
 10 necessary for the efficient administration and enforcement of
 11 the provisions of that act."

12 SECTION 8. Section 1-19A-17 NMSA 1978 (being Laws 2003,
 13 Chapter 14, Section 17, as amended) is amended to read:

14 "1-19A-17. PENALTIES.--

15 A. In addition to other penalties that may be
 16 applicable, a person who violates a provision of the Voter
 17 Action Act is subject to a civil penalty of up to ten thousand
 18 dollars (\$10,000) per violation. In addition to a fine, a
 19 certified candidate found in violation of that act may be
 20 required to return to the fund all amounts distributed to the
 21 candidate from the fund. If the ~~[secretary]~~ state ethics
 22 commission makes a determination that a violation of that act
 23 has occurred, the ~~[secretary]~~ state ethics commission shall
 24 impose a fine and, if the violation is willful or knowing,
 25 transmit the finding to the attorney general for criminal

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1 prosecution pursuant to Subsection B of this section. In
 2 determining whether a certified candidate is in violation of
 3 the expenditure limits of that act, the ~~[secretary]~~ state
 4 ethics commission may consider as a mitigating factor any
 5 circumstances out of the candidate's control.

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

12 SECTION 9. Section 2-11-8.2 NMSA 1978 (being Laws 1977,
 13 Chapter 261, Section 4, as amended) is amended to read:

14 "2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
 15 ~~[BINDING ARBITRATION]~~ CIVIL PENALTIES.--

16 A. The secretary of state shall advise and seek to
 17 educate all persons required to perform duties pursuant to the
 18 Lobbyist Regulation Act of those duties. This includes
 19 advising all registered lobbyists at least annually of the
 20 Lobbyist Regulation Act's deadlines for submitting required
 21 reports. The ~~[secretary of state, in consultation with the~~
 22 ~~attorney general]~~ state ethics commission shall issue advisory
 23 opinions, when requested to do so in writing, on matters
 24 concerning the Lobbyist Regulation Act. All prescribed forms
 25 prepared shall be clear and easy to complete.

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[Draft]

1 B. The secretary of state may conduct thorough
 2 examinations of reports and initiate investigations to
 3 determine whether the Lobbyist Regulation Act has been
 4 violated. Additionally, any person who believes that a
 5 provision of that act has been violated may file a written
 6 complaint with the ~~[secretary of state. The secretary of state~~
 7 ~~shall adopt procedures for issuing advisory opinions,~~
 8 ~~processing complaints and notifications of violations]~~ state
 9 ethics commission in accordance with the provisions of the
 10 State Ethics Commission Act.

11 C. The secretary of state and the state ethics
 12 commission shall at all times seek to ensure voluntary
 13 compliance with the provisions of the Lobbyist Regulation Act.
 14 ~~[If the secretary of state determines that a provision of that~~
 15 ~~act for which a penalty may be imposed has been violated, the~~
 16 ~~secretary of state shall by written notice set forth the~~
 17 ~~violation and the fine imposed and inform the person that he~~
 18 ~~has ten working days to provide a written explanation, under~~
 19 ~~penalty of perjury, stating any reason the violation occurred.~~
 20 ~~If a timely explanation is filed and the secretary of state~~
 21 ~~determines that good cause exists, the secretary of state may~~
 22 ~~by a written notice of final action partially or fully waive~~
 23 ~~any fine imposed. A written notice of final action shall be~~
 24 ~~sent by certified mail.~~

25 D. ~~If the person charged disputes the secretary of~~

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1 ~~state's determination, including an advisory opinion, the~~
2 ~~person charged may request binding arbitration within ten~~
3 ~~working days of the date of the final action. Any penalty~~
4 ~~imposed shall be due and payable within ten working days of the~~
5 ~~notice of final action. No additional penalty shall accrue~~
6 ~~pending issuance of the arbitration decision. Fines paid~~
7 ~~pursuant to a notice of final action that are subsequently~~
8 ~~reduced or dismissed shall be reimbursed with interest within~~
9 ~~ten working days after the filing of the arbitration decision~~
10 ~~with the secretary of state. Interest on the reduced or~~
11 ~~dismissed portion of the fine shall be the same as the rate of~~
12 ~~interest earned by the secretary of state's escrow account to~~
13 ~~be established by the department of finance and administration.~~

14 ~~E. An arbitration hearing shall be conducted by a~~
15 ~~single arbitrator selected within ten days by the person~~
16 ~~against whom the penalty has been imposed from a list of five~~
17 ~~arbitrators provided by the secretary of state. Neither the~~
18 ~~secretary of state nor a person subject to the Lobbyist~~
19 ~~Regulation Act, Campaign Reporting Act or Financial Disclosure~~
20 ~~Act may serve as an arbitrator. Arbitrators shall be~~
21 ~~considered to be independent contractors, not public officers~~
22 ~~or employees, and shall not be paid per diem and mileage.~~

23 ~~F. The arbitrator may impose any penalty and take~~
24 ~~any action the secretary of state is authorized to take. The~~
25 ~~arbitrator shall state the reasons for his decision in a~~

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1 ~~written document that shall be a public record. The decision~~
 2 ~~shall be final and binding. The decision shall be issued and~~
 3 ~~filed with the secretary of state within thirty days of the~~
 4 ~~conclusion of the hearing. Unless otherwise provided for in~~
 5 ~~this section, or by rule or regulation adopted by the secretary~~
 6 ~~of state, the procedures for the arbitration shall be governed~~
 7 ~~by the Uniform Arbitration Act. No arbitrator shall be subject~~
 8 ~~to liability for actions taken pursuant to this section.]~~

9 Additionally, the state ethics commission shall give a person
 10 who violates that act unintentionally or for good cause ten
 11 days' notice to come into compliance before the commission
 12 takes any action on a complaint filed with or referred to the
 13 commission against that person.

14 ~~[G-]~~ D. Any person who files a report after the
 15 deadline imposed by the Lobbyist Regulation Act, or any person
 16 who files a false or incomplete report, shall be liable for and
 17 shall pay to the secretary of state fifty dollars (\$50.00) per
 18 day for each regular working day after the time required for
 19 the filing of the report until the complete report is filed, up
 20 to a maximum of five thousand dollars (\$5,000).

21 E. If the secretary of state determines that a
 22 provision of the Lobbyist Regulation Act for which a penalty
 23 may be imposed has been violated, the secretary of state shall
 24 by written notice set forth the violation and the fine that may
 25 be imposed and inform the reporting individual that the

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1 individual has ten working days from the date of the letter to
 2 correct the matter and to provide a written explanation, under
 3 penalty of perjury, stating any reason why the violation
 4 occurred. If a timely explanation is filed and the secretary
 5 of state determines that good cause exists to waive the
 6 imposition of a fine, the secretary of state may by a written
 7 notice of final action partially or fully waive the imposition
 8 of a fine for any late, incomplete or false report or statement
 9 of exception. A written notice of final action shall be sent
 10 by certified mail. The secretary of state may file an
 11 appropriate court action to remit outstanding fines for good
 12 cause or refer unpaid fines for enforcement pursuant to
 13 Subsection F of this section.

14 ~~[H.]~~ F. The secretary of state may refer a matter
 15 to the state ethics commission, the attorney general or a
 16 district attorney for a civil injunctive or other appropriate
 17 order or enforcement."

18 **SECTION 10.** Section 2-11-8.3 NMSA 1978 (being Laws 2019,
 19 Chapter 86, Section 21) is amended to read:

20 "2-11-8.3. STATE ETHICS COMMISSION--JURISDICTION.--

21 A. On and after January 1, 2020:

22 (1) the state ethics commission shall have
 23 jurisdiction to investigate and adjudicate a complaint alleging
 24 a civil violation of a provision of the Lobbyist Regulation Act
 25 in accordance with the provisions of that act; and

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1 (2) the ~~[state ethics commission shall share~~
 2 ~~jurisdiction to investigate and adjudicate complaints, or any~~
 3 ~~aspect of a complaint, with the secretary of state as~~
 4 ~~formalized through an agreement. The]~~ secretary of state shall
 5 forward complaints it receives alleging violations of the
 6 Lobbyist Regulation Act to the state ethics commission in
 7 accordance with ~~[the]~~ a formalized agreement.

8 B. The state ethics commission and the secretary of
 9 state shall make recommendations to the ~~[first session of the~~
 10 ~~fifty-fifth]~~ legislature on any changes to the Lobbyist
 11 Regulation Act necessary for the efficient administration and
 12 enforcement of the provisions of that act."

13 SECTION 11. Section 10-16A-6 NMSA 1978 (being Laws 1993,
 14 Chapter 46, Section 44, as amended) is amended to read:

15 "10-16A-6. INVESTIGATIONS--~~[BINDING ARBITRATION]~~ FINES--
 16 ENFORCEMENT.--

17 A. The state ethics commission and the secretary of
 18 state may conduct thorough examinations of statements and
 19 initiate investigations to determine whether the Financial
 20 Disclosure Act has been violated. Any person who believes that
 21 act has been violated may file a written complaint with the
 22 state ethics commission. The commission shall adopt procedures
 23 for processing complaints and notifications of violations.

24 B. If the state ethics commission determines that a
 25 violation has occurred for which a penalty should be imposed,

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1 the commission shall so notify the person charged and impose
2 the penalty. [~~If the person charged disputes the commission's~~
3 ~~determination, the person charged may request binding~~
4 ~~arbitration.~~

5 ~~G. The arbitration decision shall be decided by a~~
6 ~~single arbitrator selected within ten days by the person~~
7 ~~against whom the penalty has been imposed from a list of five~~
8 ~~arbitrators provided by the state ethics commission. No~~
9 ~~arbitrator may be a person subject to the Financial Disclosure~~
10 ~~Act, Campaign Reporting Act or Lobbyist Regulation Act.~~
11 ~~Arbitrators shall be considered to be independent contractors,~~
12 ~~not public officers or employees, and shall not be paid per~~
13 ~~diem and mileage.~~

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

25 ~~E.]~~ C. Any person who files a statement or report

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

9 ~~[F-]~~ D. The secretary of state may refer a matter
 10 to the state ethics commission, attorney general or a district
 11 attorney for a civil injunctive or other appropriate order or
 12 enforcement."

13 **SECTION 12. EFFECTIVE DATE.**--The effective date of the
 14 provisions of this act is July 1, 2021.

15 - 21 -

underscored material = new
 [bracketed material] = delete

STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeffrey L. Baker, Member
Stuart M. Bluestone, Member
Hon. Garrey Carruthers, Member
Ronald Solimon, Member
Judy Villanueva, Member
Frances F. Williams, Member

**Resolution No. 6: Authorizing staff to act for
Commission during legislative session**

WHEREAS, THE NEW MEXICO STATE ETHICS COMMISSION
("Commission") met virtually, on December 4, 2020, at 9:00 a.m.;

WHEREAS, the Commission has the authority to adjudicate administrative complaints alleging violations of and to file civil actions in state court to enforce the civil compliance provisions of the following statutes: the Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to 1-19-36; the Financial Disclosure Act; NMSA 1978, §§ 10-16A-1 to 10-16A-8; the Gift Act, NMSA 1978, §§ 10-16B-1 to 10-16B-5; the Lobbyist Regulation Act, NMSA 1978, §§ 2-11-1 to 2-11-9; the Voter Action Act, NMSA 1978, §§ 1-19A-1 to 1-19A-17; the Governmental Conduct Act, 10-16-1 to 10-16-18; the Procurement Code, NMSA 1978, §§ 13-1-28 to 13-1-199; and the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to 10-16G-16;

WHEREAS, the Commission has the duty under Section 10-16G-5(B)(5) of the State Ethics Commission Act to make annual reports of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties to the legislature and the governor;

WHEREAS, under Article IV of the New Mexico Constitution, bills may be introduced during regular sessions of the Legislature that might amend the state ethics laws or the scope of the Commission's powers and duties;

WHEREAS, under Section 10-16G-6(A), the Commission must appoint an Executive Director who must be knowledgeable about state ethics laws;

WHEREAS, under Section 10-16G-6(B), the Commission's Executive Director shall prepare an annual budget for the Commission and submit it to the Commission for approval, make recommendations to the Commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act, and perform other duties as assigned by the Commission; and

WHEREAS, in view of the timing of the legislative process, including the timing of the introduction of bills, committee hearings, and floor votes, the Commission cannot practically meet to form an opinion on each bill and bill provision affecting the Commission's work that might be introduced or amended during a regular session of the legislature,

NOW, THEREFORE, BE IT RESOLVED by the New Mexico State Ethics Commission:

1. The Executive Director, or a designee, may offer testimony at any legislative hearing, or analysis in response to any request (including requests from the Department of Finance and Administration or the Legislative Finance Committee), regarding the technical or budgetary implications of any bill that would impact the work of the Commission or any bill that seeks to amend any provision of any of New Mexico's ethics laws;
2. The Executive Director, or a designee, may offer views on the merits of any bill either impacting the work of the State Ethics Commission or seeking to amend any provision of any of New Mexico's ethics laws, whether in testimony at any legislative hearing or through informal discussion with any other person, *provided that* the Executive Director must consult about any such bill with:
 - a. the Chair of the Commission, or his or her designee;
 - b. if the Chair of the Commission is a member of the majority party in the Senate, the Commissioner appointed by the minority floor leader of the Senate, or his or her designee; or, if the Chair is a member of the minority party in the Senate, the Commissioner appointed by the President Pro Tempore of the Senate, or his or her designee; and
 - c. the Commission's General Counsel.

3. During the regular session, the Executive Director, or a designee, shall weekly inform the Commission of the progress of any bill either impacting the work of the State Ethics Commission or seeking to amend any provision of any of New Mexico's ethics laws.

Adopted by the New Mexico State Ethics Commission this 4th day of December 2020.

The Hon. William F. Lang
New Mexico State Ethics Commission
Chair