

STATE ETHICS
COMMISSION



2020
ANNUAL
REPORT

To New Mexico Legislature
& Governor Michelle Lujan Grisham

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OPENING MESSAGE

December 31, 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."

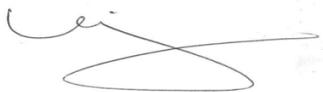
The first State Ethics Commissioners were appointed on July 1, 2019. Over the past 18 months, the Commission has made much progress toward achieving its constitutional and statutory mandates. The Commission has achieved a full complement of Commissioners, conducted 15 open meetings, and hired staff. 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 39 administrative complaints;
- issued 8 formal advisory opinions and several informal letter 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 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>	<u>Variance - Favorable (Unfavorable)</u>
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

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 12/31/2020.

Complaints Filed	Cases Closed
39	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

Q3 (July – September) Total New Filed: (13/31)	Governmental Conduct Act: 12 Financial Disclosure Act: 9 State Ethics Commission Act: 10 Anti-Donation Clause: 1 Procurement Code: 1
Q4 (October – December) Total New Filed: (7/39)	Governmental Conduct Act: 5 State Ethics Commission Act: 6 Campaign Reporting Act: 1 Voter Action Act: 1

*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. In the last weeks of 2020, Commission staff issued several informal advisory opinions 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.*

On December 11, 2020, the Commission filed a civil complaint in the Second Judicial District Court against the Council for a Competitive New Mexico (“CCNM”) to enforce the disclosure provisions of the Campaign Reporting Act. CCNM had filed independent expenditure reports disclosing that it paid more than \$130,000.00 to the Lincoln Strategy Group, LLC for campaign advertisements and advocacy calls related to four contested elections in the 2020 Democratic primary, but repeatedly refused to disclose who ultimately paid for those independent expenditures. The litigation is currently pending.

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](#)
- To view links to rule-making records corresponding to the model code of ethics, [click here](#) and scroll to State Ethics Commission’s Administrative Rules.

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 biennial 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 is developing 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 enforces 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 10-16G-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.

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.

Last, the Commission recommends granting the SOS rulemaking authority for the LRA and the FDA and enabling the SOS to address CRA issues concerning stale fines.

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 and the Campaign Reporting Act

In addition, the Commission recommends the following amendments to the Lobbyist Regulation Act and the Campaign Reporting 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 two additional reports with the secretary of state indicating (i) what bills the lobbyist or lobbyist's employer is taking a position on; and (ii) whether the lobbyist or lobbyist's employer is supporting or opposing those bills, including the specific items in the bills that the lobbyist or lobbyist's employer is supporting or opposing. These additional reports are due to the secretary of state both one

week after the start of the legislative session and one week after the bill introduction deadline.

Fourth, to confirm and make clear that the Campaign Reporting Act disallows persons making independent or coordinated expenditures from concealing the identity of contributors who contribute more than five thousand dollars (\$5,000) during an election cycle, where (i) the contributor requested in writing that that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee and (ii) the person making independent expenditures nevertheless used the contributor's contributions for independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee, the Commission would support amending Section 1-19-27.3(D)(2) of the Campaign Reporting Act to provide:

(2) if the expenditures were made in whole or in part from funds other than those described in Paragraph (1) of this subsection, report the name and address of, and the amount of each contribution made by, each contributor who contributed more than five thousand dollars (\$5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if:

(a) the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee; and

(b) the contribution is deposited in a segregated bank account which shall not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

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_____ BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE STATE ETHICS COMMISSION; REQUIRING
COMMISSIONERS TO FILE ANNUAL FINANCIAL DISCLOSURE STATEMENTS
PURSUANT TO THE FINANCIAL DISCLOSURE ACT; REMOVING THE
REQUIREMENT THAT COMPLAINTS FILED WITH THE STATE ETHICS
COMMISSION BE NOTARIZED; CLARIFYING THE VENUE PROVISION FOR
COURT ACTIONS.

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

SECTION 1. Section 10-16A-3 NMSA 1978 (being Laws 1993,
Chapter 46, Section 41, as amended) is amended to read:

"10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES
AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON
BALLOT OR APPOINTMENT.--

A. A person holding a legislative or statewide
office shall file with the secretary of state a financial

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1 disclosure statement during the month of January every year
2 that the person holds public office.

3 B. A candidate for legislative or statewide office
4 who has not already filed a financial disclosure statement with
5 the secretary of state in the same calendar year shall file
6 with the proper filing officer, as defined in the Election
7 Code, a financial disclosure statement at the time of filing a
8 declaration of candidacy. If the proper filing officer is not
9 the secretary of state, the proper filing officer shall forward
10 a copy of the financial disclosure statement to the secretary
11 of state within three days.

12 C. A state agency head, an official whose
13 appointment to a board or commission is subject to confirmation
14 by the senate, [~~or~~] a member of the insurance nominating
15 committee or a member of the state ethics commission shall file
16 with the secretary of state a financial disclosure statement
17 within thirty days of appointment and during the month of
18 January every year thereafter that the person holds public
19 office.

20 D. The financial disclosure statement shall include
21 for any person identified in Subsection A, B or C of this
22 section and the person's spouse the following information for
23 the prior calendar year:

24 (1) the full name, mailing address and
25 residence address of each person covered in the disclosure

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1 statement, except the address of the spouse need not be
2 disclosed; the name and address of the person's and spouse's
3 employer and the title or position held; and a brief
4 description of the nature of the business or occupation;

5 (2) all sources of gross income of more than
6 five thousand dollars (\$5,000) to each person covered in the
7 disclosure statement, identified by general category
8 descriptions that disclose the nature of the income source, in
9 the following broad categories: law practice or consulting
10 operation or similar business, finance and banking, farming and
11 ranching, medicine and health care, insurance (as a business
12 and not as payment on an insurance claim), oil and gas,
13 transportation, utilities, general stock market holdings,
14 bonds, government, education, manufacturing, real estate,
15 consumer goods sales with a general description of the consumer
16 goods and the category "other", with direction that the income
17 source be similarly described. In describing a law practice,
18 consulting operation or similar business of the person or
19 spouse, the major areas of specialization or income sources
20 shall be described, and if the spouse or a person in the
21 reporting person's or spouse's law firm, consulting operation
22 or similar business is or was during the reporting calendar
23 year or the prior calendar year a registered lobbyist under the
24 Lobbyist Regulation Act, the names and addresses of all clients
25 represented for lobbying purposes during those two years shall

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1 be disclosed;

2 (3) a general description of the type of real
3 estate owned in New Mexico, other than a personal residence,
4 and the county where it is located;

5 (4) all other New Mexico business interests
6 not otherwise listed of ten thousand dollars (\$10,000) or more
7 in a New Mexico business or entity, including any position held
8 and a general statement of purpose of the business or entity;

9 (5) all memberships held by the reporting
10 individual and the individual's spouse on boards of for-profit
11 businesses in New Mexico;

12 (6) all New Mexico professional licenses held;

13 (7) each state agency that was sold goods or
14 services in excess of five thousand dollars (\$5,000) during the
15 prior calendar year by a person covered in the disclosure
16 statement; and

17 (8) each state agency, other than a court,
18 before which a person covered in the disclosure statement
19 represented or assisted clients in the course of the person's
20 employment during the prior calendar year.

21 E. A complete financial disclosure statement shall
22 be filed every year. The secretary of state shall deliver to
23 each elected official required to file a financial disclosure
24 statement a copy of any statement the person filed the previous
25 year.

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1 F. The financial disclosure statements filed
2 pursuant to this section are public records open to public
3 inspection during regular office hours and shall be retained by
4 the state for five years from the date of filing.

5 G. A person who files a financial disclosure
6 statement may file an amended statement at any time to reflect
7 significant changed circumstances that occurred since the last
8 statement was filed.

9 H. A person who files to be a candidate for a
10 legislative or statewide office who fails or refuses to file a
11 financial disclosure statement required by this section before
12 the final date for qualification of the person as a candidate
13 as provided for in the Election Code shall not be qualified by
14 the proper filing officer as a candidate.

15 I. For a state agency head, an official whose
16 appointment to a board or commission is subject to confirmation
17 by the senate, ~~[or]~~ a member of the insurance nominating
18 committee or a member of the state ethics commission, the
19 filing of the financial disclosure statement required by this
20 section is a condition of entering upon and continuing in state
21 employment or holding an appointed position."

22 **SECTION 2.** Section 10-16G-2 NMSA 1978 (being Laws 2019,
23 Chapter 86, Section 2) is amended to read:

24 "10-16G-2. DEFINITIONS.--As used in the State Ethics
25 Commission Act:

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1 A. "commission" means the state ethics commission;

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

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

5 D. "complaint" means a complaint that has been
6 signed by the complainant and the complainant attests under
7 oath and subject to penalty of perjury [~~before a notary public~~]
8 that the information in the complaint, and any attachments
9 provided with the complaint, are true and accurate;

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

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

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

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

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

24 J. "public agency" means any department,
25 commission, council, board, committee, agency or institution of

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1 the executive or legislative branch of government of the state
2 or any instrumentality of the state, including the New Mexico
3 mortgage finance authority, the New Mexico finance authority,
4 the New Mexico exposition center authority, the New Mexico
5 hospital equipment loan council and the New Mexico renewable
6 energy transmission authority;

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

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

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

14 SECTION 3. Section 10-16G-4 NMSA 1978 (being Laws 2019,
15 Chapter 86, Section 4) is amended to read:

16 "10-16G-4. COMMISSIONERS--QUALIFICATIONS--LIMITATIONS.--

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

19 (1) be a qualified elector of New Mexico;

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

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

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1 appointment in such a manner as to make the member ineligible
2 to serve on the commission; and

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

- 6 (a) a public official;
- 7 (b) a public employee;
- 8 (c) a candidate;
- 9 (d) a lobbyist;
- 10 (e) a government contractor; or
- 11 (f) an office holder in a political
12 party at the state or federal level.

13 B. Before entering upon the duties of the office of
14 commissioner, each commissioner shall review the State Ethics
15 Commission Act and other laws and rules pertaining to the
16 commission's responsibilities and to ethics and governmental
17 conduct in New Mexico. Each commissioner shall take the oath
18 of office as provided in Article 20, Section 1 of the
19 constitution of New Mexico and, pursuant to the Financial
20 Disclosure Act, file with the secretary of state a financial
21 disclosure statement within thirty days of appointment and
22 during the month of January every year thereafter that the
23 commissioner serves on the commission.

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

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1 of a commissioner, the commissioner shall not:

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

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

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

10 (1) a public employee;

11 (2) a candidate;

12 (3) a lobbyist;

13 (4) a government contractor; or

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

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

21 SECTION 4. Section 10-16G-9 NMSA 1978 (being Laws 2019,
22 Chapter 86, Section 9) is amended to read:

23 "10-16G-9. COMMISSION JURISDICTION--COMPLIANCE
24 PROVISIONS.--

25 A. The commission has jurisdiction to enforce the

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1 applicable civil compliance provisions for public officials,
2 public employees, candidates, persons subject to the Campaign
3 Reporting Act, government contractors, lobbyists and lobbyists'
4 employers of:

- 5 (1) the Campaign Reporting Act;
- 6 (2) the Financial Disclosure Act;
- 7 (3) the Gift Act;
- 8 (4) the Lobbyist Regulation Act;
- 9 (5) the Voter Action Act;
- 10 (6) the Governmental Conduct Act;
- 11 (7) the Procurement Code;
- 12 (8) the State Ethics Commission Act; and
- 13 (9) Article 9, Section 14 of the constitution
14 of New Mexico.

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

18 C. The commission may choose to act on some or all
19 aspects of a complaint and forward other aspects of a complaint
20 to another state or federal agency with jurisdiction over the
21 matter in accordance with Subsection E of this section.

22 D. If the commission decides not to act on a
23 complaint, whether the complaint was filed with the commission
24 or forwarded from another public agency, or decides only to act
25 on part of a complaint, the commission shall promptly forward

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1 the complaint, or any part of a complaint on which it does not
2 wish to act, to the public agency that has appropriate
3 jurisdiction within ten days of the decision. The complainant
4 and respondent shall be notified in writing when the
5 complainant's request has been forwarded to another agency
6 unless otherwise provided pursuant to Subsection H of Section
7 ~~[10 of the State Ethics Commission Act]~~ 10-16G-10 NMSA 1978.

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

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

23 SECTION 5. Section 10-16G-10 NMSA 1978 (being Laws 2019,
24 Chapter 86, Section 10) is amended to read:

25 "10-16G-10. COMPLAINTS--INVESTIGATIONS--SUBPOENAS.--

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

8 B. The complainant shall set forth in detail the
9 specific charges against the respondent and the factual
10 allegations that support the charges and shall sign the
11 complaint under penalty of false statement. The complainant
12 shall submit any evidence the complainant has that supports the
13 complaint. Evidence may include documents, records and names
14 of witnesses. The commission shall prescribe the forms on
15 which complaints are to be filed. The complaint form shall be
16 signed and sworn by the complainant [~~and notarized~~].

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

21 D. The director shall determine if the complaint is
22 subject to referral to another state agency pursuant to an
23 agreement or outside the jurisdiction of the commission, and if
24 so, promptly refer the complaint to the appropriate agency. If
25 the director determines that the complaint is within the

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1 commission's jurisdiction, the director shall have the general
2 counsel initiate an investigation.

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

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

18 G. If the general counsel determines that there is
19 probable cause, the director shall promptly notify the
20 respondent of the finding of probable cause and of the specific
21 allegations in the complaint that are being investigated and
22 that a public hearing will be set. If the finding of probable
23 cause involves a discriminatory practice or actions by the
24 respondent against the complainant, no settlement agreement
25 shall be reached without prior consultation with the

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1 complainant. In any case, the notification, complaint,
2 specific allegations being investigated and any response to the
3 complaint shall be made public thirty days following notice to
4 the respondent.

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

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

24 J. The commission may petition the court for a
25 subpoena for the attendance and examination of witnesses or for

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1 the production of books, records, documents or other evidence
2 reasonably related to an investigation. If a person neglects
3 or refuses to comply with a subpoena, the commission may apply
4 to a district court for an order enforcing the subpoena and
5 compelling compliance. All proceedings in the district court
6 prior to the complaint being made public pursuant to Subsection
7 G of this section, or upon entry of a settlement agreement,
8 shall be sealed. A case is automatically unsealed upon notice
9 by the commission to the court that the commission has made the
10 complaint public. No later than July 1 of each even-numbered
11 year, the chief justice of the supreme court shall appoint an
12 active or pro tempore district judge to consider the issuance
13 and enforcement of subpoenas provided for in this section. The
14 appointment shall end on June 30 of the next even-numbered year
15 after appointment.

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

Attachment 2

12/29/20

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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; PROVIDING
FOR PENALTIES; PROVIDING RULEMAKING AUTHORITY; REQUIRING
ACKNOWLEDGMENT OF RESPONSIBILITIES BY POLITICAL COMMITTEE
TREASURERS; PROVIDING FOR THE RESIGNATION AND REPLACEMENT OF
TREASURERS.

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

SECTION 1. Section 1-19-26.1 NMSA 1978 (being Laws 1993,
Chapter 46, Section 2, as amended) is amended to read:

"1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--
DISCLOSURES--PENALTIES.--

A. It is unlawful for a political committee to

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1 continue to receive or make any contribution or expenditure for
2 a political purpose if the committee fails to meet the
3 requirements of Subsections B and C of this section.

4 B. A political committee shall appoint and maintain
5 a treasurer, file a statement of organization with the
6 secretary of state and pay a filing fee of fifty dollars
7 (\$50.00).

8 C. A statement of organization required by
9 Subsection B of this section shall be made under oath on a
10 prescribed form showing:

11 (1) the full name of the committee, which
12 shall fairly and accurately reflect the identity of the
13 committee, including any sponsoring organization, and its
14 address;

15 (2) a statement of the purpose for which the
16 committee was organized;

17 (3) the names and addresses of the officers of
18 the committee; and

19 (4) an identification of any bank account used
20 by the committee to receive or make contributions or make
21 expenditures.

22 D. Any changes to the information provided in the
23 statement of organization shall be reported to the secretary of
24 state within ten days.

25 E. If a political committee fails to update the

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1 statement of organization within the time prescribed in
2 Subsection D of this section, the political committee is
3 subject to a fine of five hundred dollars (\$500).

4 F. Any county political party committee registered
5 pursuant to this section that is affiliated with a major or
6 minor political party shall name the treasurer of the state
7 political party committee of the same party as the primary or
8 co-treasurer on the statement of organization. The state
9 co-treasurer shall be responsible for establishing bookkeeping
10 standards and oversight of all county treasurers of the same
11 political party.

12 [~~E-~~] G. The provisions of this section do not apply
13 to a political committee that is located in another state and
14 is registered with the federal election commission if the
15 political committee reports on federal reporting forms filed
16 with the federal election commission all expenditures for and
17 contributions made to reporting individuals in New Mexico and
18 files with the secretary of state, according to the schedule
19 required for the filing of forms with the federal election
20 commission, a copy of either the full report or the cover sheet
21 and the portions of the federal reporting forms that contain
22 the information on expenditures for and contributions made to
23 reporting individuals in New Mexico."

24 **SECTION 2.** Section 1-19-32.1 NMSA 1978 (being Laws 1981,
25 Chapter 331, Section 9, as amended) is amended to read:

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

2 A. The secretary of state shall conduct a thorough
3 examination of at least ten percent of all reports filed
4 during a year by reporting individuals, selected at random at
5 least forty days after the general election and ten days after
6 the April reports are filed in a non-election year, to
7 determine compliance with the provisions of the Campaign
8 Reporting Act. The examination may include an investigation of
9 any discrepancies, including a cross-reference to reports filed
10 by any other reporting individual. A reporting individual
11 shall be notified in writing if a discrepancy is found in the
12 report filed and shall be permitted to file a written
13 explanation for the discrepancy and come into voluntary
14 compliance within ten working days of the date of the notice.
15 [~~The notice, penalty and arbitration provisions set forth in~~
16 ~~Section 1-19-34.4 NMSA 1978 shall apply to examinations~~
17 ~~conducted under this section.~~]

18 B. After the date stated in the notice [~~of final~~
19 ~~action~~] for submission of a written explanation, the secretary
20 of state shall prepare an annual report of any unresolved
21 discrepancies found after examination of the random sample
22 provided for in Subsection A of this section. A copy of this
23 report shall be transmitted to the state ethics commission and
24 the attorney general for enforcement pursuant to the provisions
25 of [~~Section~~] Sections 1-19-34.6 and 1-19-36 NMSA 1978. This

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1 report is a public record open to public inspection and subject
2 to the retention and destruction provisions set forth in
3 Section 1-19-32 NMSA 1978."

4 SECTION 3. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
5 Chapter 46, Section 15, as amended) is amended to read:

6 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
7 INVESTIGATIONS--~~[BINDING ARBITRATION]~~ REFERRALS FOR
8 ENFORCEMENT.--

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

20 B. The ~~[secretary of]~~ state ethics commission may
21 initiate investigations to determine whether any provision of
22 the Campaign Reporting Act has been violated. Additionally,
23 any person who believes that a provision of that act has been
24 violated may file a written complaint with the ~~[secretary of~~
25 ~~state any time prior to ninety days after an election, except~~

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1 ~~that no complaints from the public may be filed within eight~~
2 ~~days prior to an election. The secretary of state shall adopt~~
3 ~~procedures for issuing advisory opinions and processing~~
4 ~~complaints and notifications of violations]~~ state ethics
5 commission.

6 C. The secretary of state and the state ethics
7 commission shall at all times seek to ensure voluntary
8 compliance with the provisions of the Campaign Reporting Act.
9 [~~If the secretary of state determines that a provision of that~~
10 ~~act for which a penalty may be imposed has been violated, the~~
11 ~~secretary of state shall by written notice set forth the~~
12 ~~violation and the fine imposed and inform the reporting~~
13 ~~individual that he has ten working days from the date of the~~
14 ~~letter to correct the matter and to provide a written~~
15 ~~explanation, under penalty of perjury, stating any reason why~~
16 ~~the violation occurred. If a timely explanation is filed and~~
17 ~~the secretary of state determines that good cause exists to~~
18 ~~waive the fine imposed, the secretary of state may by a written~~
19 ~~notice of final action partially or fully waive any fine~~
20 ~~imposed for any late, incomplete or false report or statement~~
21 ~~of exception. A written notice of final action shall be sent~~
22 ~~by certified mail.~~

23 D. ~~Upon receipt of the notice of final action, the~~
24 ~~person against whom the penalty has been imposed may protest~~
25 ~~the secretary of state's determination, including an advisory~~

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

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

24 ~~F. The arbitrator shall conduct the hearing within~~
25 ~~thirty days of the request for arbitration. The arbitrator may~~

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1 ~~impose any penalty the secretary of state is authorized to~~
2 ~~impose. The arbitrator shall state the reasons for his~~
3 ~~decision in a written document that shall be a public record.~~
4 ~~The decision shall be final and binding. The decision shall be~~
5 ~~issued and filed with the secretary of state within thirty days~~
6 ~~of the conclusion of the hearing. Unless otherwise provided~~
7 ~~for in this section or by rule or regulation adopted by the~~
8 ~~secretary of state, the procedures for the arbitration shall be~~
9 ~~governed by the Uniform Arbitration Act. No arbitrator shall~~
10 ~~be subject to liability for actions taken pursuant to this~~
11 ~~section]~~ Additionally, the state ethics commission shall give a
12 person who violates that act unintentionally or for good cause
13 ten days' notice to come into compliance before the commission
14 takes any action on an alleged violation filed with or referred
15 to the commission against that person.

16 [G.] D. The secretary of state may refer a matter
17 to the state ethics commission, the attorney general or a
18 district attorney for a civil injunctive or other appropriate
19 order or to the attorney general or a district attorney for
20 criminal enforcement."

21 SECTION 4. Section 1-19-34.6 NMSA 1978 (being Laws 1995,
22 Chapter 153, Section 19, as amended) is amended to read:

23 "1-19-34.6. CIVIL PENALTIES.--

24 A. If the secretary of state exhausts efforts in
25 seeking voluntary compliance and reasonably believes that a

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1 person committed, or is about to commit, a violation of the
2 Campaign Reporting Act, the secretary of state shall refer the
3 matter to the state ethics commission, the attorney general or
4 a district attorney for enforcement; provided, however, that
5 this requirement does not apply if the secretary of state
6 waives the imposition of a fine pursuant to Subsection D of
7 Section 1-19-35 NMSA 1978.

8 B. With or without a referral from the secretary of
9 state, the state ethics commission, the attorney general or
10 district attorney may institute a civil action in district
11 court for any violation of the Campaign Reporting Act or to
12 prevent a violation of that act that involves an unlawful
13 solicitation or the making or acceptance of an unlawful
14 contribution. An action for relief may include a permanent or
15 temporary injunction, a restraining order or any other
16 appropriate order, including a civil penalty of up to one
17 thousand dollars (\$1,000) for each violation not to exceed a
18 total of twenty thousand dollars (\$20,000), and forfeiture of
19 any contribution received as a result of an unlawful
20 solicitation or unlawful contribution. Each unlawful
21 solicitation and each unlawful contribution made or accepted
22 shall be deemed a separate violation of the Campaign Reporting
23 Act.

24 C. 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 if a violation has occurred or to prevent a violation of
3 any provision of the Campaign Reporting Act other than that
4 specified in Subsection B of this section. Relief may include
5 a permanent or temporary injunction, a restraining order or any
6 other appropriate order, including an order for a civil penalty
7 of up to one thousand dollars (\$1,000) for each violation not
8 to exceed a total of twenty thousand dollars (\$20,000)."

9 SECTION 5. Section 1-19-34.8 NMSA 1978 (being Laws 2019,
10 Chapter 86, Section 19) is amended to read:

11 "1-19-34.8. STATE ETHICS COMMISSION--JURISDICTION.--

12 A. On and after January 1, 2020:

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

17 (2) the ~~[state ethics commission shall share~~
18 ~~jurisdiction to investigate and adjudicate complaints, or any~~
19 ~~aspect of a complaint, with the secretary of state as~~
20 ~~formalized through an agreement. The]~~ secretary of state shall
21 forward complaints it receives alleging violations of the
22 Campaign Reporting Act to the state ethics commission in
23 accordance with ~~[the]~~ a formalized agreement.

24 B. The state ethics commission and the secretary of
25 state shall make recommendations to the ~~[first session of the~~

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1 ~~fifty-fifth~~] legislature on any changes to the Campaign
2 Reporting Act necessary for the efficient administration and
3 enforcement of the provisions of that act."

4 SECTION 6. Section 1-19-35 NMSA 1978 (being Laws 1979,
5 Chapter 360, Section 11, as amended) is amended to read:

6 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--
7 FAILURE TO FILE.--

8 A. Except for the report required to be filed and
9 delivered the Thursday prior to the election and any
10 supplemental report, as required in Paragraph (5) of Subsection
11 B of Section 1-19-29 NMSA 1978, [~~that is due prior to the~~
12 ~~election, and subject to the provisions of Section 1-19-34.4~~
13 ~~NMSA 1978~~] if a statement of no activity or a report of
14 expenditures and contributions [~~contains false or incomplete~~
15 ~~information~~] is not filed or is filed after any deadline
16 imposed by the Campaign Reporting Act, the responsible
17 reporting individual or political committee [~~in addition to any~~
18 ~~other penalties or remedies prescribed by the Election Code~~]
19 shall be liable for and shall pay to the secretary of state
20 fifty dollars (\$50.00) per day for each regular working day
21 after the time required by the Campaign Reporting Act for the
22 filing of statements of no activity or reports of expenditures
23 and contributions until the complete [~~or true~~] statement or
24 report is filed, up to a maximum [~~of five thousand dollars~~
25 ~~(\$5,000)~~] fine as provided in Subsection H of this section.

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1 B. If any reporting individual fails to file or
2 files a [~~false, intentionally incomplete or~~] late report of
3 expenditures and contributions due on the Thursday prior to the
4 election, the reporting individual or political committee shall
5 be liable and pay to the secretary of state five hundred
6 dollars (\$500) for the first working day and fifty dollars
7 (\$50.00) for each subsequent working day after the time
8 required for the filing of the report until the [~~true and~~]
9 complete report is filed, up to a maximum [~~of five thousand~~
10 ~~dollars (\$5,000)~~] fine as provided in Subsection H of this
11 section.

12 C. If a reporting individual fails to file or files
13 a late supplemental report of expenditures and contributions as
14 required in Paragraph (5) of Subsection B of Section 1-19-29
15 NMSA 1978, the reporting individual or political committee
16 shall be liable for and pay to the secretary of state a penalty
17 equal to the amount of each contribution received or pledged
18 after the Tuesday before the election that was not timely
19 filed.

20 D. If the secretary of state determines that a
21 reporting individual or political committee has failed to file
22 or has filed a report past the deadline, the secretary of state
23 shall by written notice set forth the violation and the fine
24 that may be imposed and inform the reporting individual that
25 the individual has ten working days from the date of the letter

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1 to come into voluntary compliance and to provide a written
2 explanation, under penalty of perjury, stating any reason why
3 the violation occurred. If a timely explanation is filed and
4 the secretary of state determines that good cause exists to
5 waive the imposition of the fine, the secretary of state may by
6 a written notice of final action partially or fully waive the
7 imposition of a fine for any late report or statement of no
8 activity. A written notice of final action shall be sent by
9 certified mail. The secretary of state may file a petition
10 with the court to remit outstanding fines for good cause or
11 refer unpaid fines for enforcement under Subsection A of
12 Section 1-19-34.6 NMSA 1978.

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

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

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

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

6 [~~F-~~] G. Any candidate who loses an election and who
7 failed or refused to file a report of expenditures and
8 contributions or a statement of no activity or to pay a penalty
9 imposed by the secretary of state as required by the Campaign
10 Reporting Act shall not be, in addition to any other penalties
11 provided by law, permitted to file a declaration of candidacy
12 or nominating petition for any future election until the
13 candidate satisfies all reporting requirements of that act and
14 pays all penalties owed.

15 H. The maximum cumulative penalties for each report
16 for which fines are assessed in accordance with Subsections A
17 and B of this section are as follows:

18 (1) five thousand dollars (\$5,000) for
19 statewide candidate committees and political committees;

20 (2) two thousand five hundred dollars (\$2,500)
21 for legislative, district judge, district attorney and public
22 education commission candidate committees;

23 (3) one thousand dollars (\$1,000) for county
24 candidate committees running in a county designated as class A;
25 and

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1 (4) five hundred dollars (\$500) for all other
2 non-class A county candidate committees."

3 SECTION 7. Section 1-19-36 NMSA 1978 (being Laws 1979,
4 Chapter 360, Section 12, as amended) is amended to read:

5 "1-19-36. CRIMINAL 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 attorney general or the district attorney in the county
13 where the candidate resides, where a political committee has
14 its principal place of business or where the violation
15 occurred."

16 SECTION 8. 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 9. 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 10. 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, in consultation with
23 the secretary of state, shall issue advisory opinions, when
24 requested to do so in writing, on matters concerning the
25 Lobbyist Regulation Act. All prescribed forms prepared shall

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1 be clear and easy to complete.

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

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

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

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

24 ~~F. The arbitrator may impose any penalty and take~~
25 ~~any action the secretary of state is authorized to take. The~~

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

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

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

23 E. If the secretary of state determines that a
24 reporting entity subject to the reporting provisions of the
25 Lobbyist Regulation Act has failed to file or has filed a

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1 report after the deadline, the secretary of state shall by
2 written notice set forth the violation and the fine that may be
3 imposed and inform the reporting individual that the individual
4 has ten working days from the date of the letter to come into
5 voluntary compliance and to provide a written explanation,
6 under penalty of perjury, stating any reason why the violation
7 occurred. If a timely explanation is filed and the secretary
8 of state determines that good cause exists to waive the
9 imposition of a fine, the secretary of state may by a written
10 notice of final action partially or fully waive the imposition
11 of a fine for any late report or statement of no activity. A
12 written notice of final action shall be sent by certified mail.
13 The secretary of state may file an appropriate court action to
14 remit outstanding fines for good cause or refer unpaid fines
15 for enforcement pursuant to Subsection F of this section.

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

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

22 "2-11-8.3. STATE ETHICS COMMISSION--JURISDICTION.--

23 A. On and after January 1, 2020:

24 (1) the state ethics commission shall have
25 jurisdiction to investigate and adjudicate a complaint alleging

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1 a civil violation of a provision of the Lobbyist Regulation Act
2 in accordance with the provisions of that act; and

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

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

15 SECTION 12. Section 10-16A-6 NMSA 1978 (being Laws 1993,
16 Chapter 46, Section 44, as amended) is amended to read:

17 "10-16A-6. INVESTIGATIONS--~~[BINDING ARBITRATION]~~ FINES--
18 ENFORCEMENT.--

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

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1 B. If the state ethics commission determines that a
2 violation has occurred for which a penalty should be imposed,
3 the commission shall so notify the person charged and impose
4 the penalty. ~~[If the person charged disputes the commission's~~
5 ~~determination, the person charged may request binding~~
6 ~~arbitration.~~

7 ~~G. The arbitration decision shall be decided 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 state ethics commission. No~~
11 ~~arbitrator may be a person subject to the Financial Disclosure~~
12 ~~Act, Campaign Reporting Act or Lobbyist Regulation Act.~~
13 ~~Arbitrators shall be considered to be independent contractors,~~
14 ~~not public officers or employees, and shall not be paid per~~
15 ~~diem and mileage.~~

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

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1 ~~section.~~

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

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

15 **SECTION 13.** A new section of the Campaign Reporting Act
16 is enacted to read:

17 "[NEW MATERIAL] POLITICAL COMMITTEES--ACKNOWLEDGMENT OF
18 RESPONSIBILITIES--PENALTY.--

19 A. Beginning on July 1, 2021, for all new political
20 committees registering with the secretary of state, the
21 treasurer for the political committee shall submit an
22 electronically signed statement acknowledging the political
23 committee's responsibilities on a form prescribed by the
24 secretary of state within ten days of registering the political
25 committee. The signed acknowledgment statement serves as

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1 notification of the responsibilities of the political committee
2 to comply with the financial reporting prescribed in the
3 Campaign Reporting Act and the potential personal liability of
4 the treasurer for penalties assessed against the political
5 committee.

6 B. The secretary of state shall notify the
7 political committee of any individual who has failed to submit
8 the acknowledgment statement. Failure to return the
9 acknowledgment statement is a violation of this section for
10 which a fine of one hundred dollars (\$100) may be assessed
11 against the political committee. This section also applies to
12 individuals named in an updated or amended registration who
13 have not previously submitted an acknowledgment statement for
14 the political committee.

15 C. For all political committees already registered
16 with the secretary of state prior to July 1, 2021, the
17 secretary of state shall notify the principal officer and
18 treasurer of record requiring the treasurer to submit an
19 acknowledgment form required in Subsection A of this section.
20 If the political committee does not respond to the request made
21 by the secretary of state or disputes current responsibility
22 for the political committee, the political committee shall not
23 raise or spend any funds until the registration is amended and
24 the acknowledgment form has been signed.

25 D. If there are already fines accrued against a

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underscoring material = new
[bracketed material] = delete

1 political committee previously registered with the secretary of
2 state, the treasurer of record shall sign the acknowledgment
3 statement accepting personal liability from that date forward.
4 Outstanding fines are still due unless the secretary of state
5 is compelled to file a petition in court to have the fines
6 dissolved."

7 SECTION 14. A new section of the Campaign Reporting Act
8 is enacted to read:

9 "[NEW MATERIAL] POLITICAL COMMITTEES--NOTICE OF
10 RESIGNATION OR REMOVAL OF TREASURER.--

11 A. An individual who resigns as the treasurer of a
12 political committee shall submit a written resignation
13 statement to the secretary of state. An individual's
14 resignation is not effective until the secretary of state
15 receives the written resignation statement from the individual
16 and a replacement treasurer is appointed for the political
17 committee. If an individual is involuntarily removed from the
18 position of treasurer, the political committee shall notify the
19 secretary of state by amending the electronic registration
20 maintained by the secretary of state. An individual who
21 resigns as the treasurer of a political committee remains
22 personally liable for any penalties or fines accrued during the
23 time that the individual served in the position.

24 B. The secretary of state shall prescribe the form
25 and process for notifying the secretary of state of a

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underscored material = new
[bracketed material] = delete

1 resignation or replacement of a treasurer and shall maintain
2 all records electronically to the extent practicable."

3 SECTION 15. A new section of the Lobbyist Regulation Act
4 is enacted to read:

5 "[NEW MATERIAL] RULEMAKING AUTHORITY.--The secretary of
6 state may promulgate rules to implement the provisions of the
7 Lobbyist Regulation Act. In promulgating the rules, the
8 secretary of state shall comply with the provisions of the
9 State Rules Act."

10 SECTION 16. A new section of the Financial Disclosure Act
11 is enacted to read:

12 "[NEW MATERIAL] RULEMAKING AUTHORITY.--The secretary of
13 state may promulgate rules to implement the provisions of the
14 Financial Disclosure Act. In promulgating the rules, the
15 secretary of state shall comply with the provisions of the
16 State Rules Act."

17 SECTION 17. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2021.