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****FOR PUBLIC RELEASE****

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THE DISCLOSURE ACT

Albuquerque, NM, January 6, 2022—In advance of the Second Session of the Fifty-Fifth Legislature, the State Ethics Commission recommends a “Disclosure Act” as a replacement for the current Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended 2021). As the American Law Institute has reported:

Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.

American Law Institute, *Principles of Law: Government Ethics*, Tentative Draft No. 3, Ch. 6 (Disclosure), Introductory Note (April 9, 2021). As noted in the State Ethics Commission’s 2021 Annual Report, the Commission believes the current Financial Disclosure Act insufficient to these purposes, for three reasons:

First, the Financial Disclosure Act is vague and undemanding as to what must be disclosed. It requires public servants to disclose sources of gross income in excess of \$5,000, but does not require disclosure of the specific source of the income. Instead, a public servant need only disclose the “general category descriptions that disclose the nature of the income source . . . [in] broad categories.” § 10-16A-3(D)(2) (2021). But requiring disclosure only of “broad category descriptions” does not suffice to alert the public of whether a public servant is subject to a financial conflict of interest. Consider, for example, a state legislator who receives income by selling pesticides to farms, and another state legislator who makes more than \$5,000 from the sale of organic produce. While legislation proposing a partial ban on the use of pesticides would have different effects on these financial interests, both legislators are required only to report income from “farming and ranching” on their financial disclosure statements. § 10-16A-3(D) (2021). As a result, the Financial Disclosure Act does not remind the disclosing legislators of

their potential obligations under the state's ethics laws, and the public is not able to determine what (if any) conflicts of interest might affect the legislators' respective votes.

Second, the Financial Disclosure Act contains significant omissions in several categories of reporting requirements—*e.g.*, the identification of specific sources of income, the identification of ownership assets, business-entity relationships, liabilities, membership and other positions in non-profit organizations, and gifts. Because Financial Disclosure Act omits these requirements, it does not do enough to inform the public whether officials in state government are engaged in self-dealing, are subject to conflicts of interest, and are in compliance with the duties that the Governmental Conduct Act and other statutes impose.

Third, the current Financial Disclosure Act, does not strike a proper balance between the public interest in disclosure and public servants' privacy interests, because the current law gives public servants far too much discretion in deciding whether to make a disclosure and what to disclose. In short, it is not a very effective disclosure law.

Over the past two years, the Commission and its staff have received input from organizations in New Mexico that have bemoaned the Financial Disclosure Act's shortcomings. The Commission staff have also carefully reviewed the American Law Institute's *Principles of Law: Government Ethics*, Tentative Draft No. 3 (April 9, 2021), which includes principles relating to disclosure in government.

As a result, the Commission proposes a new statute—the Disclosure Act—to replace the current Financial Disclosure Act as a more comprehensive and more effective approach to disclosure in government. The proposed Disclosure Act requires elected state officials and those persons who have significant decision-making authority in state government to disclose:

- Employment and the identity of sources of income greater than \$600
- Real property other than personal residences
- The identity of assets greater than \$50,000
- Liabilities greater than \$5,000, other than ordinary consumer debt, mortgage debt on a primary residence, student loans and liabilities owed to family members
- Privately-held business entities
- Professional licenses and board members on and offices in for-profit and non-for-profit boards
- Gifts received from restricted donors
- Sales to public agencies
- Representations before public agencies

A draft of the Disclosure Act is attached hereto.

1 **SECTION 1. SHORT TITLE--DISCLOSURE ACT**--Chapter 10,
2 Article 16A NMSA 1978 may be cited as the "Disclosure
3 Act".

4 **SECTION 2. DEFINITIONS.**--As used in the Disclosure
5 Act:

6 A. "beneficially owned" means a beneficiary's
7 interest in trust property;

8 B. "business" means a corporation, partnership, sole
9 proprietorship, firm, organization or individual carrying
10 on a business;

11 C. "controlled" means the ability of a person,
12 through share ownership or other means, either alone or in
13 coordination with others, to make changes in the
14 management of a business entity or to appoint persons who
15 will control the management of that entity;

16 D. "disclosure statement" means a statement on a
17 form prepared by the secretary of state for purposes of
18 compliance with this Act;

19 E. "employer" means a person or organization that
20 hires or pays another person in exchange for work;

21 F. "employment" means providing work to another
22 person in exchange for compensation;

Appendix 1 to the New Mexico State Ethics Commission's 2021 Annual Report
The Disclosure Act (Dec. 21, 2021)

1 G. "income" means the money or other form of payment
2 that a person receives from, for example, employment,
3 business, contracts, services or goods rendered and
4 investments;

5 H. "office" means a position of duty, trust, or
6 authority, including a position of employment;

7 I. "person" means an individual or entity;

8 J. "public agency" means any department, commission,
9 council, board, committee, agency or institution of the
10 executive or legislative branch of government of the state
11 or any political subdivision of the state and any
12 instrumentality of the state or any political subdivision
13 of the state;

14 K. "professional license" means an official process,
15 administered by state-level authority, that is required by
16 law for an individual to practice or work in a regulated
17 profession;

18 L. "reporting individual" means a person who has a
19 duty to file a disclosure statement with the secretary of
20 state under the terms of this Act; and

21 M. "voluntary compliance" means a reporting
22 individual's correction of all violations alleged upon
23 notification from the secretary of state.

1 **SECTION 3. WHEN DISCLOSURES ARE REQUIRED--WHO MUST**
2 **FILE.--**

3 A. The following persons are required to file with
4 the secretary of state a disclosure statement within
5 thirty days of appointment, during the month of January
6 every year thereafter that the person holds the office,
7 and upon leaving the office:

8 (1) A person holding an elected office in the
9 legislative or executive branch of state government;

10 (2) A state agency head;

11 (3) A person whose appointment to a board or
12 commission is subject to confirmation by the senate;

13 (4) A member of the insurance nominating
14 committee or a member of the state ethics commission; and

15 (5) A candidate for legislative or statewide
16 elected office who has not already filed a disclosure
17 statement with the secretary of state in the same calendar
18 year. The candidate shall file with the secretary of
19 state a disclosure statement at the time of filing a
20 declaration of candidacy.

21 B. A person who files to be a candidate for a
22 legislative or statewide office who fails or refuses to
23 file a financial disclosure statement required by this

1 section before the final date for qualification of the
2 person as a candidate as provided for in the Election Code
3 shall not be qualified by the secretary of state as a
4 candidate.

5 C. For a state agency head, an official whose
6 appointment to a board or commission is subject to
7 confirmation by the senate, a member of the insurance
8 nominating committee or a member of the state ethics
9 commission, the filing of the disclosure statement
10 required by this section is a condition of entering upon
11 and continuing in state employment or holding an appointed
12 position.

13 **SECTION 4. DISCLOSURE OF EMPLOYMENT.**--The disclosure
14 statement shall include for any reporting individual
15 identified in Subsection A of Section 3 of this Act the
16 following information related to employment for the prior
17 calendar year:

18 A. The full name of the reporting individual and
19 their spouse; and

20 B. The name and address of any employer employing
21 the reporting individual or their spouse, the title or
22 position held and a brief description of the nature of the
23 business or occupation.

1 **SECTION 5. DISCLOSURE OF ASSETS AND INCOME.**--The

2 disclosure statement shall include for any reporting
3 individual identified in Subsection A of Section 3 of this
4 Act the following information related to assets and income
5 for the prior calendar year:

6 A. The identity, location, and use of real property,
7 owned by the reporting individual, the reporting
8 individual's spouse, or the reporting individual's
9 dependent children; provided that, for personal residences
10 only the zip code or, in the absence of a zip code, the
11 county of situs need be disclosed;

12 B. The identity of assets of more than fifty
13 thousand (\$50,000) dollars directly or beneficially owned
14 by the reporting individual, the reporting individual's
15 spouse, or the reporting individual's dependent children;
16 provided that, in determining whether an asset has a value
17 of more than fifty thousand (\$50,000) dollars, the value
18 should not be reduced by any indebtedness secured by the
19 asset, such as a mortgage or other secured loan, and a
20 good faith estimate of the fair market value of an asset
21 is permitted if the exact value is neither known or easily
22 obtainable. The disclosure of assets shall include:

1 (1) commodities, including the type of
2 commodity;

3 (2) investments in stocks, bonds, futures
4 contracts, options, derivatives, currency, real estate
5 investment trusts, mutual funds, private-equity funds and
6 exchange-traded funds; provided that, if the investment is
7 or forms part of a fund, the reporting individual need
8 only identify the fund and the fund manager and not the
9 underlying holdings of the fund; and

10 (3) contractual rights that are reasonably
11 likely to generate future income, such as royalties and
12 intellectual property, the names of the contracting
13 parties and the purpose of the contract;

14 C. The source of income of more than six hundred
15 dollars (\$600) directly or indirectly accrued by the
16 reporting individual, the reporting individual's spouse,
17 or the reporting individual's dependent children,
18 including:

19 (1) the identity of the source of earned
20 income; provided that, if the source of earned income is
21 owed a legal or professional duty of confidentiality and
22 the identity of the source of the income has not been
23 disclosed to a public agency, the reporting individual may

1 identify the source as "confidential" and describe the
2 duty of confidentiality that prevents disclosure of the
3 source of the earned income; and

4 (2) the identity of sources of unearned income,
5 including taxable interest, capital gains, dividends,
6 annuities, trust distributions; rents from real property;
7 and insurance policies.

8 **SECTION 6. DISCLOSURE OF LIABILITIES.**--The

9 disclosure statement shall include for any reporting
10 individual identified in Subsection A of Section 3 of this
11 Act the following information related to liabilities for
12 the prior calendar year:

13 A. All liabilities of more than five thousand
14 dollars (\$5,000) owed by:

15 (1) the reporting individual, the reporting
16 individual's spouse, or the reporting individual's
17 dependent children; and

18 (2) a trust of which the reporting individual,
19 the reporting individual's spouse, or the reporting
20 individual's dependent children are beneficiaries.

21 B. For any liability that Subsection (A) of Section
22 6 requires identification, the reporting individual must
23 disclose:

1 (1) the identity of the person who owes the
2 debt or liability;

3 (2) the person to whom the debt or liability is
4 owed;

5 (3) the amount of the debt or liability; and

6 (4) any payments on the debt or liability
7 during the previous calendar year.

8 C. The disclosure statement need not include
9 disclosure of:

10 (1) ordinary consumer debt;

11 (2) mortgage debt on the primary residence of
12 the reporting individual, the reporting individual's
13 spouse, or the reporting individual's dependent children;

14 (3) student loans; and

15 (4) liabilities owed to parents, grandparents,
16 children or siblings of the reporting individual, the
17 reporting individual's spouse, or the reporting
18 individual's dependent children.

19 **SECTION 7. DISCLOSURE OF INFORMATION AND ASSETS OF**
20 **BUSINESS ENTITIES.**--The disclosure statement shall include
21 for any reporting individual identified in Subsection A of
22 Section 3 of this Act the following information related to
23 any privately-held business entity controlled by the

1 reporting individual, the reporting individual's spouse or
2 the reporting individual's dependent children:

3 A. The name of the business entity, a brief
4 description of the nature of its activities and its
5 geographic location (city and state); and

6 B. For a privately-held business entity that was
7 formed for the purpose of holding investments:

8 (1) assets of more than fifty thousand
9 (\$50,000) dollars or which generated more than \$600 in
10 income directly or beneficially owned by the business
11 entity, provided that, in determining whether an asset has
12 a value of more than fifty thousand (\$50,000) dollars, the
13 value should not be reduced by any indebtedness secured by
14 the asset, such as a mortgage or other secured loan; and

15 (2) any liability of more than fifty thousand
16 dollars (\$50,000) of the business entity, including:

17 (a) the identity of the business entity
18 that owes the debt or liability;

19 (b) the person to which the debt or
20 liability is owned;

21 (c) the amount of the debt or liability;

22 and

1 (d) any payments on the debt or liability
2 during the previous calendar year.

3 **SECTION 8. DISCLOSURE OF PROFESSIONAL LICENSES AND**
4 **MEMBERSHIPS.**--The disclosure statement shall include for
5 any reporting individual identified in Subsection A of
6 Section 3 of this Act the following information related to
7 professional licenses, memberships and offices for the
8 prior calendar year:

9 A. all professional licenses held by the reporting
10 individual or the reporting individual's spouse;

11 B. all board memberships, offices, or other
12 positions held by the reporting individual and the
13 reporting individual's spouse in:

14 (1) corporations, partnerships, trusts, or
15 other for-profit business entities; and

16 (2) non-profit organizations, educational
17 organizations, political organizations, or any other non-
18 governmental organization.

19 **SECTION 9. DISCLOSURES OF GIFTS.**--The disclosure
20 statement shall include for any reporting individual
21 identified in Subsection A of Section 3 of this Act the
22 following information related to gifts for the prior
23 calendar year:

1 A. any gift received by the reporting individual,
2 the reporting individual's spouse, or the reporting
3 individual's dependent children of a market value greater
4 than fifty dollars (\$50) from a restricted donor, a
5 lobbyist registered with the secretary of state, a
6 lobbyist's employer, a government contractor, or a person
7 that has responded to a request for proposals or an
8 invitation to bid issued by the agency which the reporting
9 individual serves.

10 B. As used in Subsection (A) of Section 8 of this
11 Act, "gift" and "restricted donor" have the same meanings
12 as in the Gift Act.

13 **SECTION 10. DISCLOSURES RELATED TO PUBLIC AGENCIES.-**

14 -The disclosure statement shall include for any person
15 identified in Subsection A of Section 3 of this Act the
16 following information related to public agencies for the
17 prior calendar year:

18 A. each public agency that was sold goods or
19 services in excess of five thousand dollars (\$5,000)
20 during the prior calendar year by the reporting
21 individual, the reporting individual's spouse or a
22 business entity controlled by the reporting individual or
23 the reporting individual's spouse; and

1 B. each public agency, other than a court, before
2 which the reporting individual or the reporting
3 individual's spouse represented or assisted clients in the
4 course of employment during the prior calendar year.

5 **SECTION 11. RETENTION AND PUBLIC INSPECTION OF**
6 **DISCLOSURE STATEMENTS.--**

7 A. The secretary of state will retain for ten years
8 from the date of filing any disclosure statement filed by
9 any reporting individual under Subsection A of Section 3
10 of this Act and shall make the same available to the state
11 ethics commission.

12 B. The secretary of state will make available for
13 public inspection, without request, disclosure statements
14 filed by persons under Paragraphs (1) and (5) of
15 Subsection A of Section 3 of this Act.

16 C. The secretary of state will make available for
17 public inspection, upon written request, disclosure
18 statements filed by persons under Paragraphs (2) through
19 (4) of Subsection A of Section 3 of this Act; provided
20 that:

21 (1) the secretary of state will inform the
22 reporting individual whose disclosure statement is the

1 subject of a written request of the request and the
2 identity of the requester; and

3 (2) the secretary of state shall not make
4 available for public inspection any address of personal
5 residence of any reporting individual, the reporting
6 individual's spouse, or the reporting individual's
7 dependent children.

8 **SECTION 12. EDUCATION AND VOLUNTARY COMPLIANCE.--**

9 A. The secretary of state shall advise and seek to
10 educate all persons required to perform duties under the
11 Disclosure Act of those duties. This includes providing
12 timely advance notice of the required disclosure statement
13 and preparing forms that are clear and easy to complete.

14 B. The secretary of state shall refer violations of
15 the Disclosure Act to the state ethics commission after
16 first seeking to ensure voluntary compliance with the
17 provisions of the Disclosure Act. The secretary of state
18 shall give a person who violates any provision of the
19 Disclosure Act ten days' notice to correct the matter
20 before the secretary of state refers the violation to the
21 state ethics commission.

22 **SECTION 13. RULEMAKING AUTHORITY.--**The secretary of
23 state may promulgate rules to implement the provisions of

1 the Disclosure Act. In promulgating the rules, the
2 secretary of state shall comply with the provisions of the
3 State Rules Act.

4 **SECTION 14. INVESTIGATIONS--FINES--CIVIL**
5 **ENFORCEMENT.--**

6 A. The state ethics commission may conduct
7 examinations of disclosure statements and initiate
8 complaints and investigations to determine whether the
9 Disclosure Act has been violated. The state ethics
10 commission may also receive, investigate and adjudicate
11 complaints alleging violations of the Disclosure Act
12 subject to the provisions of the State Ethics Commission
13 Act.

14 B. The state ethics commission may institute a civil
15 action in district court or refer a matter to the attorney
16 general or a district attorney to institute a civil action
17 in district court if a violation has occurred or to
18 prevent a violation of any provision of the Disclosure
19 Act. Relief may include a permanent or temporary
20 injunction, a restraining order or any other appropriate
21 order, including an order for a civil penalty of up to one
22 thousand dollars (\$1,000) for each violation not to exceed
23 twenty thousand dollars (\$20,000).

1 C. Any person identified in Subsections A and B of
2 Section 3 of this Act who files a report after the
3 deadline imposed by the Disclosure Act is additionally
4 liable for a penalty of fifty dollars (\$50.00) per day for
5 each regular working day after the time required for the
6 filing of the disclosure statement until the report is
7 filed, not to exceed five thousand dollars (\$5,000).
8 Penalties collected pursuant to this subsection shall be
9 remitted to the secretary of state.

10 D. If the secretary of state or the state ethics
11 commission reasonably believes that a person committed, or
12 is about to commit a violation of the Disclosure Act that
13 is subject to criminal penalties, the secretary of state
14 or the state ethics commission may refer the matter to the
15 attorney general or a district attorney for criminal
16 enforcement.

17 **SECTION 15. CRIMINAL PENALTIES.—**

18 A. Any person who knowingly and willfully violates
19 any of the provisions of the Disclosure Act is guilty of a
20 misdemeanor and shall be punished by a fine of not more
21 than one thousand dollars (\$1,000) or by imprisonment for
22 not more than one year or both.

1 B. Notwithstanding the provisions of Subsection C of
2 Section 30-1-8, NMSA 1978, a person shall not be
3 prosecuted, tried or punished in any court of this state
4 for knowingly and willfully violating any of the
5 provisions of the Disclosure Act unless the indictment is
6 found or information or complaint is filed within five
7 years from the time the violation was committed.

8 **SECTION 16. REPEAL.**--Sections 10-16A-1 through 10-
9 16-9 NMSA 1978 (being Laws 1993, Chapter 46, Sections 39
10 through 45, Laws 1995, Chapter 153, Sections 24 through 25,
11 Laws 1997, Chapter 112, Sections 8 through 9, Laws 2015,
12 Chapter 11, Section 1, Laws 2019, Chapter 86, Sections 27
13 through 30, Chapter 212, Section 214, Laws 2021, Chapter 109,
14 Sections 12, 13, and 21) are repealed.

15 **SECTION 17. EFFECTIVE DATE.**--The effective date of
16 the provisions of this act is January 1, 2023.