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****FOR PUBLIC RELEASE****

January 6, 2022

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.

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HOUSE BILL 149

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Matthew McQueen and James G. Townsend and Joy Garratt and
Bill Tallman

AN ACT

RELATING TO PUBLIC OFFICERS; ENACTING THE DISCLOSURE ACT;
REQUIRING PERSONS HOLDING OR SEEKING A POSITION OF DUTY, TRUST
OR AUTHORITY WITH THE STATE TO FILE ANNUAL DISCLOSURES RELATED
TO EMPLOYMENT, INCOME, ASSETS AND LIABILITIES, PROFESSIONAL
LICENSES, GIFTS AND PROCUREMENT; PROVIDING DUTIES; REQUIRING
RETENTION AND PUBLIC INSPECTION; PROVIDING RULEMAKING
AUTHORITY; ESTABLISHING FINES; CREATING A PENALTY; RENAMING THE
"FINANCIAL DISCLOSURE ACT" THROUGHOUT THE NMSA 1978 THE
"DISCLOSURE ACT"; REPEALING THE FINANCIAL DISCLOSURE ACT,
SECTIONS 10-16A-1 THROUGH 10-16A-9 NMSA 1978 (BEING LAWS 1993,
CHAPTER 46, SECTIONS 39 THROUGH 45, LAWS 1995, CHAPTER 153,
SECTION 25 AND LAWS 2021, CHAPTER 109, SECTION 21, AS AMENDED).

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 15 of this act may be cited as the "Disclosure Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Disclosure Act:

4 A. "beneficially owned" means a beneficiary's
5 interest in trust property;

6 B. "business entity" means a corporation, business
7 trust, estate, trust, partnership, limited liability company,
8 association, joint venture or any legal or commercial entity;

9 C. "controlled" means the ability of a person,
10 through share ownership or other means, to make changes in the
11 management of a business entity or to appoint persons who will
12 control the management of that business entity;

13 D. "dependent children" means any natural or
14 adopted children of a reporting individual who are under the
15 age of eighteen and living in the household of the reporting
16 individual;

17 E. "disclosure statement" means a statement on a
18 form prepared by the secretary of state for purposes of
19 compliance with the Disclosure Act;

20 F. "employer" means a person that hires or pays
21 another person in exchange for work;

22 G. "employment" means providing work to another
23 person in exchange for compensation;

24 H. "income" means the money or other form of
25 payment that a person receives from labor or services,

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1 including from employment, a business entity, contracts, goods
2 or services rendered and investments;

3 I. "office" means a position of duty, trust or
4 authority;

5 J. "ordinary consumer debt" means a personal debt
6 that is owed as a result of purchasing goods that are used for
7 individual or household consumption, including credit card debt
8 and auto loans;

9 K. "person" means an individual or business entity;

10 L. "public agency" means a department, commission,
11 council, board, committee, agency or institution of the
12 executive or legislative branch of state government or a
13 political subdivision of the state or an instrumentality of the
14 state or of a political subdivision of the state;

15 M. "professional license" means a certificate,
16 permit or other authorization required by law for an individual
17 to engage in a regulated profession or occupation;

18 N. "reporting individual" means:

19 (1) a person holding an elected office in the
20 legislative or executive branch of state government;

21 (2) a state agency head;

22 (3) a person whose appointment to a board or
23 commission is subject to confirmation by the senate;

24 (4) a member of the insurance nominating
25 committee;

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1 (5) a member of the state ethics commission;
2 and

3 (6) a candidate for a legislative or statewide
4 elected office; and

5 0. "state agency head" means the person who has the
6 ultimate responsibility for exercising the powers of or
7 expending the appropriated funds of a department, institution,
8 board, bureau, commission, district or committee of government
9 of the state of New Mexico, including of the legislative and
10 judicial branches of the state.

11 SECTION 3. [NEW MATERIAL] DISCLOSURE STATEMENT REQUIRED--
12 WHO MUST FILE.--

13 A. A reporting individual, other than a candidate
14 for a legislative or statewide elected office, shall file with
15 the secretary of state a disclosure statement:

16 (1) within thirty days of appointment or
17 election to the office held by the reporting individual;

18 (2) after the year of appointment or election,
19 during the month of January every year that the person holds
20 the office; and

21 (3) upon leaving the office.

22 B. A person who files to be a candidate for a
23 legislative or statewide elected office shall file a disclosure
24 statement at the time of filing a declaration of candidacy;
25 provided that a disclosure statement is not required to be

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1 filed if the person has already filed a disclosure statement
2 with the secretary of state in the same calendar year. If the
3 person fails or refuses to file a financial disclosure
4 statement required by this section before the final date for
5 qualification of the person as a candidate pursuant to the
6 Election Code, the person shall not be qualified as a
7 candidate.

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

14 SECTION 4. [NEW MATERIAL] DISCLOSURE OF EMPLOYMENT.--The
15 disclosure statement filed by a reporting individual shall
16 include the following information related to employment for the
17 prior calendar year:

18 A. the full name of the reporting individual and
19 the reporting individual's spouse; and

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

24 SECTION 5. [NEW MATERIAL] DISCLOSURE OF ASSETS AND
25 INCOME.--The disclosure statement filed by a reporting

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1 individual shall include the following information related to
2 assets and income for the prior calendar year:

3 A. the identity, location and purpose of use of
4 real property owned by the reporting individual, the reporting
5 individual's spouse or the reporting individual's dependent
6 children; provided that, for personal residences only the zip
7 code or, in the absence of a zip code, the county of situs is
8 required to be disclosed;

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

20 (1) commodities, including the type of
21 commodity;

22 (2) investments in stocks, bonds, futures
23 contracts, options, derivatives, currency, real estate
24 investment trusts, mutual funds, private equity funds,
25 exchange-traded funds and trust funds of which the reporting

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1 individual is a beneficiary; provided that, if the investment
2 is or forms part of a fund, the reporting individual is only
3 required to identify the fund, the fund manager and any
4 underlying holdings of the fund that have a value of more than
5 fifty thousand dollars (\$50,000); and

6 (3) contractual rights that are reasonably
7 likely to generate future income, such as royalties and
8 intellectual property, the names of the contracting parties and
9 the purpose of the contract; and

10 C. all sources of income equal to or greater than
11 the amount that must be disclosed to the internal revenue
12 service pursuant to 26 U.S.C. Section 6041(a), as amended,
13 directly or indirectly accrued by the reporting individual, the
14 reporting individual's spouse or the reporting individual's
15 dependent children, including:

16 (1) the identity of the source of earned
17 income; provided that:

18 (a) if a source of earned income is owed
19 a legal or professional duty of confidentiality and the
20 identity of the source of the income has not been disclosed to
21 a public agency, the reporting individual may identify the
22 source as "confidential" and describe the duty of
23 confidentiality that prevents disclosure of the source of the
24 earned income; and

25 (b) if an indirect source of earned

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1 income is a client of a business entity of which the reporting
2 individual or the reporting individual's spouse is a member,
3 the indirect source of earned income is not required to be
4 disclosed if the reporting individual or the reporting
5 individual's spouse has no role in any matter involving the
6 source; and

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

11 SECTION 6. [NEW MATERIAL] DISCLOSURE OF LIABILITIES.--

12 A. The disclosure statement filed by a reporting
13 individual shall include for the prior calendar year
14 liabilities of more than five thousand dollars (\$5,000) owed
15 by:

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

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

22 B. For a liability identified pursuant to
23 Subsection A of this section, the reporting individual shall
24 disclose:

25 (1) the identity of the person who owes the

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1 debt or liability;

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

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

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

7 C. The disclosure statement is not required to
8 include:

9 (1) ordinary consumer debt;

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

13 (3) student loans; and

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

18 SECTION 7. [NEW MATERIAL] DISCLOSURE OF INFORMATION AND
19 ASSETS OF BUSINESS ENTITIES.--The disclosure statement filed by
20 a reporting individual shall include the following information
21 related to any privately held business controlled by the
22 reporting individual, the reporting individual's spouse or the
23 reporting individual's dependent children:

24 A. the name of the business entity, a brief
25 description of the nature of its activities and its geographic

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1 location, including the city and state; and

2 B. for a privately held business entity that was
3 formed for the purpose of holding investments:

4 (1) assets of more than fifty thousand dollars
5 (\$50,000) or that generated income directly or beneficially
6 owned by the business entity in an amount equal to or greater
7 than the amount that must be disclosed to the internal revenue
8 service pursuant to 26 U.S.C. Section 6041(a), as amended;
9 provided that, in determining whether an asset has a value of
10 more than fifty thousand dollars (\$50,000), the value should
11 not be reduced by any indebtedness secured by the asset, such
12 as a mortgage or other secured loan; and

13 (2) any liability of the business entity in an
14 amount greater than fifty thousand dollars (\$50,000),
15 including:

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

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

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

21 and

22 (d) any payments on the debt or
23 liability during the previous calendar year.

24 SECTION 8. [NEW MATERIAL] DISCLOSURE OF PROFESSIONAL
25 LICENSES AND MEMBERSHIPS.--The disclosure statement filed by a
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1 reporting individual shall include the following information
2 related to professional licenses, memberships and offices held
3 for the prior calendar year:

4 A. professional licenses held by the reporting
5 individual and the reporting individual's spouse; and

6 B. board memberships, offices or other positions
7 held by the reporting individual and the reporting individual's
8 spouse in:

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

11 (2) nonprofit organizations, educational
12 organizations, political organizations or other nongovernmental
13 organizations.

14 SECTION 9. [NEW MATERIAL] DISCLOSURE OF GIFTS.--

15 A. The disclosure statement filed by a reporting
16 individual shall include any gift received in the prior
17 calendar year by the reporting individual, the reporting
18 individual's spouse or the reporting individual's dependent
19 children having a market value greater than fifty dollars
20 (\$50.00) from a restricted donor, a lobbyist registered with
21 the secretary of state, a lobbyist's employer, a government
22 contractor or a person that has responded to a request for
23 proposals or an invitation to bid issued by the public agency
24 that the reporting individual serves.

25 B. As used in this section, "gift" and "restricted

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1 donor" have the same meaning as those terms are defined in the
2 Gift Act.

3 SECTION 10. [NEW MATERIAL] DISCLOSURES RELATED TO PUBLIC
4 AGENCIES.--The disclosure statement filed by a reporting
5 individual shall include the following information related to
6 public agencies:

7 A. each public agency that purchased goods or
8 services in excess of five thousand dollars (\$5,000) during the
9 prior calendar year from the reporting individual, the
10 reporting individual's spouse or a business entity controlled
11 by the reporting individual or the reporting individual's
12 spouse; and

13 B. each public agency, other than a court, before
14 which the reporting individual or the reporting individual's
15 spouse represented or assisted clients in the course of
16 employment during the prior calendar year.

17 SECTION 11. [NEW MATERIAL] RETENTION AND PUBLIC
18 INSPECTION OF DISCLOSURE STATEMENTS.--

19 A. The secretary of state shall retain for ten
20 years from the date of filing any disclosure statement filed by
21 a reporting individual and shall make the same available to the
22 state ethics commission.

23 B. The secretary of state shall make publicly
24 available the disclosure statements filed by a person holding
25 an elected office in the legislative or executive branch of

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1 state government and by a candidate for legislative or
2 statewide elected office.

3 C. The secretary of state shall make available for
4 public inspection, upon written request, disclosure statements
5 filed by a state agency head, a person whose appointment to a
6 board or commission is subject to confirmation by the senate, a
7 member of the insurance nominating committee or a member of the
8 state ethics commission; provided that:

9 (1) prior to the public inspection of the
10 reporting individual's disclosure statements, the secretary of
11 state shall inform the reporting individual of the written
12 request and the identity of the requester; and

13 (2) the secretary of state shall not make
14 available for public inspection any personal residence address
15 of a reporting individual, the reporting individual's spouse or
16 the reporting individual's dependent children.

17 SECTION 12. [NEW MATERIAL] EDUCATION AND VOLUNTARY
18 COMPLIANCE.--

19 A. The secretary of state shall advise and seek to
20 educate all reporting individuals on their duties pursuant to
21 the Disclosure Act, including providing timely advance notice
22 of the required disclosure statement and preparing disclosure
23 statement forms that are clear and easy to complete.

24 B. The secretary of state shall refer violations of
25 the Disclosure Act to the state ethics commission after first

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1 seeking voluntary compliance and correction of all violations
2 alleged from the reporting individual. The secretary of state
3 shall give a person who violates any provision of the
4 Disclosure Act ten days' notice to correct the matter before
5 the secretary of state refers the violation to the state ethics
6 commission.

7 SECTION 13. [NEW MATERIAL] RULEMAKING AUTHORITY--
8 DISCLOSURE STATEMENT FORM.--The secretary of state may
9 promulgate rules to implement the provisions of the Disclosure
10 Act.

11 SECTION 14. [NEW MATERIAL] INVESTIGATIONS--FINES--CIVIL
12 ENFORCEMENT.--

13 A. The state ethics commission may conduct
14 examinations of disclosure statements and initiate complaints
15 and investigations to determine whether the Disclosure Act has
16 been violated. The state ethics commission may also receive,
17 investigate and adjudicate complaints alleging violations of
18 the Disclosure Act subject to the provisions of the State
19 Ethics Commission Act.

20 B. The state ethics commission may institute a
21 civil action in district court or refer a matter to the
22 attorney general or a district attorney to institute a civil
23 action in district court if a violation has occurred or to
24 prevent a violation of a provision of the Disclosure Act.
25 Relief may include a permanent or temporary injunction, a

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1 restraining order or any other appropriate order, including an
2 order for a civil penalty of up to one thousand dollars
3 (\$1,000) for each violation not to exceed twenty thousand
4 dollars (\$20,000).

5 C. A reporting individual who files a report after
6 the deadline imposed by the Disclosure Act is additionally
7 liable for a penalty of fifty dollars (\$50.00) per day for each
8 regular working day after the deadline required for the filing
9 of the disclosure statement until the report is filed, not to
10 exceed five thousand dollars (\$5,000).

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

17 SECTION 15. [NEW MATERIAL] CRIMINAL PENALTIES.--

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

23 B. Notwithstanding the time limitations for
24 commencing prosecutions pursuant to Subsection C of Section
25 30-1-8 NMSA 1978, a person shall not be prosecuted, tried or
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1 punished in any court of this state for knowingly and willfully
2 violating any of the provisions of the Disclosure Act unless
3 the indictment is found or information or complaint is filed
4 within five years from the time the violation was committed.

5 SECTION 16. A new section of Chapter 1, Article 8 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] CANDIDATES FOR LEGISLATIVE AND STATEWIDE
8 OFFICES--CANDIDATE QUALIFICATION--COMPLIANCE WITH DISCLOSURE
9 ACT REQUIRED.--Pursuant to the Disclosure Act, a person who
10 files to be a candidate for a legislative or statewide elected
11 office shall file a disclosure statement at the time of filing
12 a declaration of candidacy; provided that a disclosure
13 statement is not required to be filed if the person has already
14 filed a disclosure statement with the secretary of state in the
15 same calendar year. If the person fails or refuses to file a
16 disclosure statement before the final date for qualification of
17 the person as a candidate pursuant to the Election Code, the
18 person shall not be qualified as a candidate."

19 SECTION 17. Section 1-22A-6 NMSA 1978 (being Laws 2013,
20 Chapter 180, Section 6) is amended to read:

21 "1-22A-6. VOLUNTARY COMPLIANCE--COMPLAINTS AND
22 INVESTIGATIONS--ARBITRATION--REFERRALS FOR ENFORCEMENT.--

23 A. The secretary of state may initiate
24 investigations to determine whether any provision of the School
25 District Campaign Reporting Act has been violated.

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1 Additionally, any person who believes that a provision of that
2 act has been violated may file a written complaint with the
3 secretary of state any time prior to ninety days after an
4 election, except that no complaints from the public may be
5 filed within eight days prior to an election. The secretary of
6 state shall adopt procedures for issuing advisory opinions and
7 processing complaints and notifications of violations.

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

24 C. Upon receipt of the notice of final action, the
25 person against whom the penalty has been imposed may protest

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

15 D. 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 School District
20 Campaign Reporting Act, Campaign Reporting Act Lobbyist
21 Regulation Act or ~~[Financial]~~ Disclosure Act may serve as an
22 arbitrator. Arbitrators shall be considered to be independent
23 contractors, not public officers or employees, and shall not be
24 paid per diem and mileage.

25 E. The arbitrator shall conduct the hearing within

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

13 F. The secretary of state may refer a matter to the
14 attorney general or a district attorney for a civil injunction
15 or other appropriate order or for criminal enforcement."

16 SECTION 18. Section 10-16G-4 NMSA 1978 (being Laws 2019,
17 Chapter 86, Section 4, as amended) is amended to read:

18 "10-16G-4. COMMISSIONERS--QUALIFICATIONS--LIMITATIONS.--

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

- 21 (1) be a qualified elector of New Mexico;
- 22 (2) not have changed party registration in the
23 five years next preceding the member's appointment in such a
24 manner that the member's prior party registration would make
25 the member ineligible to serve on the commission;

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1 (3) not continue to serve as a commissioner if
2 the member changes party registration after the date of
3 appointment in such a manner as to make the member ineligible
4 to serve on the commission; and

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

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

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

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

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

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

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

12 (1) a public employee;

13 (2) a candidate;

14 (3) a lobbyist;

15 (4) a government contractor; or

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

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

23 SECTION 19. Section 10-16G-9 NMSA 1978 (being Laws 2019,
24 Chapter 86, Section 9, as amended by Laws 2021, Chapter 21,
25 Section 33 and by Laws 2021, Chapter 109, Section 16) is

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1 amended to read:

2 "10-16G-9. COMMISSION JURISDICTION--COMPLIANCE
3 PROVISIONS.--

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

- 9 (1) the Campaign Reporting Act;
- 10 (2) the [~~Financial~~] Disclosure Act;
- 11 (3) the Gift Act;
- 12 (4) the Lobbyist Regulation Act;
- 13 (5) the Voter Action Act;
- 14 (6) the Governmental Conduct Act;
- 15 (7) the Procurement Code;
- 16 (8) the State Ethics Commission Act;
- 17 (9) the Revised Uniform Law on Notarial Acts;

18 and

- 19 (10) Article 9, Section 14 of the constitution
20 of New Mexico.

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

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

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1 to another state or federal agency with jurisdiction over the
2 matter in accordance with Subsection E of this section.

3 D. If the commission decides not to act on a
4 complaint, whether the complaint was filed with the commission
5 or forwarded from another public agency, or decides only to act
6 on part of a complaint, the commission shall promptly forward
7 the complaint, or any part of a complaint on which it does not
8 wish to act, to the public agency that has appropriate
9 jurisdiction within ten days of the decision. The complainant
10 and respondent shall be notified in writing when the
11 complainant's request has been forwarded to another agency
12 unless otherwise provided pursuant to Subsection H of Section
13 10-16G-10 NMSA 1978.

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

24 F. The commission may file a court action to
25 enforce the civil compliance provisions of an act listed in

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1 Subsection A of this section. The court action shall be filed
2 in the district court in the county where the defendant
3 resides."

4 SECTION 20. Section 59A-2-2.1 NMSA 1978 (being Laws 2013,
5 Chapter 74, Section 15, as amended) is amended to read:

6 "59A-2-2.1. INSURANCE NOMINATING COMMITTEE--DUTIES--
7 ADMINISTRATIVE ATTACHMENT.--

8 A. The "insurance nominating committee" is created
9 and consists of nine members, including:

10 (1) four members who are selected by the New
11 Mexico legislative council as follows:

12 (a) two members who shall represent the
13 interests of the insurance industry;

14 (b) two members who shall represent the
15 interests of insurance consumers and who have experience
16 advocating on behalf of consumers or the public interest on
17 insurance issues. These consumer members shall not be employed
18 by or on behalf of or have a contract with an employer that is
19 regulated by the office of superintendent of insurance; and

20 (c) no more than two of the four members
21 shall be from the same political party;

22 (2) four members who are selected by the
23 governor as follows:

24 (a) two members who shall represent the
25 interests of the insurance industry;

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1 (b) two members who shall represent the
2 interests of insurance consumers and who have experience
3 advocating on behalf of consumers or the public interest on
4 insurance issues. These consumer members shall not be employed
5 by or on behalf of or have a contract with an employer that is
6 regulated by the office of superintendent of insurance; and

7 (c) no more than two of the four members
8 shall be from the same political party; and

9 (3) a ninth member who shall be chair of the
10 committee and who shall be selected by a majority of the other
11 eight members; provided that the member shall:

12 (a) not be a candidate for the position
13 of superintendent of insurance; and

14 (b) be either a former New Mexico
15 superintendent of insurance or another person with extensive
16 knowledge of insurance regulation in New Mexico, but does not
17 have, nor have a spouse or child who has, any direct financial
18 interest in an insurer, insurance agency or insurance
19 transaction except as a policyholder or a claimant under a
20 policy or as an owner of less than one percent of the shares of
21 an insurer that is a publicly traded corporation.

22 B. A vacancy on the committee shall be filled by
23 the original appointing authority for the remainder of the
24 term.

25 C. A committee member shall:

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1 (1) be a resident of New Mexico;
2 (2) serve a four-year term; except that a
3 member of the first committee appointed shall serve for a term
4 that ends on June 30, 2015; and

5 (3) serve without compensation, but shall be
6 eligible to receive per diem and mileage pursuant to the Per
7 Diem and Mileage Act.

8 D. The committee is subject to the Inspection of
9 Public Records Act and the Open Meetings Act. Individual
10 members of the committee are subject to the Governmental
11 Conduct Act and the ~~[Financial]~~ Disclosure Act.

12 E. The committee shall convene within ninety days
13 in anticipation of the occurrence of a vacancy in the
14 superintendent position or the expiration of a superintendent's
15 term of office.

16 F. Upon the occurrence of a vacancy in the
17 superintendent position, or after the conclusion of the
18 superintendent's term, the chair of the committee may appoint
19 an interim superintendent who shall serve until a successor is
20 duly qualified.

21 G. The committee shall actively solicit, accept and
22 evaluate applications from qualified individuals for the
23 position of superintendent and may require an applicant to
24 submit any information it deems relevant to the consideration
25 of the individual's application.

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1 H. The committee shall appoint the superintendent
2 by a vote of a majority of all members of the committee.

3 I. The committee shall meet no less often than
4 annually.

5 J. The committee is administratively attached to
6 the office of superintendent of insurance. The office of
7 superintendent of insurance shall provide staff for the
8 committee.

9 K. An employee of the office of superintendent of
10 insurance who serves as staff for the committee shall not
11 reveal to any person, except another committee staff person,
12 any requests or statements disclosed in confidence by a
13 committee member, except that this restriction shall not apply
14 to any disclosure that is:

15 (1) protected under the Whistleblower
16 Protection Act; or

17 (2) required by law."

18 SECTION 21. Section 59A-23F-3 NMSA 1978 (being Laws 2013,
19 Chapter 54, Section 3, as amended) is amended to read:

20 "59A-23F-3. NEW MEXICO HEALTH INSURANCE EXCHANGE
21 CREATED--BOARD CREATED.--

22 A. The "New Mexico health insurance exchange" is
23 created as a nonprofit public corporation to provide qualified
24 individuals and qualified employers with increased access to
25 health insurance in the state and shall be governed by a board

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1 of directors constituted pursuant to the provisions of the New
2 Mexico Health Insurance Exchange Act. The exchange is a
3 governmental entity for purposes of the Governmental Conduct
4 Act, the Gift Act, the Sunshine Portal Transparency Act, the
5 Whistleblower Protection Act, the Procurement Code and the Tort
6 Claims Act, and neither the exchange nor the board shall be
7 considered a governmental entity for any other purpose.

8 B. The exchange shall not duplicate, impair,
9 enhance, supplant, infringe upon or replace, in whole or in any
10 part, the powers, duties or authority of the superintendent,
11 including the superintendent's authority to review and approve
12 premium rates pursuant to the provisions of the Insurance Code.

13 C. All health insurance issuers and health
14 maintenance organizations authorized to conduct business in
15 this state and meeting the requirements of the rules
16 promulgated by the superintendent pursuant to Section 59A-23F-7
17 NMSA 1978, the regulations under federal law and the
18 requirements established by the board shall be eligible to
19 participate in the exchange.

20 D. The "board of directors of the New Mexico health
21 insurance exchange" is created. The board consists of thirteen
22 voting directors as follows:

23 (1) one voting director is the superintendent
24 or the superintendent's designee;

25 (2) six voting directors appointed by the

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1 governor, including the secretary of human services or the
2 secretary's designee, a health insurance issuer and a consumer
3 advocate; and

4 (3) six voting directors, three appointed by
5 the president pro tempore of the senate, including one health
6 care provider, and three appointed by the speaker of the house
7 of representatives, including one health insurance issuer. One
8 of the directors appointed by the president pro tempore of the
9 senate and one of the directors appointed by the speaker of the
10 house of representatives shall be from a list of at least two
11 candidates provided, respectively, by the minority floor leader
12 of the senate and by the minority floor leader of the house of
13 representatives.

14 E. Except as provided in Subsection F of this
15 section, managerial and full-time staff of the exchange shall
16 be subject to applicable provisions of the Governmental Conduct
17 Act and shall not have any direct or indirect affiliation with
18 any health care provider, health insurance issuer or health
19 care service provider.

20 F. Each director shall comply with the conflict-of-
21 interest provisions of Subsection E of this section, except as
22 follows:

23 (1) directors who may be appointed from the
24 board of directors of the New Mexico medical insurance pool
25 shall not be considered to have a conflict of interest with

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1 respect to their association with that entity;

2 (2) the secretary of human services, or the
3 secretary's designee, shall not be considered to have a
4 conflict of interest with respect to the secretary's
5 performance of the secretary's duties as secretary of human
6 services;

7 (3) the director who is a health care provider
8 shall not be considered to have a conflict of interest arising
9 from that director's receipt of payment for services as a
10 health care provider; and

11 (4) directors who are representatives of
12 health insurance issuers shall not be considered to have a
13 conflict of interest with respect to those directors'
14 association with their respective health insurance issuers.

15 G. Each director and employee of the exchange shall
16 have a fiduciary duty to the exchange, to the state and to
17 those persons who purchase or enroll in qualified health plan
18 coverage or medical assistance coverage through the exchange.

19 H. The board shall be composed, as a whole, to
20 assure representation of the state's Native American
21 population, ethnic diversity, cultural diversity and geographic
22 diversity.

23 I. Directors shall have demonstrated knowledge or
24 experience in at least one of the following areas:

25 (1) purchasing coverage in the individual

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1 market;

2 (2) purchasing coverage in the small employer
3 market;

4 (3) health care finance;

5 (4) health care economics or health care
6 actuarial science;

7 (5) health care policy;

8 (6) the enrollment of underserved residents in
9 health care coverage;

10 (7) administration of a private or public
11 health care delivery system;

12 (8) information technology;

13 (9) starting a small business with fifty or
14 fewer employees; or

15 (10) provision of health care services.

16 J. The governor shall appoint no more than four
17 directors from the same political party.

18 K. Except for the secretary of human services, the
19 non-health insurance issuer directors appointed by the governor
20 shall be appointed for initial terms of three years or less,
21 staggered so that the term of at least one director expires on
22 June 30 of each year. The non-health insurance insurer
23 directors appointed by the legislature shall be appointed for
24 initial terms of three years or less, staggered so that the
25 term of at least one director expires on June 30 of each year.

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1 The health insurance issuers appointed to the board shall, upon
2 appointment, select one of them by lot to have an initial term
3 ending on June 30 following one year of service and one to have
4 an initial term ending on June 30 following two years of
5 service. Following the initial terms, health insurance issuer
6 directors shall be appointed for terms of two years. A
7 director whose term has expired shall continue to serve until a
8 successor is appointed by the respective appointing authority.
9 Health insurance issuer directors shall not serve two
10 consecutive terms.

11 L. The exchange, members of the board and employees
12 of the exchange shall operate consistent with provisions of the
13 Governmental Conduct Act, the Inspection of Public Records Act,
14 the ~~[Financial]~~ Disclosure Act, the Gift Act, the Whistleblower
15 Protection Act, the Open Meetings Act and the Procurement Code
16 and shall not be subject to the Personnel Act.

17 M. The board and the exchange shall implement
18 performance-based budgeting and submit annual budgets for the
19 exchange to the secretary of finance and administration and the
20 legislative finance committee.

21 N. The exchange shall cover its directors and
22 employees under a surety bond, in an amount that the director
23 of the risk management division of the general services
24 department shall prescribe.

25 O. A majority of directors constitutes a quorum.

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1 The board may allow members to attend meetings by telephone or
2 other electronic media. A decision by the board requires a
3 quorum and a majority of directors in attendance voting in
4 favor of the decision.

5 P. Within thirty days of the effective date of the
6 New Mexico Health Insurance Exchange Act, the board shall be
7 fully appointed and the superintendent shall convene an
8 organizational meeting of the board, during which the board
9 shall elect a chair and vice chair from among the directors.
10 Thereafter, every three years, the board shall elect in open
11 meeting a chair and vice chair from among the directors. The
12 chair and vice chair shall serve no more than two consecutive
13 three-year terms as chair and vice chair.

14 Q. A vacancy on the board shall be filled by
15 appointment by the original appointing authority for the
16 remainder of the director's unexpired term.

17 R. A director may be removed from the board by a
18 [~~two-thirds~~] two-thirds' majority vote of the directors. The
19 board shall set standards for attendance and may remove a
20 director for lack of attendance, neglect of duty or malfeasance
21 in office. A director shall not be removed without proceedings
22 consisting of at least one ten-day notice of hearing and an
23 opportunity to be heard. Removal proceedings shall be before
24 the board and in accordance with procedures adopted by the
25 board.

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1 S. Appointed directors may receive per diem and
2 mileage in accordance with the Per Diem and Mileage Act,
3 subject to the travel policy set by the board. Appointed
4 directors shall receive no other compensation, perquisite or
5 allowance.

6 T. The board shall:

7 (1) meet at the call of the chair and no less
8 often than once per calendar quarter. There shall be at least
9 seven days' notice given to directors prior to any meeting.
10 There shall be sufficient notice provided to the public prior
11 to meetings pursuant to the Open Meetings Act;

12 (2) create, make appointments to and duly
13 consider recommendations of an advisory committee or committees
14 made up of stakeholders, including health insurance issuers,
15 health care consumers, health care providers, health care
16 practitioners, insurance producers, qualified employer
17 representatives and advocates for low-income or underserved
18 residents;

19 (3) create an advisory committee made up of
20 members insured through the New Mexico medical insurance pool
21 to make recommendations to the board regarding the transition
22 of each organization's insured members into the exchange. The
23 advisory committee shall only exist until a transition plan has
24 been adopted by the board;

25 (4) create an advisory committee made up of

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1 Native Americans, some of whom live on a reservation and some
2 of whom do not live on a reservation, to guide the
3 implementation of the Native American-specific provisions of
4 the federal Patient Protection and Affordable Care Act and the
5 federal Indian Health Care Improvement Act;

6 (5) designate a Native American liaison, who
7 shall assist the board in developing and ensuring
8 implementation of communication and collaboration between the
9 exchange and Native Americans in the state. The Native
10 American liaison shall serve as a contact person between the
11 exchange and New Mexico Indian nations, tribes and pueblos and
12 shall ensure that training is provided to the staff of the
13 exchange, which may include training in:

14 (a) cultural competency;
15 (b) state and federal law relating to
16 Indian health; and

17 (c) other matters relating to the
18 functions of the exchange with respect to Native Americans in
19 the state; and

20 (6) establish at least one walk-in customer
21 service center where persons may, if eligible, enroll in
22 qualified health plans or public coverage programs."

23 SECTION 22. Section 59A-52-27 NMSA 1978 (being Laws 2020,
24 Chapter 9, Section 53) is amended to read:

25 "59A-52-27. FIRE SERVICES COUNCIL CREATED--MEMBERSHIP.--
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1 A. The "fire services council" is created to advise
2 the state fire marshal's office on fire and emergency services
3 policy. The council consists of ten members as follows:

4 (1) the presiding officer or designee of each
5 of the:

6 (a) New Mexico fire chiefs association;

7 (b) fire and emergency managers
8 affiliate of New Mexico counties;

9 (c) New Mexico state firefighters
10 association;

11 (d) New Mexico emergency medical
12 technician association;

13 (e) New Mexico fire marshals
14 association;

15 (f) metro fire chiefs association; and

16 (g) New Mexico professional fire
17 fighters association;

18 (2) one person appointed by the governor;

19 (3) one person appointed by the president pro
20 tempore of the senate; and

21 (4) one person appointed by the speaker of the
22 house of representatives.

23 B. The fire services council shall select from
24 among its members a chair and vice chair, who shall serve one-
25 year terms. No member shall serve as chair or vice chair for

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1 more than two consecutive years.

2 C. The fire services council shall meet as
3 frequently as necessary to conduct business or hold hearings
4 but no less than four times per year. A majority of members of
5 the council constitutes a quorum.

6 D. Council members shall be reimbursed for their
7 per diem and mileage expenses in accordance with the Per Diem
8 and Mileage Act. Council members shall otherwise serve without
9 compensation.

10 E. The fire services council is subject to the
11 Inspection of Public Records Act and the Open Meetings Act.
12 Individual members of the fire services council are subject to
13 the Governmental Conduct Act and the ~~[Financial]~~ Disclosure
14 Act.

15 F. An employee of the state fire marshal's office
16 who serves as staff for the fire services council shall not
17 reveal to any person, except another council staff person, any
18 requests or statements disclosed in confidence by a council
19 member, except that this restriction shall not apply to any
20 disclosure that is:

21 (1) protected pursuant to the Whistleblower
22 Protection Act; or

23 (2) required by law."

24 SECTION 23. Section 62-19-4 NMSA 1978 (being Laws 2020,
25 Chapter 9, Section 18) is amended to read:

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1 "62-19-4. PUBLIC REGULATION COMMISSION NOMINATING
2 COMMITTEE.--

3 A. The "public regulation commission nominating
4 committee" is created and consists of seven members who are:

5 (1) knowledgeable about public utility
6 regulation;

7 (2) not employed by or on behalf of or have a
8 contract with a public utility that is regulated by the
9 commission;

10 (3) not applicants or nominees for a position
11 on the commission; and

12 (4) appointed as follows:

13 (a) four members appointed one each by
14 the speaker of the house of representatives, the minority floor
15 leader of the house of representatives, the president pro
16 tempore of the senate and the minority floor leader of the
17 senate, with no more than two members being from the same
18 political party;

19 (b) two members appointed one each by
20 the secretary of energy, minerals and natural resources and the
21 secretary of economic development; and

22 (c) one member who is a member of an
23 Indian nation, tribe or pueblo appointed by the governor.

24 B. A committee member shall:

25 (1) be a resident of New Mexico;

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1 (2) serve a four-year term; and

2 (3) serve without compensation, but shall be
3 reimbursed for expenses incurred in pursuit of the member's
4 duties on the committee pursuant to the Per Diem and Mileage
5 Act.

6 C. The committee and individual members shall be
7 subject to the Governmental Conduct Act, the Inspection of
8 Public Records Act, the ~~[Financial]~~ Disclosure Act and the Open
9 Meetings Act.

10 D. Administrative support shall be provided to the
11 committee by the staff of the commission.

12 E. Initial appointments to the committee shall be
13 made by the appointing authorities prior to July 1, 2022.
14 Subsequent appointments shall be made no later than thirty days
15 before the end of a term.

16 F. The first meeting of the appointed members of
17 the committee shall be held prior to September 1, 2022. The
18 committee shall select one member to be chair and one member to
19 be secretary. Following the first meeting, the committee shall
20 meet as often as necessary in order to submit a list to the
21 governor of no fewer than five qualified nominees for
22 appointment to the commission for the terms beginning January
23 1, 2023. The list shall be developed to provide geographical
24 diversity, and nominees on the list shall be from at least
25 three different counties of the state.

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1 G. Subsequent to January 1, 2023, the committee
2 shall meet at least ninety days prior to the date on which the
3 term of a commissioner ends and as often as necessary
4 thereafter in order to submit a list to the governor, at least
5 thirty days prior to the beginning of the new term, of no fewer
6 than two qualified nominees from diverse geographical areas of
7 the state for appointment to the commission for each
8 commissioner position term that is ending.

9 H. Upon the occurrence of a vacancy in a
10 commissioner position, the committee shall meet within thirty
11 days of the date of the beginning of the vacancy and as often
12 as necessary thereafter in order to submit a list to the
13 governor, within sixty days of the first meeting after the
14 vacancy occurs, of no fewer than two qualified nominees from
15 diverse geographical areas of the state for appointment to the
16 commission to fill the remainder of the term of each
17 commissioner position that is vacant.

18 I. If a position on the committee becomes vacant
19 during a term, a successor shall be selected in the same manner
20 as the original appointment for that position and shall serve
21 for the remainder of the term of the position vacated.

22 J. The committee shall actively solicit, accept and
23 evaluate applications from qualified individuals for a position
24 on the commission and may require an applicant to submit any
25 information it deems relevant to the consideration of the

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1 individual's application.

2 K. The committee shall select nominees for
3 submission to the governor who, in the committee's judgment,
4 are best qualified to serve as a member of the commission.

5 L. A majority vote of all members of the committee
6 in favor of a person is required for that person to be included
7 on the list of qualified nominees submitted to the governor."

8 SECTION 24. Section 62-19-8 NMSA 1978 (being Laws 1998,
9 Chapter 108, Section 19, as amended) is amended to read:

10 "62-19-8. PROHIBITED ACTS--NOMINEES--COMMISSIONERS AND
11 EMPLOYEES.--

12 A. As used in this section, in addition to the
13 definitions provided in Section [~~16 of this 2020 act~~] 62-19-2
14 NMSA 1978:

15 (1) "affiliated interest" means a person who
16 directly controls or is controlled by or is under common
17 control with a regulated entity, including an agent,
18 representative, attorney, employee, officer, owner, director or
19 partner of an affiliated interest. For the purposes of this
20 definition, "control" includes the possession of the power to
21 direct or cause the direction of the management and policies of
22 a person, whether directly or indirectly, through the
23 ownership, control or holding with the power to vote of ten
24 percent or more of the person's voting securities;

25 (2) "intervenor" means a person who is

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1 intervening as a party in an adjudicatory matter or commenting
2 in a rulemaking pending before the commission or has intervened
3 in an adjudicatory or rulemaking matter before the commission
4 within the preceding twenty-four months, including an agent,
5 representative, attorney, employee, officer, owner, director,
6 partner or member of an intervenor;

7 (3) "pecuniary interest" includes owning or
8 controlling securities; serving as an officer, director,
9 partner, owner, employee, attorney or consultant; or otherwise
10 benefiting from a business relationship. "Pecuniary interest"
11 does not include an investment in a mutual fund or similar
12 third-party-controlled investment, pension or disability
13 benefits or an interest in capital credits of a rural electric
14 cooperative or telephone cooperative because of current or past
15 patronage; and

16 (4) "regulated entity" means a person whose
17 charges for services to the public are regulated by the
18 commission and includes any direct or emerging competitors of a
19 regulated entity and includes an agent, representative,
20 attorney, employee, officer, owner, director or partner of the
21 regulated entity.

22 B. In addition to the requirements of the
23 ~~[Financial]~~ Disclosure Act and the Governmental Conduct Act,
24 nominees for appointment to the commission, commissioners and
25 employees of the commission shall comply with the requirements

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1 of the Public Regulation Commission Act, as applicable.

2 C. A nominee for appointment to the commission
3 shall not solicit or accept anything of value, either directly
4 or indirectly, from a person whose charges for services to the
5 public are regulated by the commission. For the purposes of
6 this subsection, "anything of value" includes money, in-kind
7 contributions and volunteer services to the nominee or the
8 nominee's organization, but does not include pension or
9 disability benefits.

10 D. A commissioner or employee of the commission
11 shall not:

12 (1) accept anything of value from a regulated
13 entity, affiliated interest or intervenor. For the purposes of
14 this paragraph, "anything of value" does not include:

15 (a) the cost of refreshments totaling no
16 more than five dollars (\$5.00) a day or refreshments at a
17 public reception or other public social function that are
18 available to all guests equally;

19 (b) inexpensive promotional items that
20 are available to all customers of the regulated entity,
21 affiliated interest or intervenor; or

22 (c) pension or disability benefits
23 received from a regulated entity, affiliated interest or
24 intervenor;

25 (2) have a pecuniary interest in a regulated

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1 entity, affiliated interest or intervenor, and if a pecuniary
2 interest in an intervenor develops, the commissioner or
3 employee shall divest that interest or self recuse from the
4 proceeding with the intervenor interest; or

5 (3) solicit any regulated entity, affiliated
6 interest or intervenor to appoint a person to a position or
7 employment in any capacity.

8 E. After leaving the commission:

9 (1) a former commissioner shall not be
10 employed or retained in a position that requires appearances
11 before the commission by a regulated entity, affiliated
12 interest or intervenor within two years of the former
13 commissioner's separation from the commission;

14 (2) a former employee shall not appear before
15 the commission representing a party to an adjudication or a
16 participant in a rulemaking within one year of ceasing to be an
17 employee; and

18 (3) a former commissioner or employee shall
19 not represent a party before the commission or a court in a
20 matter that was pending before the commission while the
21 commissioner or employee was associated with the commission and
22 in which the former commissioner or employee was personally and
23 substantially involved in the matter.

24 F. The attorney general or a district attorney may
25 institute a civil action in the district court for Santa Fe

underscoring material = new
~~[bracketed material] = delete~~

1 county or, in the attorney general's or a district attorney's
2 discretion, the district court for the county in which a
3 defendant resides if a violation of this section has occurred
4 or to prevent a violation of this section. A civil penalty may
5 be assessed in the amount of two hundred fifty dollars (\$250)
6 for each violation, not to exceed five thousand dollars
7 (\$5,000)."

8 SECTION 25. REPEAL.--Sections 10-16A-1 through 10-16A-9
9 NMSA 1978 (being Laws 1993, Chapter 46, Sections 39 through 45,
10 Laws 1995, Chapter 153, Section 25 and Laws 2021, Chapter 109,
11 Section 21, as amended) are repealed.

12 SECTION 26. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is January 1, 2023.