

STATE ETHICS
COMMISSION MEETING

October 14, 2022

PUBLIC MATERIALS

PUBLIC MATERIALS
TABLE OF CONTENTS

(1) Agenda for 2022-08-05 Commission Meeting	1
(2) Minutes for 2022-06-10 Commission Meeting	5
(3) Advisory Op. 2022-11	12
(4) SEC FY24 Strategic Plan	18
(5) SEC FY24 Budget Request	48
(6) Disclosure Act (as introduced in 2022)	73
(7) Campaign Reporting Act Discussion Draft	118



STATE ETHICS COMMISSION

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

Friday, October 14, 2022, 9:00 a.m. to 12:00 p.m. (Mountain Time)

State Capitol, Santa Fe
Room 309

Public Meeting

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of August 5, 2022 Commission Meeting

Commission Meeting Items

Action Required

- | | |
|--|-----|
| 4. Advisory Opinion No. 2022-11
(Branch) | Yes |
| 5. FY24 Budget Request and Strategic Plan
(Farris) | Yes |
| 6. The consequences of <i>State v. Gutierrez, et al.</i> for the Commission
and potential legislative amendments to the Governmental Conduct
Act
(Farris) | No |
| 7. Potential legislative amendments for inclusion in 2022 Annual Report
(Farris)
a. Disclosure Act | No |

- b. Amendments to Campaign Reporting Act
- 8. Bill concerning sexual harassment by officials in the legislative branch No
(Guest: Monet Silva, Common Cause)

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

- 9. Discussion regarding current and potential litigation:
(Farris)
 - a. Commission authorization of declaratory judgment action regarding violation of Article IX, Section 14 of the New Mexico Constitution
 - b. Commission authorization of civil action regarding violations of Section 10-16-8 of the Governmental Conduct Act by a former employee of a local public body
 - c. Commission authorization of civil action regarding violations of Sections 10-16-3(A), 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an employee of a local public body
 - d. Commission authorization of civil action regarding violations of Sections 1-19-26.4, 1-19-34.3(B), and 1-19-27.3 of the Campaign Reporting Act
- 10. Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:
(Manierre)
 - a. Administrative Complaint No. 2022-014
- 11. Discussion regarding administrative matters under Revised Uniform Law on Notarial Acts:
(Branch)
 - a. 2022-NP-05 (*In re commission of Perez*)
 - b. 2022-NP-10 (*In re commission of Miller*)
 - c. 2022-NP-12 (*In re commission of Hanson*)
 - d. 2022-NP-16 (*In re commission of Cordova*)
 - e. 2022-NP-17 (*In re commission of Al-Assi*)
- 12. Discussion regarding administrative matters under State Ethics Commission Act
(Farris)
 - a. Administrative Complaint No. 2022-004
 - b. Administrative Complaint No. 2022-006 (Leave to issue subpoenas)
 - c. Administrative Complaint No. 2022-027 (Leave to issue subpoenas)

- d. Administrative Complaint No. 2022-031
- e. Administrative Complaint No. 2022-032 (Leave to issue subpoenas)
- f. Administrative Complaint No. 2022-035

Upon applicable motion, Commission returns from executive session

13. Authorizations of Civil Actions Yes
(Farris)

- a. Commission authorization of declaratory judgment action regarding violation of Article IX, Section 14 of the New Mexico Constitution
- b. Commission authorization of civil action regarding violations of Section 10-16-8 of the Governmental Conduct Act by a former employee of a local public body
- c. Commission authorization of civil action regarding violations of Sections 10-16-3(A), 10-16-3.1(C), and 10-16-4(A) of the Governmental Conduct Act by an employee of a local public body
- d. Commission authorization of civil action regarding violations of Sections 1-19-26.4, 1-19-34.3(B), and 1-19-27.3 of the Campaign Reporting Act

14. Actions on Administrative Complaints Yes

Administrative Matters under State Ethics Commission Act:
(Farris)

- a. Administrative Complaint No. 2022-004
- b. Administrative Complaint No. 2022-006 (Leave to issue subpoenas)
- c. Administrative Complaint No. 2022-014 (Approval of settlement)
- d. Administrative Complaint No. 2022-027 (Leave to issue subpoenas)
- e. Administrative Complaint No. 2022-031
- f. Administrative Complaint No. 2022-032 (Leave to issue subpoenas)
- g. Administrative Complaint No. 2022-035

Administrative Matters under Revised Uniform Law on Notarial Acts: Yes
(Branch)

- a. 2022-NP-05 (*In re commission of Perez*)
- b. 2022-NP-10 (*In re commission of Miller*)
- c. 2022-NP-12 (*In re commission of Hanson*)
- d. 2022-NP-16 (*In re commission of Cordova*)
- e. 2022-NP-17 (*In re commission of Al-Assi*)

15. Discussion of next meeting: No

(Lang)

16. Public Comment

No

17. Adjournment

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

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



Hon. William F. Lang
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Hon. Celia Foy Castillo
Ronald Solimon
Judy Villanueva

STATE ETHICS COMMISSION

Commission Meeting Minutes of August 5, 2022 | 9:00AM-12:00PM

Virtually Via Zoom: [Watch Here](#)

[Subject to Ratification by Commission]

1. Call to Order

Chairman Lang Calls the Meeting to Order at 9:01 AM.

2. Roll Call

The roll was called; the following Commissioners were present:

Jeffrey L. Baker, Commissioner
Stuart M. Bluestone, Commissioner
Hon. Garrey Carruthers, Commissioner
Hon. Celia Foy Castillo, Commissioner
Ronald Solimon, Commissioner
Judy Villanueva, Commissioner
Hon. William Lang, Chair

3. Approval of Agenda

Executive Director Farris sought an amendment to the agenda, striking Administrative Case 2021-017, agenda items 11a and 12a, because the case had been dismissed by a hearing officer following the Deputy General Counsel's findings that the complaint was not supported by probable cause. Commissioner Carruthers moved to amend the agenda; Commissioner Villanueva seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the amendment unanimously. Chair Lang sought a motion to adopt the agenda as amended. Commissioner Baker moved to adopt the agenda; Commissioner Foy Castillo seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the agenda unanimously.

4. Approval of June 10, 2022 Commission Meeting Minutes

Chair Lang sought a motion to approve the minutes of the June 10, 2022 Commission meeting. Commissioner Baker moved to approve the minutes; Commissioner Bluestone seconded. Hearing no discussion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the minutes unanimously.

Commission Meeting Items

5. Advisory Opinion 2022-07

Director Farris provided an overview of advisory opinion 2022-07, which addresses the following question:

At the May 16, 2022, Albuquerque City Council meeting, the Council passed Floor Amendment No. 13 to the City's operating budget bill. According to an "explanation" contained in the amendment and to an official press release, the amendment added "\$250,000 for a Council directed sponsorship to Planned Parenthood of New Mexico." The operating budget bill was passed and then signed by Mayor Tim Keller.

The questions presented to the State Ethics Commission are:

- 1. Does the 'Council-directed sponsorship to Planned Parenthood of New Mexico,' a private corporation, violate Article IX, Section 14 of the Constitution?*
- 2. Does the 'Council-directed sponsorship to Planned Parenthood of New Mexico' violate the Procurement Code?*

(To read the full opinion following its issuance, [click here](#).)

Chair Lang sought a motion to adopt Advisory Opinion 2022-07. Commissioner Baker moved to adopt the opinion; Commissioner Carruthers seconded. After a discussion on the merits of the opinion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2022-07 unanimously.

6. Advisory Opinion 2022-08

Director Farris provided an overview of advisory opinion 2022-08, which addresses the following question:

May a political committee make a coordinated expenditure on an advertisement that advocates both the election of clearly identified candidates and the passage of a clearly identified ballot question?

(To read the full opinion following its issuance, [click here](#).)

Chair Lang sought a motion to adopt Advisory Opinion 2022-07. Commissioner Carruthers moved to adopt the opinion; Commissioner Foy Castillo seconded. After a discussion on the merits of the opinion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2022-07 unanimously.

7. Advisory Opinion 2022-09

General Counsel Walker Boyd provided an overview of advisory opinion 2022-08, which addresses the following question:

An individual serves as an appointed officer of a public post-secondary educational institution. The individual's spouse is an employee of the institution. May the officer participate in the review and approval of a contract that will increase the wages paid to the officer's spouse?

(To read the full opinion following its issuance, [click here](#).)

Chair Lang sought a motion to adopt Advisory Opinion 2022-07. Commissioner Carruthers moved to adopt the opinion; Commissioner Bluestone seconded. After a discussion on the merits of the opinion, Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved Advisory Opinion 2022-07 unanimously.

8. Executive Session

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

---Beginning of Executive Session---

The following matters were discussed in executive session:

- **Discussions regarding litigated matters:**
 - a. *State Ethics Comm'n v. Vargas & Double Eagle Real Estate LLC*, D-202CV-2021-06201 (2d Jud. Dist. Ct.)
 - b. *In re State Ethics Commission Petition for Issuance of a Subpoena Duces Tecum Pursuant to NMSA 1978, 10-16G-10(J)*, No. A-1-CA-39841 (N.M. App.), and *Dow v. Martin*, No. S-1-SC-38928 (N.M.)

- **Discussion of administrative matters under the State Ethics Commission Act subject to settlement approval:**
 - a. Administrative Complaint No. 2021-026
 - b. Administrative Complaint No. 2022-008

- **Discussion regarding administrative matters under Revised Uniform Law on Notarial Acts:**
 - a. In re notary public commission of Hyatt, 2022-NP-01
 - b. In re notary public commission of Ratigan, 2022-NP-11

c. In re notary public commission of Fulfer, 2022-NP-14

- **Discussion regarding administrative matters under State Ethics Commission Act:**

- a. Administrative Complaint Nos. 2021-038 & 2022-007 (consolidated)
- b. Administrative Complaint No. 2022-006
- c. Administrative Complaint No. 2022-011
- d. Administrative Complaint No. 2022-014
- e. Administrative Complaint No. 2022-015
- f. Administrative Complaint No. 2022-016
- g. Administrative Complaint No. 2022-017
- h. Administrative Complaint No. 2022-018
- i. Administrative Complaint No. 2022-021
- j. Administrative Complaint No. 2022-022
- k. Administrative Complaint No. 2022-023
- l. Administrative Complaint No. 2022-024
- m. Administrative Complaint No. 2022-025
- n. Administrative Complaint No. 2022-026
- o. Administrative Complaint No. 2022-028

- The matters discussed in the closed meeting were limited to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session upon an appropriate motion.

---End of Executive Session---

-
9. **Actions on Administrative Complaints Nos. 2021-017, 2021-038 & 2022-07, 2022-006, 2022-011, 2022-014, 2022-015, 2022-016, 2022-017, 2022-018, 2022-021, 2022-022, 2022-023, 2022-024, 2022-025, 2022-026, 2022-028, 2021-026, and 2022-08.**

Director Farris asked the Commission for the following motions on the following administrative cases:

- **In administrative case 2021-038 & 2022-07, motion for a 90-day extension:**
Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-006, motion for a 90-day extension:**
Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-011, motion for a 90-day extension:**
 Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-014, motion for a 90-day extension:**
 Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-015, motion for a 90-day extension:**
 Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-016, motion for an order of dismissal due to the Secretary of State certifying voluntary compliance:**
 Commissioner Foy Castillo moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-017, motion for a 90-day extension:**
 Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-018, motion for a 90-day extension:**
 Commissioner Carruthers moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-021, motion for an order of dismissal due to the Secretary of State certifying voluntary compliance:**
 Commissioner Bluestone moved as stated above; Commissioner Foy Castillo seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.
- **In administrative case 2022-022, motion for an order of dismissal due to a lack of jurisdiction:**
 Commissioner Baker moved as stated above; Commissioner Foy Castillo seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-023, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Foy Castillo moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. Commissioner Baker recused himself from the vote. All other Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-024, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Baker moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-025, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Foy Castillo moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-026, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-028, motion for an order of dismissal due to a lack of jurisdiction:**

Commissioner Foy Castillo moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2021-026, motion to approve the settlement agreement between General Counsel Walker Boyd and the Respondent Rebecca Dow:**

Commissioner Baker moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- **In administrative case 2022-08, motion to approve the settlement agreement between General Counsel Walker Boyd and the Respondent Mark Ronchetti:**

Commissioner Foy Castillo moved as stated above; Commissioner Villanueva seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

10. Administrative Matters Under Revised Uniform Law on Notarial Acts (RULONA), Case Nos. 2022-NP-01, 2022-NP-11, and 2022-NP-14

Deputy General Counsel Rebecca Branch sought motions on the following cases under the Revised Uniform Law on Notarial Acts:

- a. **In 2022-NP-01, *In re notary public commission of Hyatt*, motion to issue a default order revoking Ms. Hyatt’s notary public commission and make an appropriate referral to a prosecuting authority:**

Commissioner Carruthers moved as stated above; Commissioner Baker seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- b. **In 2022-NP-11, *In re notary public commission of Ratigan*, motion to issue a Notice of Contemplated Action revoking Mr. Ratigan’s notary public commission:**

Commissioner Bluestone moved as stated above; Commissioner Solimon seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

- c. **In 2022-NP-14, *In re notary public commission of Fulfer*, motion to approve a settlement with Mr. Fulfer:**

Commissioner Carruthers moved as stated above; Commissioner Bluestone seconded as stated above. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative and approved the motion.

11. Selection of Next Meeting

Chair Lang confirmed that the next meeting would take place on October 14, 2022. Chair Lang clarified that the Commission would hold its next meeting in the Capitol building in Santa Fe.

12. Public Comments

No public comments were offered.

13. Adjournment

Chair Lang raised adjournment of the meeting. With no objections made, the meeting was adjourned at 11:33 AM.

[Subject to Ratification by Commission]



STATE ETHICS COMMISSION

[Draft] ADVISORY OPINION NO. 2022-11

October 14, 2022¹

QUESTIONS PRESENTED²

An individual served as a deputy secretary of a state agency. After leaving the agency, may the individual work on a contractual basis for a healthcare corporation during the year after the individual separated from the state agency?

After the one-year separation period may this individual join the healthcare corporation as an employee?

ANSWER

Yes, to both questions.

ANALYSIS

1. Relevant law

¹ This is an official advisory opinion of the State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceeding concerning a person who acted in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C) (2019).

² The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” NMSA 1978, § 10-16G-8(A)(2) (2019). On August 3, 2022, the Commission received a request for an informal advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(A) NMAC. Commissioner Bluestone requested that it be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC.

The Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1993, as amended through 2019) prohibits a former government employee from representing a person or corporation in dealings with the government in a matter in which that employee personally and substantially participated while a state employee.³ The Governmental Conduct Act does not define “matter,”⁴ and New Mexico courts have not addressed whether one or more matters are the same in the context of subsection 10-16-8(B). Subsection 10-16-8(B), however, is modeled on Rule 16-111(A)(2) NMRA and ABA Model Rule of Professional Conduct 1.11(a)(2).⁵ While the individual who requested the advice is not an attorney, the comparison to Rule 16-111 NMRA is helpful in this assessment. The rule

represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer’s professional functions on behalf of the government. Also, unfair advantage could

³ See NMSA 1978 § 10-16-8(B) (2011).

⁴ See NMSA 1978, § 10-16-2 (2011).

⁵ Rule 16-111(A)(2) NMRA and ABA Model Rule 1.11(A)(2) provide:

[A] lawyer who has formerly served as a public officer or employee of the government . . . shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

Like the Governmental Conduct Act, these rules are “intended to deal with what [is] conventionally referred to as the “revolving door” situation of lawyer transfer between government and private employment.” See Discussion Appendix to Proposed Model Rule of Professional Conduct 1.11 at the February 1983 ABA Midyear Meeting, in ABA Ctr. for Prof’l Responsibility, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013* 279 (Art Garwin ed., 2013); see also Rachel E. Boehm, *Caught in the Revolving Door: A State Lawyer’s Guide to Post-Employment Restrictions*, 15 REV. LITIG. 525, 533 (Summer 1996) (collecting state statutes, including subsection 10-16-8(B), which “are the same or similar to the standard imposed by . . . ABA Model Rule 1.11”).

accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially.

Rule 16-111 NMRA, comment [4]; *accord* ABA Model Rule of Professional Conduct 1.11 cmt.

The Governmental Ethics Task Force, created by Laws 1992, Chapter 109, and signed into law by Governor Bruce King, drafted the Governmental Conduct Act's revolving door provisions. The task force described subsection 10-16-8's purposes in similar terms:

The amendments proposed by the task force preclude public officers and employees, after leaving government service, from representing any person before or against the government on specific matters in which the former officer or employee participated personally and substantially while in government. . . . This provision is designed to balance the competing interests involved—ensuring that the government officer or employee acts only in the public interest and not in a way that might “feather his or her nest” for post-government employment, while at the same time not barring the officer or employee from representation before his or her agency for such a long period that it would deter government recruitment of the best talent available.

Rep. H. John Underwood & James B. Mulcock, *Governmental Ethics Task Force, Final Report—Findings and Recommendations*, at 19 (N.M. Legislative Council Service Info. Memo. No. 202.90785, Jan. 27, 1993).

Given subsection 10-16-8(B) and Rule 16-111(A)(2)'s shared phrasing and purpose, the definition and interpretation of the word "matter" in the latter context guides the Commission's analysis.⁶ Rule 16-111 NMRA and ABA Model Rule of Professional Conduct 1.11 define the term "matter" as follows:

"matter" includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 16-111(E) NMRA; *accord* ABA Model Rule of Prof. Conduct 1.11(e).

In determining whether two or more matters are the same for purposes of subsection 10-16-8(B), the Commission will consider whether the matters' underlying facts, parties, and temporal relationship are the same or overlap substantially. *See Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 26, 292 P.3d 466 (concluding that Rule 16-111 "indicate[s] a fact-specific, transactional approach to determining the scope of '[the] matter'" (second alteration original); *see also* Rule 16-111 cmt. [10] ("In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties and the time elapsed.")).

Next, subsection 10-16-8(D) of the Governmental Conduct Act provides that "[f]or a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked." NMSA 1978, § 10-16-8(D) (2011).

2. Application to the facts presented in the request for advice

⁶*Cf. Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."); *Marquez v. Larrabee et al.*, 2016-NMCA-087, ¶ 12, 382 P.3d 968 (stating that New Mexico courts may look to the Federal Rules of Civil Procedure and caselaw interpreting those rules for guidance in interpreting substantially similar provisions in New Mexico court rules); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (West 2012) (discussing "prior-construction" canon of statutory interpretation).

The requester is a former deputy secretary who served in state government from October 2021 to May 2022. The request indicates that the former deputy secretary, through their limited liability company, will work as a contractor for a healthcare corporation during the year after she separated from state government and, after that initial year, the corporation might hire her as an employee. Under the contract, the former deputy secretary will assist in writing a proposal for a contract award and, upon award, direct the implementation of behavioral health services. During the contract period, the requester will not have direct or indirect communications with either the state agency that formerly employed her or other state entities that have responsibilities relating to behavioral health or Medicaid assistance.

These facts do not indicate that, by contracting with the hospital corporation, the former deputy secretary would represent a person or corporation in their dealings with the government in a matter in which the former deputy secretary personally and substantially participated while a state employee. Because the facts indicate that, during the contract period, the former deputy secretary will not directly or indirectly communicate with state agencies that oversee behavioral health or Medicaid assistance, it is unlikely that the former deputy secretary will “represent” the healthcare corporation before any state agency. § 10-16-8(B). Under subsection 10-16-8(B), therefore, the former deputy secretary may, as her contract provides, assist in writing a proposal for a procurement and, upon award, direct implementation for the corporation without acting as the corporation’s agent before any state agency. Thus, because the facts presented indicate that the former deputy secretary will not “represent” the healthcare corporation before the government, necessarily, the former deputy cabinet secretary will not “represent” the healthcare corporation on a matter in which she personally and substantially participated. § 10-16-8(B).

We observe that subsection 10-16-8(B)’s prohibition is perpetual.⁷ If, in the future (and perhaps after the contract period expires), the requester’s duties for the

⁷ See 2020 Op. Ethics Comm’n No. 2020-02 at 3 (stating that subsection 10-16-8(B)’s restriction on a former public officer’s or employee’s representation is stringent because it does not expire) and Office of the New Mexico Attorney General, Governmental Conduct Act Compliance Guide at 37 (2015) (“Subsection B creates an absolute restriction on certain former public officers or employees. It prevents them from representing a person in the person’s dealings with the government on a matter in which the public officer or employee participated “personally and substantially” while working for either the state agency or local government involved. The amount

healthcare corporation requires the requester to represent their employer or another on a matter that overlaps with her work for state government, the requester will need to consider whether her participation in the matter, as a former deputy secretary, was personal and substantial. Those facts are not presented in the request, and this advisory opinion does not address them.

Finally, under the Governmental Conduct Act, for one year after leaving state employment, former state employees may not represent a person or corporation for pay before the state agency that employed them. *See* § 10-16-8(D). If the requester will have no communications with their former employer, then, again, she would not represent the healthcare corporation before her former state agency and, thus, her contract work for the healthcare corporation would not violate subsection 10-16-8(D).

CONCLUSION

The former deputy secretary may work as a contractor for a healthcare corporation during the year after she separated from state employment, so long as she does not represent the healthcare corporation before her former state agency for pay. After the one-year “cooling off” period, the former deputy cabinet secretary may not represent the healthcare corporation or another before the government on any matter in which she personally and substantially participated while a state employee.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
STUART M. BLUESTONE, Commissioner
HON. GARREY CARRUTHERS, Commissioner
HON. CELIA FOY CASTILLO, Commissioner
RON SOLIMON, Commissioner
JUDY VILLANUEVA, Commissioner

of the contract or the length of time that the employee has been gone from public service is immaterial.”).



STATE ETHICS COMMISSION

<https://sec.state.nm.us>

800 Bradbury Dr. SE
Suite 215
Albuquerque, NM 87106
(505) 827-7800

STRATEGIC PLAN

FISCAL YEAR 2024

A Message from the Executive Director

I am pleased to present the *Strategic Plan* for the State Ethics Commission for fiscal year 2024—the Commission’s fifth year. The Commission has no staff vacancies and is experiencing increasing levels of work to meet its constitutional and statutory mandates to oversee New Mexico’s governmental conduct, procurement, and disclosure laws. Furthermore, the Legislature has recently expanded the Commission’s responsibilities to oversee notary publics under the Revised Uniform Law on Notarial Acts.

The Commission remains focused on hiring and achieving full funding for key personnel that are necessary for the Commission to meet its significant constitutional and statutory mandates. This strategic plan is targeted to those needs.

Sincerely,

Jeremy Farris
Executive Director
State Ethics Commission



Table Of Contents

<u>A Message from the Executive Director</u>	2
<u>Mission Statement</u>	4
<u>Agency Overview</u>	4
<u>Major Accomplishments</u>	7
<u>Organizational Structure</u>	9
<u>FY24 Objectives and Strategic Actions</u>	10
<u>Performance Measures</u>	13
<u>Considerations</u>	15
<u>Appendix I: Current Commissioners</u>	16
<u>Appendix II: The Commission's Legal Authority</u>	17

Mission Statement

The State Ethics Commission is an independent agency committed to preventing and remedying public corruption and building trust in state government. The Commission promotes the integrity of government through the interpretation, enforcement, and improvement of New Mexico's governmental conduct, procurement, and financial disclosure laws.

Agency Overview

Legal Foundation and Creation

The State Ethics Commission is an independent state agency created by Article V, Section 17 of the New Mexico Constitution and enabled by the State Ethics Commission Act. The Commission's initial Commissioners were appointed on July 1, 2019. The Commission's jurisdiction and enforcement authority began on January 1, 2020.

Structure

The Commission is comprised of seven Commissioners and chaired by a retired judge. The State Ethics Commission Act sets forth both the qualifications to serve as a Commissioner and a procedure for appointing Commissioners that ensures an independent commission: The Governor appoints the Chair, who must be a retired judge. The Speaker of the House, the House Minority Floor Leader, the President Pro Tempore of the Senate, and the Senate Minority leader each appoint a Commissioner. The legislatively appointed Commissioners appoint two other Commissioners.

No more than three Commissioners may be members of the same political party. Except for the initial Commissioners, the Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms. Commissioners are removable for cause only, through a removal proceeding before the New Mexico Supreme Court. The seven current Commissioners are listed at Appendix I, *infra*.

The Commission hires an Executive Director, who in turn hires the staff, including the Commission's General Counsel. Both the Commission's Executive Director and General Counsel are term-limited positions created by statute. The current and founding Executive Director is Jeremy Farris. The current and founding General Counsel is Walker Boyd.

Agency Powers

The Commission has five core responsibilities:

- (1) to investigate and adjudicate administrative complaints alleging violations of New Mexico's ethics laws;
- (2) to investigate and prosecute violations of the ethics laws through civil enforcement actions in state court;
- (3) to provide guidance to public officers, employees, and the public about New Mexico's governmental conduct, procurement and disclosure laws;
- (4) to investigate and prosecute in administrative proceedings violations of New Mexico's Revised Uniform Law on Notarial Acts; and
- (5) to make annual recommendations to the Governor and the Legislature regarding amendments to New Mexico's ethics laws.

First, the Commission may investigate and adjudicate administrative complaints against state government officials, employees, candidates, lobbyists and contractors. These administrative complaints must allege violations of the Campaign Reporting Act, the Financial Disclosure Act, the Gift Act, the Lobbyist Regulation Act, the Voter Action Act, the Governmental Conduct Act, the Procurement Code, the State Ethics Commission Act, or Article IX, Section 14 of the New Mexico Constitution, commonly known as the "Anti-Donation Clause." The Commission may also issue advisory opinions upon appropriate request, opinions which bind the Commission's decisions in future administrative adjudications.

Second, under its executive power, the Commission may investigate and initiate enforcement actions in state court to remedy violations of New Mexico's ethics laws, including the Governmental Conduct Act, the Procurement Code, and the Financial Disclosure Act. For example, in *State Ethics Commission v. Vargas et al.*, D-202-CV-2021-06201, the Commission filed suit to enforce the revolving door provisions of the Governmental Conduct Act against a former commercial assessor in the Sandoval County Assessor's office and the tax consultancy company that currently employs him. The Commission may also initiate administrative proceedings and petition state district courts to issue subpoenas.

Third, the Commission provides guidance to government officers and employees and members of the public about New Mexico's ethics and disclosure laws. The Commission fulfills this responsibility by answering requests for advice through either advisory opinions or letters and by offering trainings and guidance materials for public officials and employees. The Commission also provides trainings and presentations to associations that support public officials and employees, including the Municipal League, New Mexico Counties, the New Mexico Public Procurement Association, the New Mexico Society of Certified Public Accountants, and members of the New Mexico State Bar. The Commission's advisory opinions are published by

the New Mexico Compilation Commission and are publicly available on www.NMOneSource.com. The Commission has also issued a model code of ethics at 1.8.4 NMAC, which is available for state agencies to adopt in whole or in part.

Fourth, under the Revised Uniform Law on Notarial Acts (“RULONA”), NMSA 1978, §§ 14-14A-1 to -32 (2021), the State Ethics Commission has authority to “deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public” NMSA 1978, § 14-14A-22(A) (2021). Under this authority, the Commission investigates and adjudicates complaints against notaries public. These administrative cases are handled separately from the Commission’s ethics docket, and they reflect a growing and significant part of the Commission’s work.

Fifth, the Commission is tasked to make an annual report to the Governor and the Legislature for amendments to statutes relating to the Commission’s jurisdiction and New Mexico’s ethics laws, including New Mexico’s governmental conduct, procurement, and disclosure statutes.

The Commission also has several responsibilities that flow from the core functions described above. The Commission periodically issues and amends administrative rules governing the issuance of advisory opinions (1.8.1 NMAC), commissioner recusals (1.8.2 NMAC), and administrative hearing procedures (1.8.3 NMAC). The Commission also provides the Legislature and the Governor with annual reports on its activities and potential amendments to the laws under the Commission’s jurisdiction. Additionally, to foster a community of attorneys in New Mexico that are familiar with the Commission and the state’s ethics laws, the Commission hosts an internship program for students at the University of New Mexico School of Law.

Major Accomplishments

Significant Accomplishments During FY22:

Investigation and Adjudication of Administrative Complaints:

- In FY22, the Commission received, investigated and adjudicated 44 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, 9 of the 44 administrative matters filed during FY22 are still pending.

Subpoena Litigation, Civil Enforcement Actions, and Pre-Litigation Settlements:

- In August and September 2021, the Commission prevailed in a motion seeking civil contempt sanctions against Representative Rebecca Dow for refusing to make herself available for a deposition related to administrative matter No. 2020-031. The Court imposed a \$50 daily fine until Dow attended a deposition. Dow paid over \$4,100 in sanctions before she sat for a deposition related to the general counsel's investigation in the administrative matter. The Commission prevailed in both New Mexico district court and in the New Mexico Supreme Court in relation to Dow's challenges to the Commission's subpoena power.
- On October 27, 2021, the Commission filed a civil action against a former commercial assessor at the Sandoval County Assessor's Office, and Double Eagle Property Tax Consultants, to enforce the revolving-door provisions of the Governmental Conduct Act. This is the first instance in which the Commission commenced a civil action to enforce the Governmental Conduct Act.
- On January 21, 2022, in response to an inquiry from the Commission's Executive Director, the candidate committee New Mexicans for Michelle ("NMF"), paid a \$4,200 excess contribution to the public election fund. NMF had received contributions from Intrepid Potash that exceeded the lawful limit on contribution amounts by \$4,200.
- On April 28, 2022, in response to a demand letter, Representative Georgene Louis paid the Commission a civil fine of \$250, the amount of the statutorily available fine for a violation of Section 10-16-3(A) of the Governmental Conduct Act. The Commission concluded that Representative Louis had violated Section 10-16-3(A) by referencing her legislative office and displaying her legislative license plate to a law enforcement officer during a traffic stop in an attempt to obtain favorable treatment from the officer.

Advisory Opinions, Education and Trainings:

- Issued 10 advisory opinions, available on www.NMOneSource.com, and 14 advisory letters
- Delivered over twenty separate trainings to state agencies, state boards and commissions, legislative committees, affiliate and professional organizations, and bar associations around New Mexico.

Other Accomplishments:

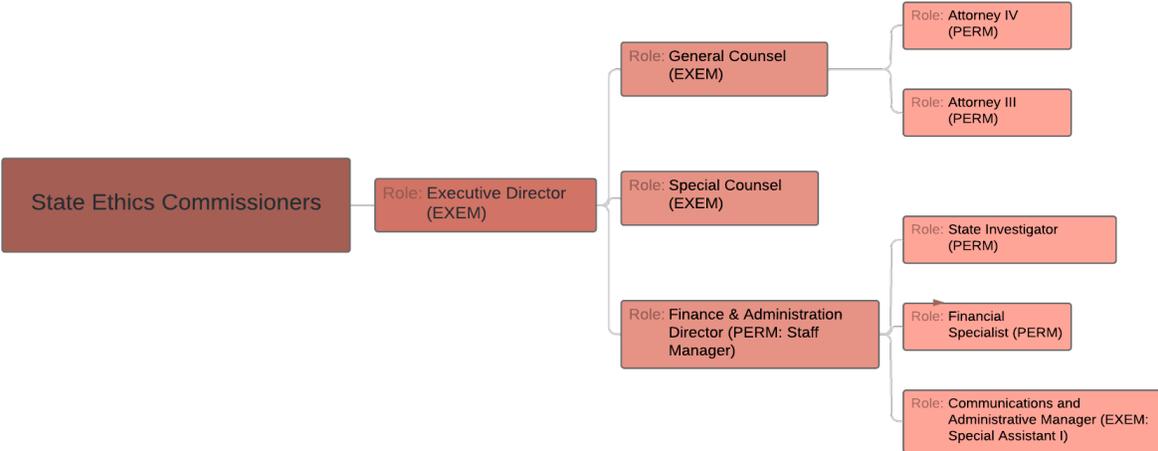
- On December 7, 2021, the Commission received national recognition as a model agency among state and local ethics agencies in the Campaign Legal Center's [Top 10 Transparency Upgrades for Ethics Commissions](#). The CLC report featured both the Commission's Proceedings Portal and posting of publicly available and searchable advisory opinions on www.NMOneSource.com.
- During FY22, the Commission's staff also staffed the Citizen Redistricting Committee ("CRC"), providing ample support to the CRC Chair, the Honorable Edward L. Chávez and assisting in the drafting of the [CRC's final report](#), issued on November 2, 2021. In taking on these uncompensated, extra duties, several members of the Commission's staff stepped up for New Mexico's democracy, when other state agencies were unable to do so.
- Since January 1, 2022, the Commission has received, investigated, or prosecuted over 17 separate administrative matters involving a potential remedial action against a notary public's commission.
- In 2022, the Commission, working with the Office of the Secretary of State, achieved financial disclosure filings from all individuals who are required to file annual financial disclosure statements.
- In July 2022, the Commission reclassified its Finance and Administration Director position from a Staff Manager to an Administration and Operations Manager (A/O 1), with a corresponding increase in the salary band. This institutional change helps to ensure that the Commission will be better able to recruit for a talented, experienced person to handle this vital position, as the Commission transitions away from its initial staff.

Organizational Structure

Agency Organization (Corresponding to FY24 Request):

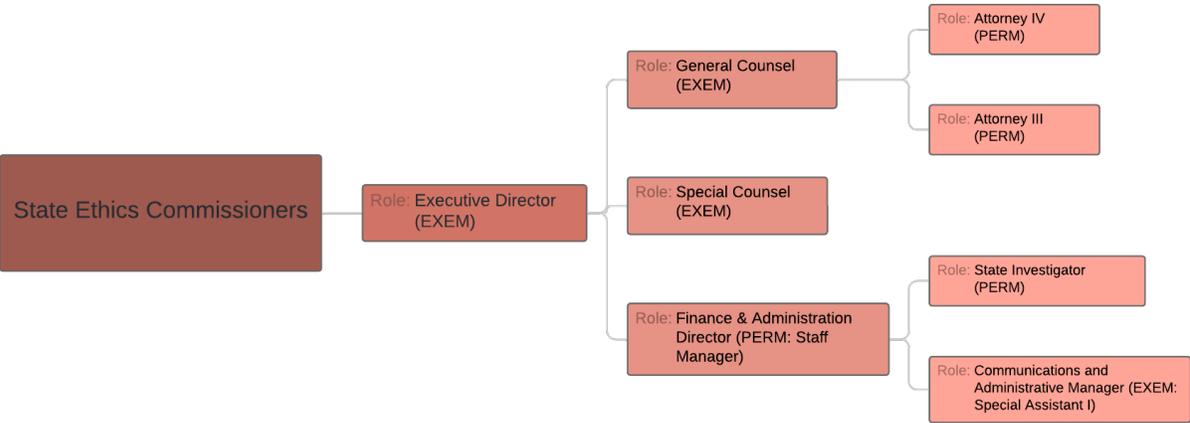
PROPOSED STATE ETHICS COMMISSION ORGANIZATIONAL CHART

FY 2024



Agency Organizational Chart (FY23):

STATE ETHICS COMMISSION ORGANIZATIONAL CHART



FY24 Objectives and Strategic Actions

Through FY24, the Commission will retain the same basic objectives as in previous fiscal years: investigation and adjudication of administrative complaints; enforcement of New Mexico's governmental conduct, procurement and disclosure laws; guidance and education; and building the agency's capacity and visibility. Looking forward to FY24, the Commission proposes the following strategic actions.

ADMINISTRATIVE ADJUDICATION

The Commission's primary function is the investigation and adjudication of administrative complaints filed either by members of the public or referred by other state agencies. In FY23, the Commission will hire an Attorney IV and a State Investigator position to assist in the investigation and adjudication of administrative cases. In FY24, the Commission intends to take the following strategic actions to improve its administrative adjudications:

Strategic Actions (FY24)

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Contract for hearing-officer services with a retired state judge or retired federal magistrate or bankruptcy judge and with the Administrative Hearings Office.

ENFORCEMENT

The Commission may pursue civil enforcement actions in state court to remedy violations of the laws provided for in Section 10-16G-9(A) of the State Ethics Commission Act, including the Governmental Conduct Act, the Procurement Code, and the Campaign Reporting Act. This discretionary authority is the Commission's greatest tool to directly vindicate New Mexico's ethics laws. In FY24, the Commission intends to take the following strategic actions to enable and effectuate its enforcement authority:

Strategic Actions (FY24)

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Contract for paralegal services to support the Commission's attorneys in the investigation and prosecution of civil enforcement actions and special statutory proceedings.
- Undertake Financial Disclosure Act compliance project in conjunction with the Office of the Secretary of State
- File and litigate enforcement actions in state court as necessary and participate as amicus curiae on appellate cases implicating New Mexico's ethics laws.

GUIDANCE AND EDUCATION

The Commission has the responsibility to provide guidance on the Governmental Conduct Act, the Procurement Code and other of the state's ethics and disclosure laws to officials and employees across New Mexico's state and local governments. In FY23, the Commission intends to take the following strategic actions to continue and increase its guidance function:

Strategic Actions (FY24)

- Subject to requested appropriations, fully fund the Attorney IV position, so that the Commission has a greater ability to timely issue formal advisory opinions and advisory letters that are legally correct and responsive to any requester.
- Research and prepare recommended amendments to the state ethics laws for consideration by members of the legislature during the 2023 legislative session.
- Develop and offer trainings and continuing legal education courses (and related materials) on the Governmental Conduct Act and other laws within the Commission's jurisdiction; provide those trainings to both state agencies, local public bodies, and affiliate organizations.
- Issue advisory opinions and advisory letters upon proper request.
- Work with the New Mexico Compilation Commission to ensure that State Ethics Commission advisory opinions are published on www.NMOneSource.com and New Mexico's statutes are annotated with the growing body of State Ethics Commission advisory opinions.

CAPACITY BUILDING AND VISIBILITY

FY24 will be the Commission's fifth year. The Commission remains a young state agency, mostly staffed by its initial staff members. To build capacity to perform its basic constitutional and statutory mandates, in FY24, the Commission intends to take the following strategic actions:

Strategic Actions (FY24)

- Subject to requested appropriations, fully fund the Attorney IV and State Investigator positions.
- Subject to requested appropriations, recruit and hire for a Financial Specialist to assist the Finance and Administration Director (AO/1) in carrying out all of the agency's financial and human resource related tasks and obligations. The agency has grown to a point at which a single employee cannot handle or sensibly be made responsible for all of the Commission's financial and human resource duties. The onboarding of a Financial Specialist would increase the Commission's staff to a total of 9 FTE.
- Conduct a summer internship program for UNM law students to develop a pipeline of New Mexico lawyers familiar with and concerned about New Mexico's ethics and disclosure laws and the Commission's work enforcing those laws.

IMPROVED ENGAGEMENT WITH LOCAL GOVERNMENTS

In the Commission's October 1, 2021 [special report](#) to the Governor and the Legislature, the Commission did not recommend expansion of its personal jurisdiction for administrative matters to officials and employees of local governments. The Commission argued that such an expansion would exceed the limited capacity of its staff to investigate and adjudicate administrative complaints, considering all of the other responsibilities the Commission is tasked to handle. Further, the Commission is able to efficiently enforce New Mexico's ethics and disclosure laws as they apply to local governments through the Commission's authority to investigate and initiate civil enforcement actions. Separate from its enforcement duties and its responsibilities to provide advisory services and trainings, the Commission can more deeply engage with local governments to better ensure compliance with New Mexico's ethics and disclosure laws. To that end, in FY24, the Commission intends to take the following strategic actions:

Strategic Actions (FY24)

- Develop a toolkit of resources that local governments can consult to enact local ethics and disclosure ordinances and local ordinances creating local ethics boards to adjudicate local ethics complaints.
- Host a conference for local ethics bodies to discuss best practices and to publicize the Commission's work and resources available to local governments.

Revised Uniform Law on Notarial Acts (RULONA)

The Commission may "deny, refuse to renew, revoke, suspend or impose a condition on a commission as a notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public" § 14-14A-22(A). Under this authority, the Commission investigates and adjudicates complaints against notaries public. These RULONA administrative cases are handled separately from the Commission's ethics docket, and they reflect a growing and significant part of the Commission's work.

Strategic Actions (FY24)

- Subject to requested appropriations, fully fund the State Investigator position, which can assist in the investigation of complaints against notaries public that implicate the Commission's remedial power under RULONA.
- Create a separate department within the Commission to separately budget for and track expenses that relate to the Commission's investigation and adjudication of administrative proceedings arising under RULONA.
- Contract for paralegal services to assist the Attorney III in the management of the RULONA administrative docket.
- Continue to work with the Business Services Division of the Office of the Secretary of State to ensure that Commission adverse actions on notary public commissions are reflected and made available to the public.

Performance Measures

Current Performance Measures

Under the Accountability in Government Act, NMSA 1978, §§ 6-3A-1 to -10 (1999, as amended 2019), each state agency submits performance measures and outcomes under those measures to the State Budget Division of the Department of Finance and Administration and the Legislative Finance Committee. The Commission’s current performance measures and outcomes are:

Existing Measure	FY22 Actual	FY24 Target
Percent of advisory opinions issued within sixty days of receipt of request.	80%*	90%
Percent of complaints either disposed, referred to other state agency, or set for public hearing within ninety days after a complaint is either received or referred from other state agency with shared jurisdiction.	57%†	90%

Recommended Performance Measures

The Commission recommends a revision to the second performance measure above. In lieu of the current measure, the Commission recommends the following metric:

Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within one-hundred-and-eighty (180) days after a complaint is received.

* From July 1, 2021, to June 30, 2022, the Commission issued 10 advisory opinions. Eight of these opinions were issued by the Commission within 60 days of the receipt of the request for an advisory opinion. For the two opinions that were issued in excess of 60 days, one was issued 63 days after the request was received; the other was issued 73 days after the request was received. During FY22, on average, the Commission issued advisory opinions 33 days after the Commission staff received a proper request. Because the Commission regularly meets every other month, the Commission often will not issue an advisory opinion within 60 days of a request when the request is received shortly before the Commission meeting, particularly when the agenda is already set.

† There are several reasons why the Commission often requires more than 90 days to resolve an administrative complaint. There are substantial delays that occur before a probable cause determination and a hearing. Under applicable regulations (1.8.3 NMAC), the parties to administrative cases may request extensions to deadlines. These requests are routinely made and granted. Further, the Risk Management Division of the General Services Department is required to hire and pay attorneys to represent respondents who are officers or employees of the state. Risk Management Division counsel often request extensions of time to become familiar with the case, and often elect to challenge Commission subpoenas. Litigating novel and complex issues in front of district courts and the courts of appeal is common, and these proceedings take far longer than 90 days to resolve. Also, it can take substantial time for the Commission’s general counsel to schedule interviews and depositions, working with the schedules of parties and witnesses.

First, the performance measure should focus on "ethics complaints," as opposed to "complaints" to focus on those administrative matters arising under New Mexico's governmental conduct, procurement, and disclosure laws, and excluding the Revised Uniform Law on Notarial Acts. RULONA matters are not administered according to the procedure set forth in the State Ethics Commission Act and 1.8.3 NMAC.

Second, the performance measure should focus on complaints within the Commission's jurisdiction. The Commission receives administrative complaints for which it lacks personal jurisdiction (e.g., where the respondent is a local government employee), or subject matter jurisdiction (e.g., where the alleged violation arises under a statute the Commission does not oversee - the Inspection of Public Records Act, for example). The Commission readily and swiftly disposes of administrative complaints outside of its jurisdiction. Accordingly, the current performance measure incorporates and reflects the percentage of complaints that are outside of the agency jurisdiction, which is not a real measure of agency performance. Performance should rather be measured as to those administrative matters for which the agency has jurisdiction.

Third, the clauses "referred to another agency" and "or referred from other state agency with shared jurisdiction" should be deleted as redundant and unnecessary. At the conclusion of a Commission administrative adjudication, if the Commission refers a claim to another agency, then that is one form of a disposition, before the administrative matter is closed. Thus, "referred to another agency" is already captured by the language "disposed" in the current and proposed performance measure. Similarly, "referred from other state agency with shared jurisdiction" is simply one method by which the Commission receives administrative complaints; accordingly, the language "received" in the current and proposed performance measure already captures the circumstances when a complaint is referred to the Commission by another state agency.

Fourth, 180 (rather than 90) days is a much fairer measure of the agency's performance in investigating and adjudicating administrative complaints within the agency's jurisdiction. There are several potential delays built into the adjudication of an administrative complaint, including (1) assignation of defense counsel by the Risk Management Division to a respondent; (2) a respondent's (or their counsel's) filing of a response to the complaint; (3) the process required for the Commission to seek and obtain leave from a state district court judge before issuing a subpoena; (4) any litigation before the state district court on a motion to quash filed in response to the Commission's issuance of a subpoena; and (5) the built-in statutory delays for complaints alleging violations of the disclosure laws, during which the Office of the Secretary of State has the opportunity to attempt to seek voluntary compliance. In light of these delays, the Commission's staff can rarely complete an investigation into an administrative ethics matter for which it has jurisdiction within 90 days. These delays should not be fairly attributed to agency staff when assessing their

performance in conducting and completing timely investigations in administrative matters. 180 days is a fairer measure of agency performance.

Considerations

Two considerations are relevant to the Commission's strategic plan for FY24:

1. Because the Commission is comprised of bipartisan, trusted New Mexican leaders, each of whom have long experience in public service to this State, the Legislature has tasked the Commission with responsibilities that exceed the Commission's initial mandate. For example, in FY21, the Legislature required the Commission to appoint three members of the independent, Citizens Redistricting Committee ("CRC"), including the CRC's Chair - a responsibility that required the Commission's staff to create and organize a competitive, statewide application process, followed by public interviews. Also, in the 2021 regular session, the Legislature expanded the Commission's jurisdiction to investigate and adjudicate violations of the Revised Uniform Law on Notarial Acts, NMSA 1978, §§ 14-14A-1 to 14-14A-32 (2021) - additional jurisdiction which commenced in January 2022. For the past two sessions, legislators have introduced joint resolutions that would authorize and mandate the Commission to set the salaries for the elected officials in the state: legislators, elected executive officers, and judges. The Commission simply cannot perform additional constitutional and statutory mandates without a commensurate increase in funding.
2. Under Section 10-16G-10(K) of the State Ethics Commission Act, a public official or state employee who is a respondent to an administrative complaint alleging an ethics violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department. After consulting with other state ethics commissions, this provision stands as an aberration among other state ethics regimes. As a result of this Section 10-16G-10(K) and considering the incentives of private attorneys providing legal defenses to their clients, administrative matters where respondents are represented by risk counsel tend to generate significant expense for the State and significant work for the Commission's attorney staff. So long as Section 10-16G-10(K) remains the law, the Commission is concerned that it has adequate attorney staff to investigate and adjudicate administrative ethics cases.

Appendix I: Current Commissioners

The current Commissioners are:

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

Jeffrey Baker, Member

Appointing authority: Legislatively-appointed Commissioners

Term expires: June 18, 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

Hon. Celia Foy Castillo, Member

Appointing authority: President Pro Tem of the Senate, Mimi Stewart

Term expires: June 30, 2025

Ronald Solimon, Member

Appointing authority: Legislatively-appointed Commissioners

Term expires: June 18, 2024

Dr. Judy Villanueva, Member

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

Term expires: June 30, 2025

Appendix II: The Commission's Legal Authority

Article V, Section 17 of the New Mexico Constitution

A. The "state ethics commission" is established as an independent state agency under the direction of seven commissioners, no more than three of whom may be members of the same political party, whose terms and qualifications shall be as provided by law. The governor shall appoint one commissioner. One commissioner each shall be appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all as certified by the chief clerks of the respective chambers. Two commissioners, who shall not be members of the same political party, shall be appointed by the four legislatively appointed commissioners.

B. The state ethics commission may initiate, receive, investigate and adjudicate complaints alleging violations of, and issue advisory opinions concerning, standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law, 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 have such other jurisdiction as provided by law.

C. The state ethics commission may require the attendance of witnesses or the production of records and other evidence relevant to an investigation by subpoena as provided by law and shall have such other powers and duties and administer or enforce such other acts as further provided by law. (As added November 6, 2018.)

NMSA 1978, § 1-19-34.6 (2021) (Campaign Reporting Act)

A. If the secretary of state exhausts efforts in seeking voluntary compliance and reasonably

believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the state ethics commission for enforcement; provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred.

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

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

NMSA 1978, § 1-19-34.8 (2021) (Campaign Reporting Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a

provision of the Campaign Reporting Act in accordance with the provisions of that act.

B. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the provisions of the Campaign Reporting Act and a formalized agreement.

NMSA 1978, § 1-19A-15.1 (2021) (Voter Action Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978].

B. The secretary of state shall forward complaints it receives alleging violations of the Voter Action Act to the state ethics commission in accordance with a formalized agreement.

NMSA 1978, § 2-11-8.2 (2021) (Lobbyist Regulation Act)

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The state ethics commission, in consultation with the secretary of state, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act.

B. The secretary of state may conduct examinations of reports and the state ethics commission may initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Any person who believes that a provision of the Lobbyist Regulation Act has been violated may file a written complaint with the state ethics commission pursuant to the terms of the State Ethics Commission Act [10-16G-1 to 10-16G-16 NMSA 1978]. If the

commission has jurisdiction for the complaint, the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Lobbyist Regulation Act. Within twenty days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntary compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Lobbyist Regulation Act. If the secretary of state does not certify voluntary compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

C. The secretary of state and the state ethics commission shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. Additionally, the state ethics commission shall give a person who violates that act unintentionally or for good cause ten days' notice to come into compliance before the commission takes any action on a complaint filed with or referred to the commission against that person.

D. Any person who fails to file or files a report after the deadline imposed by the Lobbyist Regulation Act shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

E. If the secretary of state determines that a reporting entity subject to the reporting provisions of the Lobbyist Regulation Act has failed to file or has filed a report after the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation, under penalty of perjury, stating

any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the imposition of a fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file an appropriate court action to remit outstanding fines for good cause or refer unpaid fines for enforcement pursuant to Subsection F of this section.

F. The secretary of state may refer a matter to the state ethics commission for a civil injunctive or other appropriate order or enforcement.

NMSA 1978, § 2-11-8.3 (2021) (Lobbyist Regulation Act)

A. The state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act.

B. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with the Lobbyist Regulation Act and a formalized agreement.

NMSA 1978, § 10-16-11 (2021) (Governmental Conduct Act)

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative

council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

...

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

NMSA 1978, § 10-16-18 (2021) (Governmental Conduct Act)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16A-8 (2021) (Financial Disclosure Act)

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

NMSA 1978, § 10-16B-5 (2019) (Gift Act)

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

NMSA 1978, § 13-1-196 (2019) (Procurement Code)

Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The district attorney in the jurisdiction in which the violation occurs or the state ethics commission is empowered to bring a civil action for the enforcement of any provision of the Procurement Code; provided that the commission may refer a matter for enforcement to the attorney general or the

district attorney in the jurisdiction in which the violation occurred. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

NMSA 1978, § 13-1-196.1 (2019) (Procurement Code)

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

NMSA 1978, § 10-16G-1 to -16 (2019, as amended 2021) (State Ethics Commission Act)

§ 10-16G-1. Short Title

Sections 1 through 16 of this act may be cited as the "State Ethics Commission Act".

§ 10-16G-2. Definitions

As used in the State Ethics Commission Act:

- A. "commission" means the state ethics commission;
- B. "commissioner" means a member of the commission;
- C. "complainant" means a person who files a verified complaint with the commission;
- D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury that the information in the complaint, and any attachments provided with the complaint, are true and accurate;
- E. "director" means the executive director of the commission;
- F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;
- G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978];

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

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

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

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

§ 10-16G-3. State Ethics Commission Created; Membership; Terms; Removal

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

H. Four commissioners consisting of two members of the largest political party in the

state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

§ 10-16G-4. Commissioners; Qualifications; Limitations

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

- (1) be a qualified elector of New Mexico;
- (2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;
- (3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and
- (4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:
 - (a) a public official;
 - (b) a public employee;
 - (c) a candidate;
 - (d) a lobbyist;
 - (e) a government contractor; or
 - (f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner

shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and, pursuant to the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978], file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the commissioner serves on the commission.

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

- (1) represent a respondent, unless appearing on the commissioner's own behalf; or
- (2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

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

- (1) a public employee;
- (2) a candidate;
- (3) a lobbyist;
- (4) a government contractor; or
- (5) an office holder in a political party at the state or federal level.

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

§ 10-16G-5. Commission; Duties and Powers

A. The commission shall:

- (1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;
- (2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and

(3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

(1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers;

(2) hold hearings in appropriate cases to determine whether there has been an ethics violation;

(3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;

(4) 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; and

(5) 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.

C. Beginning January 1, 2020, the commission may:

(1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;

(3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;

(4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and

(5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

§ 10-16G-6. Executive director; appointment; duties and powers

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

(1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;

(2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;

(3) hire additional personnel as may be necessary to carry out the duties of the commission;

(4) prepare an annual budget for the commission and submit it to the commission for approval;

(5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;

(6) perform other duties as assigned by the commission; and

(7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

(1) enter into contracts and agreements on behalf of the commission; and

(2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

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

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

§ 10-16G-7. Recusal and Disqualification of a Commissioner

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

§ 10-16G-8. Advisory Opinions

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act.

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

§ 10-16G-9. Commission Jurisdiction; Compliance Provisions

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978];
- (3) the Gift Act [10-16B-1 to 10-16B-4 NMSA 1978];
- (4) the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];
- (5) the Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978];
- (6) the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978];
- (7) the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];
- (8) the State Ethics Commission Act;

and

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

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

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

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

E. The commission may share jurisdiction with other public agencies having authority to

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

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

§ 10-16G-10. Complaints; Investigations; Subpoenas

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act [Chapter 10, Article 16B NMSA 1978] may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed under oath by the complainant.

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

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

that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

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

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

G. If the general counsel determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

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

I. As part of an investigation, the general counsel may administer oaths, interview

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

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

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

§ 10-16G-11. Status of Investigation; Reports to Commission

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the

commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

§ 10-16G-12. Investigation Report; Commission Hearings; Decisions and Reasons Given; Disclosure of an Ethics Violation

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

(1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or

(2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation,

the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

(1) house of representatives if the respondent is a public official who is subject to impeachment;

(2) appropriate legislative body if the respondent is a member of the legislature;

(3) respondent's appointing authority if the respondent is an appointed public official;

(4) appropriate public agency if the respondent is a public employee;

(5) public agency with which the respondent has a government contract if the respondent is a government contractor; and

(6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

(1) the number of complaints filed with and referred to the commission;

(2) the disposition of the complaints; and

(3) the type of violation alleged in the complaints.

§ 10-16G-13. Confidentiality of Records; Penalty

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the commission; provided that the commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

(1) disclosure is necessary to pursue an investigation by the commission;

(2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or

(3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

§ 10-16G-14. Criminal Violations; Referral

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an

investigation pending resolution of any criminal charges.

§ 10-16G-15. Time Limitations on Jurisdiction

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

(1) on which the alleged conduct occurred; or

(2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act or Voter Action Act, less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

§ 10-16G-16. Prohibited Actions

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

(1) files a verified complaint with the commission that alleges a violation; or

(2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel

or slander or other civil or criminal actions against a person who files a false claim.

NMSA 1978, § 14-14A-22 (2022) (Revised Uniform Law on Notarial Acts)

A. The state ethics commission may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

(1) failure to comply with the Revised Uniform Law on Notarial Acts;

(2) a fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the state ethics commission;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit during the term of the notary public's commission or during the five years immediately preceding such term;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(7) violation by the notary public of a rule of the secretary of state regarding a notary public;

(8) denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;

(9) failure of the notary public to maintain an assurance as provided in Subsection D of Section 20 [14-14A-20 NMSA 1978] of the Revised Uniform Law on Notarial Acts; or

(10) if the individual ceases to be a resident of this state or ceases to be employed in this state.

§ 14-14A-24. Prohibited acts.

I. An individual who performs a purported notarial act with knowledge that the individual's commission as a notary public has expired or that the individual is otherwise disqualified from the office of notary public or as a notarial officer is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars (\$500) and shall be removed from office by the state ethics commission.



**APPROPRIATION REQUEST
CERTIFICATION
FORM S-1**

Agency Name: Ethics Commission

Business Unit: 41000

I hereby certify that the accompanying summary and detailed statements are true and correct to the best of my knowledge and belief and that the arithmetic accuracy of all numeric information has been verified.



Jeremy Farris, Executive Director



Hon. William F Lang, Chair

Wendy George, CFO

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

505-554-7608

wendyj.george@state.nm.us

Note: Appropriation Requests for agencies headed by a board or commission must be approved by the board or commission by official action and signed by the chairperson. Operating Budgets of other agencies must be signed by the director or secretary. Appropriation Requests not properly signed will be returned.

Program Description:

The State Ethics Commission is an independent state agency created by Article V, Section 17 of the New Mexico Constitution. The Commission has five core responsibilities:

First, the Commission investigates and adjudicates administrative complaints alleging violations of New Mexico's ethics laws—namely, New Mexico's governmental conduct, procurement, and disclosure laws, including laws requiring financial disclosure, campaign finance disclosure, and lobbyist disclosure.

Second, the Commission investigates and prosecutes violations of the ethics laws through civil enforcement actions in state court.

Third, the Commission educates public officers, public employees, and the public about New Mexico's ethics laws by issuing advisory opinions, offering trainings to legislators, state agencies, local governments, and affiliate organizations, and promulgating a model code of ethics.

Fourth, the Commission investigates and prosecutes in administrative proceedings violations of New Mexico's Revised Uniform Law on Notarial Acts, which governs notaries public.

Fifth, the Commission makes annual recommendations to the Governor and the Legislature regarding amendments to New Mexico's ethics laws.

Major Issues and Accomplishments:

[1] Major Accomplishments Over Past Year

[1] Investigation and Adjudication of Administrative Complaints

- In FY22, the Commission received, investigated and adjudicated 44 administrative complaints alleging violations of New Mexico's ethics and disclosure laws. At present, 9 of the 44 administrative matters filed during FY22 are still pending.

[2] Civil Enforcement and Subpoenas

- In August and September 2021, the Commission prevailed in a motion seeking civil contempt sanctions against Representative Rebecca Dow for refusing to make herself available for a deposition related to administrative matter No. 2020-031. The Court imposed a \$50 daily fine until Dow attended a deposition. Dow paid over \$4100 in sanctions before she sat for a deposition related to the general counsel's investigation in the administrative matter. The Commission prevailed in both New Mexico district court and in the New Mexico Supreme Court in relation to Dow's challenges to the Commission's subpoena power.

- On October 27, 2021, the Commission filed a civil action against a former commercial assessor at the Sandoval County Assessor's Office, and Double Eagle Property Tax Consultants, to enforce the revolving-door provisions of the Governmental Conduct Act. This is the first instance in which the Commission commenced a civil action to enforce the Governmental Conduct Act.

- On January 21, 2022, in response to an inquiry from the Commission's Executive Director, the candidate committee New Mexicans for Michelle ("NMF"), paid a \$4,200 excess contribution to the public election fund. NMF had received contributions from Intrepid Potash that exceeded the lawful limit on contribution amounts by \$4,200.

- On April 28, 2022, in response to a demand letter, Representative Georgene Louis paid the Commission a civil fine of \$250, the amount of the statutorily available fine for a violation of Section 10-16-3(A) of the Governmental Conduct Act. The Commission concluded that Representative Louis had violated Section 10-16-3(A) by referencing her legislative office and displaying her legislative license plate to a law enforcement officer during a traffic stop in an attempt to obtain favorable treatment from the officer.

State of New Mexico
P-1 Program Overview

[3] Advisory Opinions, Education and Trainings

- Issued 10 advisory opinions, available on www.NMOneSource.com, and 14 advisory letters
- Delivered over twenty separate trainings to state agencies, state boards and commissions, legislative committees, affiliate and professional organizations, and bar associations around New Mexico.

[4] Other Accomplishments

- On December 7, 2021, the Commission received national recognition as a model agency among state and local ethics commissions in the Campaign Legal Center's Top 10 Transparency Upgrades for Ethics Commissions. The CLC report featured both the Commission's Proceedings Portal and posting of publicly available and searchable advisory opinions on www.NMOneSource.com.
- During FY22, the Commission's staff also staffed the Citizen Redistricting Committee ("CRC"), providing ample support to the CRC Chair, the Honorable Edward L. Chávez and assisting in the drafting of the CRC's final report, issued on November 2, 2021. In taking on these uncompensated, extra duties, several members of the Commission's staff stepped up for New Mexico's democracy, when other state agencies were unable or unwilling to do so.
- Since January 1, 2022, the Commission has received, investigated, or prosecuted over 17 separate administrative matters involving a potential remedial action against the commissions of notaries public.
- In 2022, the Commission, working with the Office of the Secretary of State, achieved financial disclosure filings from all individuals who are required to file annual financial disclosure statements.

[II] Major Issues

- (1) In comparison to its constitutional and statutory responsibilities, the Commission has a small and very lean staff: an executive director, three staff attorneys, a finance and administration director, and a communications manager, who also handles sundry paralegal and front office duties. In addition to this staff of six, during FY23, the Commission will hire for two additional positions, as funding allows: an Attorney IV and a State Investigator, which are necessary for the Commission to minimally satisfy its constitutional and statutory responsibilities. Accordingly, it is necessary that the Commission have full funding for the eight positions currently on its organizational listing.
- (2) As the Commission grows in work and staff size, by FY24, the Commission is concerned that one employee will no longer be able responsibly handle all of the Commission's financial, human resources, and administrative transactions. Recall that the Commission is an independent agency: it is not administratively attached to a larger state agency. Therefore, unlike many smaller and comparable state agencies, the Commission does not have the ability to rely on the administrative services division of a larger state agency. By FY24, the Commission will need a second employee who is primarily committed to administrative services.
- (3) In FY23, the Commission was tasked to enforce the Revised Uniform Law on Notarial Acts (RULONA), NMSA 1978, Sections 14-14A-1 to 14-14A-32 (2021), which governs notaries public and notarial acts. Consequently, the Commission is now also required to adjudicate violations of statutory law governing notaries public—a function that was previously assigned to the Regulation and Licensing Department. As such, the Commission assigned one of its staff attorneys to handle RULONA matters, which currently occupy at least 80% of that attorney's time. For context, there are over 50,000 notaries public in the State of New Mexico.
- (4) As part of its core functions, the Commission handles intensive civil litigation and administrative adjudications. The State Ethics Commission handles all its litigation in house. Unlike other state agencies, the Commission has not

P-1 Program Overview

contracted for outside counsel to represent it in court. The Commission often litigates civil actions (including subpoena litigation) or handles administrative cases where respondents are entitled to state-funded attorneys who have contracts with the Risk Management Division (RMD). These state-funded attorneys have incentives to litigate on every issue because New Mexico's taxpayers—not the respondent in the underlying ethics case—are paying their fees. If the State pays for respondents in ethics cases to receive publicly funded defenses, then the Commission should receive adequate funding for a staff that is able to enforce New Mexico's ethics laws.

Overview of Request:

The Commission seeks an FY24 appropriation for \$1,460,200. By category, this request amounts to \$1,122,700 for personnel; \$200,000 for contracts; and \$137,500 for other operating costs. As of September 1, 2022, the Commission only has 6 FTE. During FY23, the Commission will expand to 8 FTE, the currently allowable number of FTE on the Commission's organizational listing. The Commission will hire for an Attorney IV and, later, a State Investigator, as funding allows. The Commission needs to secure funding in FY24 to fully fund these positions. Accordingly, the base FY24 request for personnel (200s) is \$1,058,200, which funds the 8 FTE that the Commission will have on staff in FY23.

Additionally, in FY24, the Commission seeks additional funding for a Financial Specialist. The Commission's staff and work will have expanded by FY24 such that a single employee will no longer be able to responsibly handle all the Commission's financial, human resources and other administrative services related tasks. Accordingly, the expansion FY24 request for personnel (200s) is \$64,500, which would fund the Financial Specialist position.

The primary programmatic and policy focus of the Commission's FY24 request is to maintain the Commission's current ability to perform its constitutional and statutory duties by fully funding the Commission's staff positions.

Programmatic Changes:

[1] In FY23, the Commission has expended authority to enforce the Revised Uniform Law on Notarial Acts, 14-14A-1 to 14-14A-32 (2021), which governs notaries public and notarial acts. Consequently, the Commission is now also required to adjudicate violations of statutory law governing notaries public—a function that was previously assigned to the Regulation and Licensing Department.

[2] Article V, Section 17(C) of the New Mexico Constitution authorizes the Legislature to assign other duties to the State Ethics Commission. Since the Commission's beginning on July 1, 2019, the Legislature assigned the Commission new duties related to the Citizen Redistricting Committee and the Revised Uniform Law on Notarial Acts.

Base Budget Justification:

Increase request to base is needed to address the active Attorney IV and State Investigator positions that are not included in the PCM calculations. Additionally the AO1 position does not reflect the current salary for this filed position.

Additional salary and benefit increase is needed to fund the Financial Specialist position. By FY24, the Commission will have grown to a point at which a single employee cannot handle or sensibly be made responsible for all of the Commission's financial and human resource duties. The addition of a Financial Specialist will not only assist the Finance and Administration Director (AO/1) in carrying out all of the agency's financial and human resource related tasks and obligations. The addition will also free up staff time in the Executive Director (EXEM) and the Communications Manager (EXEM) positions to focus on other Commission duties.

Comparable state agencies with staff sizes from 8 to 16 employees each have more than one staff member dedicated to administrative services. See, for example, the Administrative Office the District Attorneys; the Administrative Hearings Office; the New Mexico Medical Board; the Board of Licensure of Professional Engineers and Professional Surveyors; the Commission for the Deaf and Hard of Hearing; and the Indian Affairs Department.

S-8 Financial Summary

(Dollars in Thousands)

BU PCode Department
41000 0000 0000000000

	2021-22 Opbud	2021-22 Actuals	2022-23 Opbud	2023-24 PCF Proj	Base	----- FY 2024 Agency Request ----- Expansion		Total
REVENUE								
111 General Fund Transfers	900.3	900.3	1,236.3	0.0	1,395.7	64.5		1,460.2
112 Other Transfers	10.0	15.4	0.0	0.0	0.0	0.0		0.0
130 Other Revenues	0.0	40.7	0.0	0.0	0.0	0.0		0.0
REVENUE, TRANSFERS	910.3	956.4	1,236.3	0	1,395.7	64.5		1,460.2
REVENUE	910.3	956.4	1,236.3	0	1,395.7	64.5		1,460.2
EXPENSE								
200 Personal Services and Employee Benefits	633.2	694.6	924.5	798.3	1,058.2	64.5		1,122.7
300 Contractual Services	175.0	83.9	200.0	0.0	200.0	0.0		200.0
400 Other	102.1	106.5	111.8	0.0	137.5	0.0		137.5
EXPENDITURES	910.3	885.1	1,236.3	798.28	1,395.7	64.5		1,460.2
EXPENSE	910.3	885.1	1,236.3	798.28	1,395.7	64.5		1,460.2
FTE POSITIONS								
810 Permanent	6.00	6.00	8.00	6.00	8.00	1.00		9.00
FTEs	6.00	6.00	8.00	6.00	8.00	1.00		9.00
FTE POSITIONS	6.00	6.00	8.00	6.00	8.00	1.00		9.00

S-9 Account Code Revenue/Expenditure Summary

(Dollars in Thousands)

BU PCode Department
41000 0000 0000000000

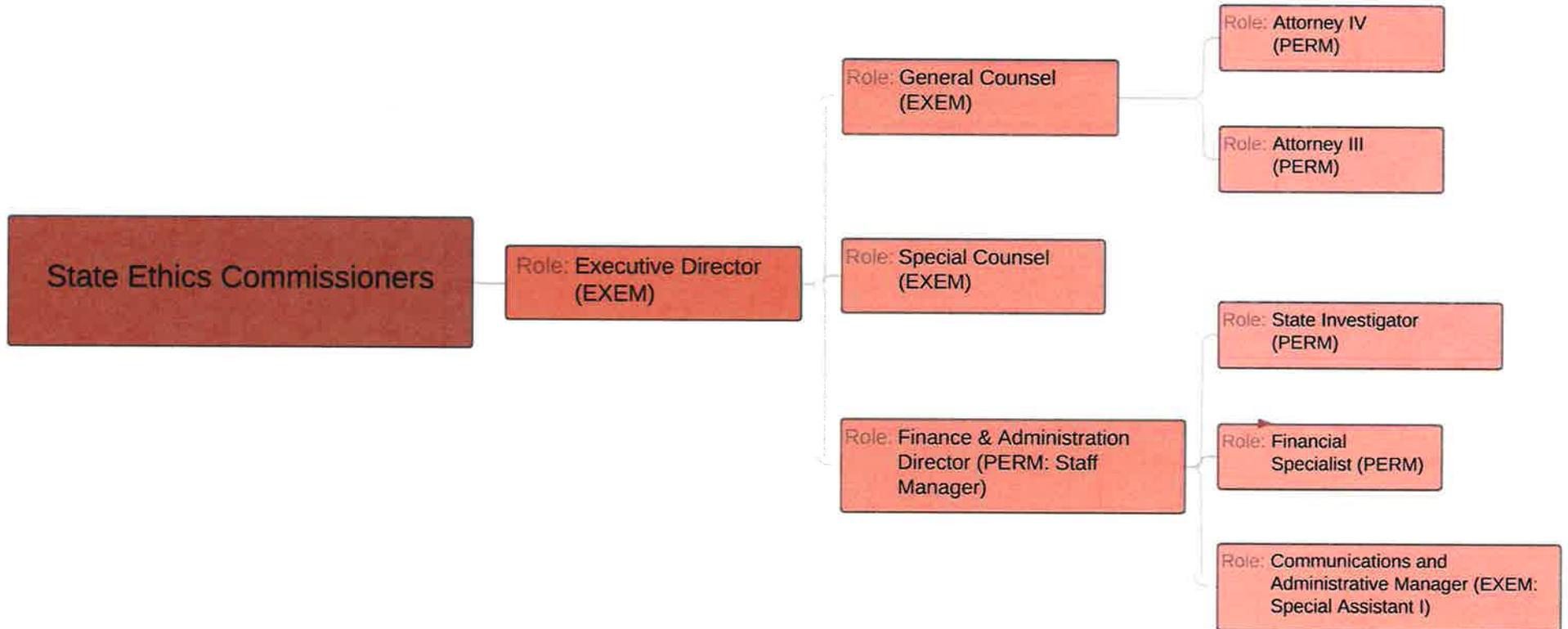
		2021-22	2021-22	2022-23	2023-24	----- FY 2024 Agency Request -----		
		Opbud	Actuals	Opbud	PCF Proj	Base	Expansion	Total
499105	General Fd. Appropriation	900.3	900.3	1,236.3	0.0	1,395.7	64.5	1,460.2
111	General Fund Transfers	900.3	900.3	1,236.3	0.0	1,395.7	64.5	1,460.2
499905	Other Financing Sources	10.0	15.4	0.0	0.0	0.0	0.0	0.0
112	Other Transfers	10.0	15.4	0.0	0.0	0.0	0.0	0.0
461302	Court Fines & Forfeitures	0.0	4.1	0.0	0.0	0.0	0.0	0.0
496909	Misc Revenue - Interagency	0.0	36.6	0.0	0.0	0.0	0.0	0.0
130	Other Revenues	0.0	40.7	0.0	0.0	0.0	0.0	0.0
TOTAL REVENUE		910.3	956.4	1,236.3	0	1,395.7	64.5	1,460.2
520000	Payroll	633.2	0.0	0.0	0.0	0.0	0.0	0.0
520100	Exempt Perm Positions P/T&F/T	0.0	377.4	412.4	444.3	444.3	0.0	444.3
520300	Classified Perm Positions F/T	0.0	150.6	271.4	160.9	344.4	45.4	389.8
520800	Annl & Comp Paid At Separation	0.0	2.3	0.0	0.0	0.0	0.0	0.0
521100	Group Insurance Premium	0.0	15.0	31.6	18.2	33.5	5.8	39.3
521200	Retirement Contributions	0.0	96.4	137.2	116.4	157.5	8.7	166.2
521300	F I C A	0.0	39.9	53.1	46.3	57.5	3.5	61.0
521400	Workers' Comp Assessment Fee	0.0	0.3	0.1	0.0	0.3	0.0	0.3
521410	GSD Work Comp Insur Premium	0.0	0.0	1.2	0.0	1.3	0.0	1.3
521600	Employee Liability Ins Premium	0.0	1.0	1.9	0.0	2.2	0.0	2.2
521700	RHC Act Contributions	0.0	10.6	15.6	12.1	17.2	1.1	18.3
523200	COVID Related Time Worked	0.0	1.2	0.0	0.0	0.0	0.0	0.0
200	Personal Services and Employee Bene	633.2	694.6	924.5	798.3	1,058.2	64.5	1,122.7
530000	Contracts	175.0	0.0	0.0	0.0	0.0	0.0	0.0
535200	Professional Services	0.0	67.5	143.0	0.0	143.0	0.0	143.0
535209	Professional Svcs - Interagenc	0.0	5.1	5.0	0.0	6.0	0.0	6.0
535400	Audit Services	0.0	11.3	11.8	0.0	12.3	0.0	12.3
535500	Attorney Services	0.0	0.0	5.2	0.0	5.2	0.0	5.2
535600	IT Services	0.0	0.0	35.0	0.0	33.5	0.0	33.5
300	Contractual Services	175.0	83.9	200.0	0.0	200.0	0.0	200.0
540000	Other Expenses	102.1	0.0	0.0	0.0	0.0	0.0	0.0
542100	Employee I/S Mileage & Fares	0.0	0.9	2.0	0.0	2.0	0.0	2.0
542200	Employee I/S Meals & Lodging	0.0	0.0	1.5	0.0	1.5	0.0	1.5
542300	Brd & Comm Mbr Meals & Lodging	0.0	0.0	8.0	0.0	8.0	0.0	8.0
544000	Supply Inventory IT	0.0	6.5	5.2	0.0	5.2	0.0	5.2

S-9 Account Code Revenue/Expenditure Summary

(Dollars in Thousands)

BU PCode Department
 41000 0000 0000000000

		2021-22	2021-22	2022-23	2023-24	----- FY 2024 Agency Request -----		
		Opbud	Actuals	Opbud	PCF Proj	Base	Expansion	Total
544100	Supplies-Office Supplies	0.0	2.7	2.3	0.0	2.3	0.0	2.3
544400	Supplies-Field Supplies	0.0	0.0	0.1	0.0	0.1	0.0	0.1
544900	Supplies-Inventory Exempt	0.0	1.9	1.5	0.0	1.5	0.0	1.5
545600	Reporting & Recording	0.0	0.0	1.0	0.0	1.0	0.0	1.0
545700	ISD Services	0.0	5.7	8.2	0.0	6.3	0.0	6.3
545710	DOIT HCM Assessment Fees	0.0	2.2	2.9	0.0	3.3	0.0	3.3
545900	Printing & Photo Services	0.0	0.1	2.0	0.0	1.0	0.0	1.0
546100	Postage & Mail Services	0.0	0.7	1.0	0.0	1.0	0.0	1.0
546400	Rent Of Land & Buildings	0.0	40.9	40.0	0.0	61.8	0.0	61.8
546500	Rent Of Equipment	0.0	3.7	3.5	0.0	4.1	0.0	4.1
546610	DOIT Telecommunications	0.0	13.8	14.3	0.0	13.9	0.0	13.9
546700	Subscriptions/Dues/License Fee	0.0	12.2	9.8	0.0	15.0	0.0	15.0
546800	Employee Training & Education	0.0	3.2	2.5	0.0	3.5	0.0	3.5
546900	Advertising	0.0	0.9	3.0	0.0	3.0	0.0	3.0
548200	Furniture & Fixtures	0.0	11.1	0.0	0.0	0.0	0.0	0.0
549600	Employee O/S Mileage & Fares	0.0	0.0	1.5	0.0	1.5	0.0	1.5
549700	Employee O/S Meals & Lodging	0.0	0.0	1.5	0.0	1.5	0.0	1.5
400	Other	102.1	106.5	111.8	0.0	137.5	0.0	137.5
TOTAL EXPENSE		910.3	885.1	1,236.3	798.28	1,395.7	64.5	1,460.2
810	Permanent	6.00	6.00	8.00	6.00	8.00	1.00	9.00
810	Permanent	6.00	6.00	8.00	6.00	8.00	1.00	9.00
TOTAL FTE POSITIONS		6.00	6.00	8.00	6.00	8.00	1.00	9.00



State of New Mexico
S-13 Line Items by Business Unit
(Dollars in Thousands)

-----FY 2024 Exec Recommendation

BusUnit	Line Item	2021-22	2022-23	Request		Recommendation		Opbud
		Actuals	Opbud	Base	Expansion	Base	Expansion	
41000	P410-R State Ethics Commission							
	461302 Court Fines & Forfeitures	4.12	0	0	0	0	0	0.0
	496909 Misc Revenue - Interagency	36.61	0	0	0	0	0	0.0
	499105 General Fd. Appropriation	900.3	0	1,395.7	64.5	0	0	0.0
	499905 Other Financing Sources	15.4	0	0	0	0	0	0.0
	520100 Exempt Perm Positions P/T&F/T	377.36	0	444.3	0	0	0	0.0
	520300 Classified Perm Positions F/T	150.62	0	344.4	45.4	0	0	0.0
	520800 Annl & Comp Paid At Separation	2.3	0	0	0	0	0	0.0
	521100 Group Insurance Premium	15	0	33.5	5.8	0	0	0.0
	521200 Retirement Contributions	96.45	0	157.5	8.7	0	0	0.0
	521300 F I C A	39.87	0	57.5	3.5	0	0	0.0
	521400 Workers' Comp Assessment Fee	0.25	0	0.3	0	0	0	0.0
	521410 GSD Work Comp Insur Premium	0	0	1.3	0	0	0	0.0
	521600 Employee Liability Ins Premium	1	0	2.2	0	0	0	0.0
	521700 RHC Act Contributions	10.58	0	17.2	1.1	0	0	0.0
	523200 COVID Related Time Worked	1.18	0	0	0	0	0	0.0
	535200 Professional Services	67.48	0	143	0	0	0	0.0
	535209 Professional Svcs - Interagenc	5.12	0	6	0	0	0	0.0
	535400 Audit Services	11.33	0	12.3	0	0	0	0.0
	535500 Attorney Services	0	0	5.2	0	0	0	0.0
	535600 IT Services	0	0	33.5	0	0	0	0.0
	542100 Employee I/S Mileage & Fares	0.94	0	2	0	0	0	0.0
	542200 Employee I/S Meals & Lodging	0	0	1.5	0	0	0	0.0
	542300 Brd & Comm Mbr Meals & Lodgin	0	0	8	0	0	0	0.0
	544000 Supply Inventory IT	6.51	0	5.2	0	0	0	0.0
	544100 Supplies-Office Supplies	2.69	0	2.3	0	0	0	0.0
	544400 Supplies-Field Supplies	0	0	0.1	0	0	0	0.0
	544900 Supplies-Inventory Exempt	1.86	0	1.5	0	0	0	0.0
	545600 Reporting & Recording	0	0	1	0	0	0	0.0
	545700 ISD Services	5.71	0	6.3	0	0	0	0.0
	545710 DOIT HCM Assessment Fees	2.19	0	3.3	0	0	0	0.0
	545900 Printing & Photo Services	0.11	0	1	0	0	0	0.0

State of New Mexico
S-13 Line Items by Business Unit
(Dollars in Thousands)

	546100	Postage & Mail Services	0.66	0	1	0	0	0	0.0
	546400	Rent Of Land & Buildings	40.86	0	61.8	0	0	0	0.0
	546500	Rent Of Equipment	3.72	0	4.1	0	0	0	0.0
	546610	DOIT Telecommunications	13.85	0	13.9	0	0	0	0.0
	546700	Subscriptions/Dues/License Fee	12.21	0	15	0	0	0	0.0
	546800	Employee Training & Education	3.19	0	3.5	0	0	0	0.0
	546900	Advertising	0.94	0	3	0	0	0	0.0
	548200	Furniture & Fixtures	11.07	0	0	0	0	0	0.0
	549600	Employee O/S Mileage & Fares	0	0	1.5	0	0	0	0.0
	549700	Employee O/S Meals & Lodging	0	0	1.5	0	0	0	0.0
	810	Permanent	0.01	0	0.01	0	0	0	0.0
Subtotal for:	41000	P410-R State Ethics Commission	1,841.49	0	2,791.41	129	0	0	0.0
41000			1,841.49	0	2,791.41	129	0	0	0.0

Totals by Line Item

BusUnit	Line Item	2021-22 Actuals	2022-23 Opbud	-----FY 2024 Exec Recommendation				
				Request		Recommendation		Opbud
				Base	Expansion	Base	Expansion	
41000	461302 Court Fines & Forfeitures	4.12	0	0	0	0	0	0.0
	496909 Misc Revenue - Interagency	36.61	0	0	0	0	0	0.0
	499105 General Fd. Appropriation	900.3	0	1,395.7	64.5	0	0	0.0
	499905 Other Financing Sources	15.4	0	0	0	0	0	0.0
	520100 Exempt Perm Positions P/T&F/T	377.36	0	444.3	0	0	0	0.0
	520300 Classified Perm Positions F/T	150.62	0	344.4	45.4	0	0	0.0
	520800 Annl & Comp Paid At Separation	2.3	0	0	0	0	0	0.0
	521100 Group Insurance Premium	15	0	33.5	5.8	0	0	0.0
	521200 Retirement Contributions	96.45	0	157.5	8.7	0	0	0.0
	521300 F I C A	39.87	0	57.5	3.5	0	0	0.0
	521400 Workers' Comp Assessment Fee	0.25	0	0.3	0	0	0	0.0
	521410 GSD Work Comp Insur Premium	0	0	1.3	0	0	0	0.0
	521600 Employee Liability Ins Premium	1	0	2.2	0	0	0	0.0

State of New Mexico

S-13 Line Items by Business Unit

(Dollars in Thousands)

521700	RHC Act Contributions	10.58	0	17.2	1.1	0	0	0.0
523200	COVID Related Time Worked	1.18	0	0	0	0	0	0.0
535200	Professional Services	67.48	0	143	0	0	0	0.0
535209	Professional Svcs - Interagenc	5.12	0	6	0	0	0	0.0
535400	Audit Services	11.33	0	12.3	0	0	0	0.0
535500	Attorney Services	0	0	5.2	0	0	0	0.0
535600	IT Services	0	0	33.5	0	0	0	0.0
542100	Employee I/S Mileage & Fares	0.94	0	2	0	0	0	0.0
542200	Employee I/S Meals & Lodging	0	0	1.5	0	0	0	0.0
542300	Brd & Comm Mbr Meals & Lodging	0	0	8	0	0	0	0.0
544000	Supply Inventory IT	6.51	0	5.2	0	0	0	0.0
544100	Supplies-Office Supplies	2.69	0	2.3	0	0	0	0.0
544400	Supplies-Field Supplies	0	0	0.1	0	0	0	0.0
544900	Supplies-Inventory Exempt	1.86	0	1.5	0	0	0	0.0
545600	Reporting & Recording	0	0	1	0	0	0	0.0
545700	ISD Services	5.71	0	6.3	0	0	0	0.0
545710	DOIT HCM Assessment Fees	2.19	0	3.3	0	0	0	0.0
545900	Printing & Photo Services	0.11	0	1	0	0	0	0.0
546100	Postage & Mail Services	0.66	0	1	0	0	0	0.0
546400	Rent Of Land & Buildings	40.86	0	61.8	0	0	0	0.0
546500	Rent Of Equipment	3.72	0	4.1	0	0	0	0.0
546610	DOIT Telecommunications	13.85	0	13.9	0	0	0	0.0
546700	Subscriptions/Dues/License Fee	12.21	0	15	0	0	0	0.0
546800	Employee Training & Education	3.19	0	3.5	0	0	0	0.0
546900	Advertising	0.94	0	3	0	0	0	0.0
548200	Furniture & Fixtures	11.07	0	0	0	0	0	0.0
549600	Employee O/S Mileage & Fares	0	0	1.5	0	0	0	0.0
549700	Employee O/S Meals & Lodging	0	0	1.5	0	0	0	0.0
810	Permanent	0.01	0	0.01	0	0	0	0.0
Grand Total		1,841.49	0	2,791.41	129	0	0	0.0

State of New Mexico
S-13 Line Items by Business Unit
(Dollars in Thousands)

State of New Mexico
EB-1 Expansion Justifications
 (Dollars in Thousands)

Financial Specialist Position

Rank: 1

New Initiative	2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
General Fund Transfers	64.5	0	0	0	64.5	0
REVENUE, TRANSFERS	64.5	0	0	0	64.5	0
Personal Services and Employee	64.5	0	0	0	64.5	0
EXPENDITURES	64.5	0	0	0	64.5	0
Permanent	0	0	0	0	1	0
FTEs	0	0	0	0	1	0

Quantitative Outcome:

Brief Description:

The Commission seeks to add a Financial Specialist to its staff. The Financial Specialist will assist the Finance and Administration Director (AO/1) in carrying out all of the agency's financial and human resource related tasks and obligations. By FY24, the Commission will have grown to a point at which a single employee cannot handle or sensibly be made responsible for all of the Commission's financial and human resource duties.

Currently, both the Executive Director (EXEM) and the Communications Manager (EXEM) positions assist the Finance and Administration Director (AO/1) in both financial and human resource transactions. The Communications Manager assists in procurement responsibilities under the Procurement Code and the Model Accounting Practices. The Executive Director assists in daily review and approval of purchase orders, encumbrances, vouchers, deposits, and personnel time entry. The addition of a Financial Specialist to handle these positions will free up time for both the Executive Director and another exempt position (currently the Communications Manager), which could then be targeted to other agency duties.

Comparable state agencies with staff sizes from 8 to 16 employees each have more than one staff member dedicated to administrative services. See, for example, the Administrative Office the District Attorneys; the Administrative Hearings Office; the New Mexico Medical Board; the Board of Licensure of Professional Engineers and Professional Surveyors; the Commission for the Deaf and Hard of Hearing; and the Indian Affairs Department.

Problem being addressed:

The agency has grown to a point at which the Finance and Administration Director AOI cannot handle or sensibly be made responsible for all of the Commission's financial and human resource duties.

Description of how performance will be improved:

The addition of a Financial Specialist will not only the Finance and Administration Director (AO/1) in carrying out all of the agency's financial and human resource related tasks and obligations. The addition will also free up staff time in the Executive Director (EXEM) and the Communications Manager (EXEM) positions to focus on other Commission duties

Consequences of not funding this expansion:

Risk of inaccurate financial and human resource transactions as a consequence of a single employee attempting to handle an unreasonable volume of work.

Assumptions and methodology:

The position and class (Financial Specialist) are based the number of FTE for ASD and HR positions for other similarly sized agencies. Projected figures are based on PCM calculation of salary and benefits.

Performance Measures:

Not applicable. The Commission's current performance measures target the productivity of the Commission's attorney staff.

Analyst recommendations and comments:

10114521 Attorney IV approved position

Rank: 0

New Initiative	2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
Personal Services and Employee	0	0	0	0	0	0

EB-1 Expansion Justifications
(Dollars in Thousands)

EXPENDITURES	0	0	0	0	0	0
---------------------	----------	----------	----------	----------	----------	----------

0

Quantitative Outcome:

Brief Description:

Added as this position is missing from PCM calcs

Problem being addressed:

Position 10114521 already exists, PCM did not include in calc

Description of how performance will be improved:

Consequences of not funding this expansion:

Assumptions and methodology:

Performance Measures:

Analyst recommendations and comments:

10114522 State Investigator M5052S

Rank: 0

New Initiative	2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
Personal Services and Employee	0	0	0	0	0	0
EXPENDITURES	0	0	0	0	0	0
Permanent	0	0	0	0	0	0
FTEs	0	0	0	0	0	0

Quantitative Outcome:

Brief Description:

Approved position for FY23 but did not show up in PCM calcs. Add for calculation purposes only

Problem being addressed:

Position 10114522 already exists, PCM did not include in calculation

Description of how performance will be improved:

Consequences of not funding this expansion:

Assumptions and methodology:

Performance Measures:

Analyst recommendations and comments:

AO1 Salary Correction

Rank: 0

New Initiative	2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
----------------	--------------------	---------------------	--------------------------	--------------------	-----------------------	-----------------------------

State Ethics Commission

State of New Mexico

BU PCode Department
41000 P410 000000

EB-1 Expansion Justifications
(Dollars in Thousands)

Personal Services and Employee	0	0	0	0	0	0
EXPENDITURES	0	0	0	0	0	0
Permanent	0	0	0	0	1	0
FTEs	0	0	0	0	1	0

Quantitative Outcome:

Brief Description:

Problem being addressed:

Description of how performance will be improved:

Consequences of not funding this expansion:

Assumptions and methodology:

Performance Measures:

Analyst recommendations and comments:

EB-2 Expansion Fiscal Summary
(Dollars in Thousands)

Financial Specialist Position

Rank: 1

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
111	General Fund Transfers	64.5	0	0	0	64.5	0
REVENUE, TRANSFERS		64.5	0	0	0	64.5	0
200	Personal Services and Employee Benefits	64.5	0	0	0	64.5	0
EXPENDITURES		64.5	0	0	0	64.5	0
810	Permanent	0	0	0	0	1	
FTEs		0	0	0	0	1	0

10114521 Attorney IV approved position

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
200	Personal Services and Employee Benefits	0	0	0	0	0	0
EXPENDITURES		0	0	0	0	0	0

10114522 State Investigator M5052S

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
200	Personal Services and Employee Benefits	0	0	0	0	0	0
EXPENDITURES		0	0	0	0	0	0
810	Permanent	0	0	0	0	0	
FTEs		0	0	0	0	0	0

AO1 Salary Correction

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/ IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
200	Personal Services and Employee Benefits	0	0	0	0	0	0
EXPENDITURES		0	0	0	0	0	0
810	Permanent	0	0	0	0	1	
FTEs		0	0	0	0	1	0

BU PCode Department
41000 P410 000000

EB-3 Expansion Line Item Detail
(Dollars in Thousands)

Financial Specialist Position

Rank: 1

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
520300	Classified Perm Positions F/T	45.4	0	0	0	45.4	0
521100	Group Insurance Premium	5.8	0	0	0	5.8	0
521200	Retirement Contributions	8.7	0	0	0	8.7	0
521300	F I C A	3.5	0	0	0	3.5	0
521700	RHC Act Contributions	1.1	0	0	0	1.1	0
200	Personal Services and Employee Benefit	64.5	0	0	0	64.5	0
Total for Financial Specialist Position		64.5	0	0	0	64.5	0

10114521 Attorney IV approved position

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
520300	Classified Perm Positions F/T	0	0	0	0	0	0
521100	Group Insurance Premium	0	0	0	0	0	0
521200	Retirement Contributions	0	0	0	0	0	0
521300	F I C A	0	0	0	0	0	0
521700	RHC Act Contributions	0	0	0	0	0	0
200	Personal Services and Employee Benefit	0	0	0	0	0	0
Total for 10114521 Attorney IV approved position		0	0	0	0	0	0

10114522 State Investigator M5052S

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
520300	Classified Perm Positions F/T	0	0	0	0	0	0
521100	Group Insurance Premium	0	0	0	0	0	0
521200	Retirement Contributions	0	0	0	0	0	0
521300	F I C A	0	0	0	0	0	0
521700	RHC Act Contributions	0	0	0	0	0	0
200	Personal Services and Employee Benefit	0	0	0	0	0	0
Total for 10114522 State Investigator M5052S		0	0	0	0	0	0

AO1 Salary Correction

Rank: 0

		2023-24 GF Sources	2023-24 OSF Sources	2023-24 ISF/IAT Sources	2023-24 FF Sources	2023-24 Total Request	2023-24 Exec Recommendation
520300	Classified Perm Positions F/T	0	0	0	0	0	0

State Ethics Commission

State of New Mexico

BU PCode Department
41000 P410 000000

EB-3 Expansion Line Item Detail
(Dollars in Thousands)

521100	Group Insurance Premium	0	0	0	0	0	0
521200	Retirement Contributions	0	0	0	0	0	0
521300	F I C A	0	0	0	0	0	0
521700	RHC Act Contributions	0	0	0	0	0	0
200	Personal Services and Employee Benefit	0	0	0	0	0	0
Total for AO1 Salary Correction		0	0	0	0	0	0

Attorney IV position 10114521

Employee	Position	Fiscal Year	Benefit Code	Amount
	NEWP-987461	2024	MI	\$ 1,435.33
	NEWP-987461	2024	NMC-ADMINA	\$ 10.18
	NEWP-987461	2024	NMC-BASICP	\$ 81.95
	NEWP-987461	2024	NMC-DELTA1	\$ 239.68
	NEWP-987461	2024	NMC-LOVEA1	\$ 3,984.60
	NEWP-987461	2024	NMC-VISNA1	\$ 44.45
	NEWP-987461	2024	OASDI	\$ 1,137.26
	NEWP-987461	2024	RETHCP	\$ 1,474.70
	NEWP-987461	2024	STPL3	\$ 1,045.29
	NEWP-987461	2024	Total Benefits	\$ 33,453.43
	NEWP-987461	2024	Total Salary	\$ 112,909.00
	NEWP-987461	2024	Total	\$ 155,815.87

State Investigator 10114552

Employee	Position	Fiscal Year	Benefit Code	Amount
	NEWP-530	2024	MI	\$828.53
	NEWP-530	2024	NMB-ADM	\$11.78
	NEWP-530	2024	NMB-BASIC	\$81.95
	NEWP-530	2024	NMB-DELT	\$279.58
	NEWP-530	2024	NMB-LOVE	\$4,648.74
	NEWP-530	2024	NMB-VISN	\$51.95
	NEWP-530	2024	OASDI	\$3,542.68
	NEWP-530	2024	RETHC	\$1,142.80
	NEWP-530	2024	RETHCP	\$1,428.50
	NEWP-530	2024	SPLAN3	\$10,993.74
	NEWP-530	2024	STPL3	\$10,993.74
	NEWP-530	2024	Total Benefit	\$34,003.98
	NEWP-530	2024	Total Salary	\$57,140.00
	NEWP-530	2024	Total	\$91,143.98

Employee	Position	Fiscal Year	Benefit Code	Amount
	NEWP-693	2024	MI	\$658.47
	NEWP-693	2024	NMA-ADM	\$13.39
	NEWP-693	2024	NMA-BASL	\$54.63
	NEWP-693	2024	NMA-DELT	\$319.75
	NEWP-693	2024	NMA-LOVE	\$5,312.62
	NEWP-693	2024	NMA-VISN	\$59.45
	NEWP-693	2024	OASDI	\$2,815.54
	NEWP-693	2024	RETHCP	\$1,135.30
	NEWP-693	2024	STPL3	\$8,737.27
	NEWP-693	2024	Total Bene	\$19,106.43
	NEWP-693	2024	Total Salary	\$45,412.00
	NEWP-693	2024	Total	\$64,518.43

Budgeted Positions (E1 form) BU4100

Dept ID	Name	ID	Job Code	Position	Grade	Hrly Rate	Annual Rt	Descr	Grade	Sal Plan	FTE	HR Status	Pos Status	Pay Status	Req/Temp	Full/P	Entry Date	Unit
1000000000	Manierre,Caroline	343875	7085	10111374	30	54.075000	112,476.00	Attorney	30	GOVX	1.000000	A	A	A	R	F	2/7/2022	41000
1000000000	Farris,Jeremy D.	347116	7385	10111661	36	67.954250	141,344.84	Executive Director	36	GOVX	1.000000	A	A	A	R	F	11/2/2019	41000
1000000000	Boyd,James W	346300	7455	10111663	34	62.727000	130,472.16	General Counsel	34	GOVX	1.000000	A	A	A	R	F	11/30/2019	41000
1000000000	Musa,Suha A	365980	7740	10111662	22	28.866500	60,273.32	Special Assistant I	22	GOVX	1.000000	A	A	A	R	F	5/28/2022	41000
1000000000	Attorney IV - pending Hire		LLLS40	10114521	LI	54.075000	112,909.00	Attorney IV	LI	CLSS	1.000000	I	I	I	R	F	7/1/2022	41000
1000000000	Branch,Rebecca	312019	LLLA35	10112396	LH	45.078131	94,123.00	Attorney III	LH	CLSS	1.000000	A	A	A	R	F	8/24/2019	41000
1000000000	George,Wendy J	345291	X40000	10111778	80	38.559054	80,202.83	A/O I	80	CLSS	1.000000	A	A	A	R	F	7/23/2022	41000
1000000000	State Investigator - pending posting		M50520	10114522	65	31.029000	64,789.00	Attorney IV	65	CLSS	1.000000	I	I	I	R	F	7/1/2022	41000

DFA Performance Based Budgeting Data System

Annual Performance Report

Agency: 41000 Ethics Commission

Program: P410 State Ethics Commission

The purpose of the New Mexico ethics commission is to receive, investigate and adjudicate complaints against public officials, public employees, candidates, those subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers and to ensure that public ethics laws are clear, comprehensive and effective.

Performance Measures:	2021-22 Target	2021-22 Result	Met Target	Year End Result Narrative
Explanatory Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within one-hundred-and-eighty (180) days after a complaint is received.	N/A	57%	N/A	There are substantial delays that occur before a probable cause determination and a hearing. Under applicable regulations (1.8.3 NMAC), the parties to administrative cases may request extensions to deadlines. These requests are routinely made and granted. Further, the Risk Management Division of the GSD is required to hire and pay attorneys to represent respondents who are officers or employees of the state. RMD counsel often request extensions of time to become familiar with the case, and often elect to challenge Commission subpoenas. Litigating novel and complex issues in front of district courts and the courts of appeal is common, and these proceedings take far longer than 90 days to resolve.
Output Percent of advisory opinions issued within sixty days of receipt	90%	80%	No	From July 1, 2021, to June 30, 2022, the Commission issued 10 advisory opinions. Eight of these opinions were issued by the Commission within 60 days of the receipt of the request for an advisory opinion. For the two opinions that were issued in excess of 60 days, one was issued 63 days after the request was received; the other was issued 73 days after the request was received. During FY22, on average, the Commission issued advisory opinions 33 days after the Commission staff received a proper request. Because the Commission regularly meets every other month, the Commission often will not issue an advisory opinion within 60 days of a request when the request is received shortly before the Commission meeting, particularly when the agenda is already set.

Performance Measures Summary

P410 State Ethics Commission					
Purpose:		The purpose of the New Mexico ethics commission is to receive, investigate and adjudicate complaints against public officials, public employees, candidates, those subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers and to ensure that public ethics laws are clear, comprehensive and effective.			
Performance Measures:		2020-21 Actual	2021-22 Actual	2022-23 Budget	2023-24 Request
Output	Percent of advisory opinions issued within sixty days of receipt	100%	80%	90%	90%
Explanatory	Percent of ethics complaints within the agency's jurisdiction that are either disposed or set for public hearing within one-hundred-and-eighty (180) days after a complaint is received.	70%	57%	N/A	N/A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

.221712.3SA

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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,

.221712.3SA

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;

.221712.3SA

underscored material = new
[bracketed material] = delete

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

.221712.3SA

underscoring material = new
[bracketed material] = delete

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

.221712.3SA

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

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

.221712.3SA

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

.221712.3SA

underscored material = new
[bracketed material] = delete

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

.221712.3SA

underscored material = new
[bracketed material] = delete

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

.221712.3SA

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

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
.221712.3SA

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

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

.221712.3SA

underscoring material = new
[bracketed material] = delete

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

.221712.3SA

underscoring material = new
[bracketed material] = delete

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

.221712.3SA

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

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

.221712.3SA

underscoring material = new
[bracketed material] = delete

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
.221712.3SA

underscored material = new
[bracketed material] = delete

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.

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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

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;

.221712.3SA

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

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.

.221712.3SA

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

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

.221712.3SA

underscored material = new
[bracketed material] = delete

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

.221712.3SA

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

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

.221712.3SA

underscoring material = new
[bracketed material] = delete

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;

.221712.3SA

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

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:

.221712.3SA

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

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.

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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.

.221712.3SA

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

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.

.221712.3SA

underscored material = new
[bracketed material] = delete

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.

.221712.3SA

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

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

.221712.3SA

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

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.--
.221712.3SA

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

.221712.3SA

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

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:

.221712.3SA

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

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;

.221712.3SA

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

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.

.221712.3SA

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

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

.221712.3SA

underscored material = new
[bracketed material] = delete

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

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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

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

.221712.3SA

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CAMPAIGN FINANCE; AMENDING THE CAMPAIGN REPORTING ACT; CLARIFYING AND CHANGING CERTAIN REQUIREMENTS RELATING TO CONTRIBUTIONS AND DONATIONS; AMENDING CERTAIN REPORTING REQUIREMENTS; PROHIBITING USING CAMPAIGN FUNDS TO REPAY LOANS MADE BY THE CANDIDATE THAT ARE SUBJECT TO A RATE OF INTEREST.

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

SECTION 1. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "advertisement" means a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including

.222984.2

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

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

1 recorded phone messages, or by printed materials, including
2 mailers, handbills, signs and billboards, but "advertisement"
3 does not include:

4 (1) a communication by a membership
5 organization or corporation to its current members,
6 stockholders or executive or administrative personnel;

7 (2) a communication appearing in a news story
8 or editorial distributed through a print, broadcast, satellite,
9 cable or electronic medium;

10 (3) a candidate debate or forum or a
11 communication announcing a candidate debate or forum paid for
12 on behalf of the debate or forum sponsor; provided that two or
13 more candidates for the same position have been invited to
14 participate or, in the case of an uncontested election, that
15 the single candidate for the position has been invited to
16 participate;

17 (4) nonpartisan voter guides allowed by the
18 federal Internal Revenue Code of 1986, as amended, for Section
19 501(c)(3) organizations; or

20 (5) statements made to a court or
21 administrative board in the course of a formal judicial or
22 administrative proceeding;

23 B. "anonymous contribution" means a contribution
24 the contributor of which is unknown to the candidate or the
25 candidate's agent or the political committee or its agent who

.222984.2

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

1 accepts the contribution;

2 C. "ballot question" means a constitutional
3 amendment or other question submitted to the voters in an
4 election;

5 D. "bank account" means an account in a financial
6 institution regulated by the United States or a state of the
7 United States;

8 E. "campaign committee" means an association of two
9 or more persons authorized by a candidate to act on the
10 candidate's behalf for the purpose of electing the candidate to
11 office; provided that a candidate shall not authorize more than
12 one campaign committee;

13 F. "campaign expenditure" means an expenditure that
14 is made by a campaign committee or by a candidate in support of
15 the candidate's campaign in an election;

16 G. "candidate" means an individual who seeks or
17 considers an office in an election covered by the Campaign
18 Reporting Act, including a public official, who has filed a
19 declaration of candidacy and has not subsequently filed a
20 statement of withdrawal or:

21 (1) for a nonstatewide office, has received
22 contributions or made expenditures of more than one thousand
23 dollars (\$1,000) or authorized another person or campaign
24 committee to receive contributions or make expenditures of more
25 than one thousand dollars (\$1,000) for the purpose of seeking

.222984.2

underscored material = new
[bracketed material] = delete

1 election to the office; or

2 (2) for a statewide office, has received
3 contributions or made expenditures of more than three thousand
4 dollars (\$3,000) or authorized another person or campaign
5 committee to receive contributions or make expenditures of more
6 than three thousand dollars (\$3,000) for the purpose of seeking
7 election to the office or for candidacy exploration purposes in
8 the years prior to the year of the election;

9 H. "contribution":

10 (1) means a gift, subscription, loan, advance,
11 or deposit of money or other thing of value, including the
12 estimated value of an in-kind contribution, that is made or
13 received for a political purpose, including payment of a debt
14 incurred in an election campaign;

15 (2) includes a coordinated expenditure;

16 (3) does not include the value of services
17 provided without compensation or unreimbursed travel or other
18 personal expenses of individuals who volunteer a portion or all
19 of their time on behalf of a candidate or political committee
20 nor does it include the administrative or solicitation expenses
21 of a political committee that are paid by an organization that
22 sponsors the committee; and

23 (4) does not include the value of the
24 incidental use of the candidate's personal property, home or
25 business office for campaign purposes;

.222984.2

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

1 I. "coordinated expenditure" means an expenditure
2 that is made:

3 (1) by a person other than a candidate or
4 campaign committee;

5 (2) at the request or suggestion of, or in
6 cooperation, consultation or concert with, a candidate,
7 campaign committee or political party or any agent or
8 representative of a candidate, campaign committee or
9 political party; and

10 (3) for the purpose of:

11 (a) supporting or opposing the
12 nomination or election of a candidate; or

13 (b) paying for an advertisement that
14 refers to a clearly identified candidate and is published and
15 disseminated to the relevant electorate in New Mexico within
16 thirty days before the primary election or sixty days before
17 the general election in which the candidate is on the ballot;

18 J. "deliver" or "delivery" means to deliver by
19 certified or registered mail, telecopier, electronic
20 transmission or facsimile or by personal service;

21 K. "election" means any primary, general or
22 statewide special election in New Mexico and includes county
23 and judicial retention elections but excludes federal,
24 municipal, school board and special district elections;

25 L. "election year" means an even-numbered year in

.222984.2

underscored material = new
[bracketed material] = delete

1 which an election covered by the Campaign Reporting Act is
2 held;

3 M. "expenditure" means a payment, transfer or
4 distribution or obligation or promise to pay, transfer or
5 distribute any money or other thing of value, [~~for a political~~
6 ~~purpose~~] including payment of a debt incurred in an election
7 campaign or pre-primary convention:

8 (1) by a campaign committee or a political
9 committee;

10 (2) by a public official or candidate in
11 support of the public official's or candidate's campaign for
12 office in an election covered by the Campaign Reporting Act; or

13 (3) to pay for an advertisement that refers to
14 a candidate or ballot question;

15 N. "independent expenditure" means an expenditure
16 that is:

17 (1) made by a person other than a candidate or
18 campaign committee;

19 (2) not a coordinated expenditure as defined
20 in the Campaign Reporting Act; and

21 (3) made to pay for an advertisement that:

22 (a) expressly advocates the election or
23 defeat of a clearly identified candidate or the passage or
24 defeat of a clearly identified ballot question;

25 (b) is susceptible to no other

.222984.2

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

1 reasonable interpretation than as an appeal to vote for or
2 against a clearly identified candidate or ballot question; or

3 (c) refers to a clearly identified
4 candidate or ballot question and is published and disseminated
5 to the relevant electorate in New Mexico within thirty days
6 before the primary election or sixty days before the general
7 election at which the candidate or ballot question is on the
8 ballot;

9 O. "legislative caucus committee" means a political
10 committee established by the members of a political party in a
11 chamber of the legislature;

12 P. "person" means an individual or entity;

13 Q. "political committee" means:

14 (1) a political party;

15 (2) a legislative caucus committee;

16 (3) an association that consists of two or
17 more persons whose primary purpose is to make contributions to
18 candidates, campaign committees or political committees or make
19 coordinated expenditures or any combination thereof; or

20 (4) an association that consists of two or
21 more persons whose primary purpose is to make independent
22 expenditures and that has received more than five thousand
23 dollars (\$5,000) in contributions or made independent
24 expenditures of more than five thousand dollars (\$5,000) in the
25 election cycle;

.222984.2

underscored material = new
[bracketed material] = delete

1 R. "political party" means an association that has
2 qualified as a political party pursuant to the provisions of
3 Section 1-7-2 NMSA 1978;

4 S. "political purpose" means for the purpose of
5 supporting or opposing a ballot question or the nomination or
6 election of a candidate;

7 T. "prescribed form" means a form or electronic
8 format prepared and prescribed by the secretary of state;

9 U. "public official" means a person elected to an
10 office in an election covered by the Campaign Reporting Act or
11 a person appointed to an office that is subject to an election
12 covered by that act; and

13 V. "reporting individual" means a public official,
14 candidate or treasurer of a campaign committee or a treasurer
15 of a political committee."

16 SECTION 2. Section 1-19-27.3 NMSA 1978 (being Laws 2019,
17 Chapter 262, Section 1) is amended to read:

18 "1-19-27.3. INDEPENDENT EXPENDITURES--REPORTING
19 REQUIREMENTS.--

20 A. A person who makes an independent expenditure
21 ~~[not otherwise required to be reported under the Campaign~~
22 ~~Reporting Act]~~ shall file a report with the secretary of state
23 within:

24 (1) three days of making the expenditure if
25 the expenditure, by itself or aggregated with all independent

.222984.2

underscored material = new
[bracketed material] = delete

1 expenditures made by the same person during the election cycle,
2 exceeds one thousand dollars (\$1,000) in a nonstatewide
3 election or three thousand dollars (\$3,000) in a statewide
4 election; or

5 (2) twenty-four hours of making the
6 expenditure if the expenditure is in an amount of three
7 thousand dollars (\$3,000) or more and is made within seven days
8 before a nonstatewide or statewide election.

9 B. The report required by Subsection A of this
10 section shall state:

11 (1) the name and address of the person who
12 made the independent expenditure;

13 (2) the name and address of the person to whom
14 the independent expenditure was made and the amount, date and
15 purpose of the independent expenditure. If no reasonable
16 estimate of the monetary value of a particular expenditure is
17 practicable, it is sufficient to report instead a description
18 of the services, property or rights furnished through the
19 expenditure; and

20 (3) the source of the contributions or
21 donations used to make the independent expenditure as provided
22 in Subsections C and D of this section.

23 C. A person who makes independent expenditures
24 required to be reported under this section in an amount
25 totaling three thousand dollars (\$3,000) or less in a

.222984.2

underscored material = new
[bracketed material] = delete

1 nonstatewide election or nine thousand dollars (\$9,000) or less
2 in a statewide election shall report the name and address of
3 each person who has made [~~contributions~~] donations of more than
4 a total of two hundred dollars (\$200) in the election cycle
5 that were earmarked for or made in response to a solicitation
6 to fund independent expenditures and shall report the amount of
7 each such [~~contribution~~] donation made by that person.

8 D. A person who makes independent expenditures
9 required to be reported under this section in an amount
10 totaling more than three thousand dollars (\$3,000) in a
11 nonstatewide election or nine thousand dollars (\$9,000) in a
12 statewide election, in addition to reporting the information
13 specified in Subsection C of this section, shall either:

14 (1) if the expenditures were made exclusively
15 from a segregated bank account consisting only of funds
16 [~~contributed~~] donated to the account by individuals to be used
17 for making independent expenditures, report the name and
18 address of, and amount of each [~~contribution~~] donation made by,
19 each [~~contributor~~] donor who [~~contributed~~] donated more than
20 two hundred dollars (\$200) to that account in the election
21 cycle; or

22 (2) if the expenditures were made in whole or
23 part from funds other than those described in Paragraph (1) of
24 this subsection, report the name and address of, and amount of
25 each [~~contribution~~] donation made by, each [~~contributor~~] donor

.222984.2

underscored material = new
[bracketed material] = delete

1 who ~~[contributed]~~ donated more than a total of five thousand
2 dollars (\$5,000) during the election cycle to the person making
3 the expenditures; provided, however, that a ~~[contribution]~~
4 donation is exempt from reporting pursuant to this paragraph
5 if:

6 (a) the ~~[contributor]~~ donor requested in
7 writing that the ~~[contribution]~~ donation not be used to fund
8 independent or coordinated expenditures or to make
9 contributions to a candidate, campaign committee or political
10 committee; and

11 (b) the donation is deposited in a
12 segregated bank account that is not used to fund independent or
13 coordinated expenditures or to make contributions to a
14 candidate, campaign committee or political committee.

15 E. If a person who has made a report required by
16 this section is required to make subsequent reports during the
17 election cycle, the information concerning contributions or
18 donations in the subsequent reports shall cover only
19 contributions or donations not previously reported.

20 F. For the purposes of this section, "donation"
21 means a payment or transfer, or promise of payment or transfer,
22 of money or other thing of value to a person who makes
23 independent expenditures, but "donation" does not include:

24 (1) a payment or transfer made in a commercial
25 transaction in the ordinary course of a trade or business;

.222984.2

underscored material = new
[bracketed material] = delete

1 (2) compensation for services rendered,
2 capital invested or payment for a sale of property that is
3 reasonable in amount and commensurate with the value of the
4 services rendered, the magnitude of the risk undertaken on the
5 investment or the property sold;

6 (3) a commercially reasonable loan made in the
7 ordinary course of business by an institution authorized by the
8 laws of the state to engage in the business of making loans;

9 (4) a gift on a special occasion from a family
10 member or close personal friend; or

11 (5) a personal loan from a family member or a
12 repayment of such a loan."

13 SECTION 3. Section 1-19-29 NMSA 1978 (being Laws 1993,
14 Chapter 46, Section 5, as amended) is amended to read:

15 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

16 A. Except as otherwise provided in this section,
17 all reporting individuals shall file with the secretary of
18 state no later than the second Monday in April and October a
19 report of all expenditures made and contributions received on
20 or before the first Monday in those months and not previously
21 reported; provided that, if the date falls on a state holiday,
22 the report shall be filed no later than the next business day.
23 The report shall be filed biannually until the provisions
24 specified in Subsection F or G [~~or H~~] of this section have been
25 satisfied.

.222984.2

underscored material = new
[bracketed material] = delete

1 B. In an election year, instead of the biannual
2 reports provided for in Subsection A of this section, all
3 reporting individuals, except for public officials who are not
4 candidates in an election that year, shall file reports of all
5 expenditures made and contributions received or, if applicable,
6 statements of no activity, according to the following schedule:

7 (1) no later than the second Monday in April,
8 a report of all expenditures made and contributions received on
9 or before the first Monday in April and not previously
10 reported;

11 (2) no later than the second Monday in May, a
12 report of all expenditures made and contributions received on
13 or before the first Monday in May and not previously reported;

14 (3) no later than the second Monday in
15 September, a report of all expenditures made and contributions
16 received on or before the first Monday in September and not
17 previously reported;

18 (4) no later than the second Monday in
19 October, a report of all expenditures made and contributions
20 received on or before the first Monday in October and not
21 previously reported; provided that if the second Monday of
22 October is a state holiday, the report shall be made on the
23 following day;

24 (5) no later than the Thursday before a
25 primary, general or statewide special election, a report of all

.222984.2

underscored material = new
[bracketed material] = delete

1 expenditures made and contributions received by 5:00 p.m. on
2 the Tuesday before the election and not previously reported.
3 Any expenditure that is made or contribution or pledge to
4 contribute that is received after 5:00 p.m. on the Tuesday
5 before the election and that is for more than one thousand
6 dollars (\$1,000) in a nonstatewide election, or more than three
7 thousand dollars (\$3,000) in a statewide election, shall be
8 reported to the secretary of state either in a supplemental
9 report on a prescribed form within twenty-four hours [~~of~~
10 ~~receipt~~] or in the report to be filed no later than the
11 Thursday before a primary, general or statewide special
12 election, except that any such expenditure that is made or
13 contribution or pledge to contribute that is received after
14 5:00 p.m. on the Friday before the election may be reported by
15 12:00 noon on the Monday before the election;

16 (6) no later than the thirtieth day after a
17 primary election, a report by all reporting individuals, except
18 those individuals that become candidates after the primary
19 election, of all expenditures made and contributions received
20 on or before the twenty-fifth day after the primary election
21 and not previously reported;

22 (7) no later than the thirtieth day after a
23 statewide special election, a report of all expenditures made
24 and contributions received on or before the twenty-fifth day
25 after the statewide special election and not previously

.222984.2

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

1 reported; and

2 (8) no later than January 7 after a general
3 election, a report of all expenditures made and contributions
4 received on or before December 31 after the general election
5 and not previously reported.

6 C. If a candidate, political committee, campaign
7 committee or public official has not received any contributions
8 and has not made any expenditures since the candidate's,
9 committee's or official's last report was filed with the proper
10 filing officer, the candidate, committee or official shall only
11 be required to file a statement of no activity, which shall not
12 be required to be notarized, in lieu of a full report when that
13 report would otherwise be due and shall not be required to file
14 a full report until the next required filing date occurring
15 after an expenditure is made or a contribution is received.

16 D. In an election year, a public official who is
17 not a candidate shall file biannual reports of expenditures
18 made and contributions received or statements of no activity in
19 accordance with the schedule provided for in Subsection A of
20 this section.

21 E. A report of expenditures and contributions filed
22 after a deadline set forth in this section shall not be deemed
23 to have been timely filed.

24 F. Except for candidates, campaign committees and
25 public officials who file a statement of no activity, each

.222984.2

underscored material = new
[bracketed material] = delete

1 candidate, campaign committee or public official shall file a
2 report of expenditures and contributions pursuant to the filing
3 schedules set forth in this section, regardless of whether any
4 expenditures were made or contributions were received during
5 the reporting period. Reports shall be required until the
6 reporting individual delivers a report to the secretary of
7 state stating that:

- 8 (1) there are no outstanding campaign debts;
- 9 (2) all money has been expended in accordance
10 with the provisions of Section 1-19-29.1 NMSA 1978; and
- 11 (3) the bank accounts have been closed.

12 ~~[G. If, during a nonelection year, a political~~
13 ~~committee has not received any contributions or made any~~
14 ~~coordinated or independent expenditures since it filed its last~~
15 ~~report pursuant to this section, it need not file any report~~
16 ~~under this section until the next reporting period, if any, in~~
17 ~~which it receives contributions or makes expenditures. A~~
18 ~~political committee that has not received any contributions or~~
19 ~~made any coordinated or independent expenditures for a~~
20 ~~continuous period of at least one year may cancel its~~
21 ~~registration as a political committee by submitting an~~
22 ~~appropriate request in writing to the secretary of state. The~~
23 ~~committee shall retain the obligation to submit a new~~
24 ~~registration pursuant to Section 1-19-26.1 NMSA 1978 in the~~
25 ~~event that its future activities meet the requisites for~~

.222984.2

underscored material = new
[bracketed material] = delete

1 ~~registration under that section.~~

2 ~~H.]~~ G. A reporting individual who is a candidate
3 within the meaning of the Campaign Reporting Act because of the
4 amount of contributions the candidate receives or expenditures
5 the candidate makes and who does not ultimately file a
6 declaration of candidacy or a nominating petition with the
7 secretary of state and does not file a statement of no activity
8 shall file biannual reports in accordance with Subsection A of
9 this section.

10 ~~[F.]~~ H. Reports required by this section shall be
11 subscribed and sworn to by the candidate or the treasurer of
12 the political committee or, in the case of candidates for
13 judicial office, by the treasurer of the candidate's campaign
14 committee. A report filed electronically shall be
15 electronically authenticated by the candidate or the treasurer
16 of the committee using an electronic signature in conformance
17 with the Electronic Authentication of Documents Act and the
18 Uniform Electronic Transactions Act. For the purposes of the
19 Campaign Reporting Act, a report that is electronically
20 authenticated in accordance with the provisions of this
21 subsection shall be deemed to have been subscribed and sworn to
22 by the candidate or the treasurer of the committee who was
23 required to file the report.

24 ~~[J.]~~ I. Reports required by this section shall be
25 filed electronically by all reporting individuals.

.222984.2

underscored material = new
[bracketed material] = delete

1 [~~K-~~] J. Reporting individuals may apply to the
2 secretary of state for exemption from electronic filing in case
3 of hardship, which shall be defined by the secretary of state."

4 **SECTION 4.** Section 1-19-29.1 NMSA 1978 (being Laws 1993,
5 Chapter 46, Section 6, as amended) is amended to read:

6 "1-19-29.1. CAMPAIGN FUNDS--LIMITATION ON USE.--

7 A. It is unlawful for a candidate or the
8 candidate's agent to make an expenditure of contributions
9 received, except for the following purposes or as otherwise
10 provided in this section:

11 (1) expenditures of the campaign;
12 (2) expenditures of legislators that are
13 reasonably related to performing the duties of the office held,
14 including mail, telephone and travel expenditures to serve
15 constituents, but excluding personal and legislative session
16 living expenses;

17 (3) donations to the state general fund;
18 (4) donations to an organization to which a
19 federal income tax deduction would be permitted under
20 Subparagraph (A) of Paragraph (1) of Subsection (b) of Section
21 170 of the Internal Revenue Code of 1986, as amended;

22 (5) expenditures to eliminate the campaign
23 debt of the candidate for the office sought or expenditures
24 incurred by the candidate when seeking election to another
25 public office covered by the Campaign Reporting Act;

.222984.2

underscored material = new
[bracketed material] = delete

1 (6) donations to a political committee or to
2 another candidate seeking election to public office covered by
3 the Campaign Reporting Act; or

4 (7) disbursements to return unused funds pro
5 rata to the contributors if no campaign debt exists.

6 B. It is unlawful for a candidate or the
7 candidate's agent to make an expenditure of contributions
8 received for the purpose of repaying a loan that is received
9 from the candidate and that includes a rate of interest.

10 [~~B-~~] C. A judge subject to a nonpartisan retention
11 election or a candidate for judicial office shall solicit or
12 accept campaign funds and return unused funds in accordance
13 with the provisions of the Code of Judicial Conduct.

14 [~~G-~~] D. No contributions solicited for or received
15 in a federal election campaign may be used in a state election
16 campaign."

17 SECTION 5. Section 1-19-31 NMSA 1978 (being Laws 1979,
18 Chapter 360, Section 7, as amended) is amended to read:

19 "1-19-31. CONTENTS OF REPORT.--Each required report of
20 expenditures and contributions shall be typed or printed
21 legibly, or on a computer disc or format approved by the
22 secretary of state, and shall include:

23 A. the name and address of the person or entity to
24 whom an expenditure was made or from whom a contribution was
25 received, except as provided for anonymous contributions or

.222984.2

underscored material = new
[bracketed material] = delete

1 contributions received from special events as provided in
2 Section 1-19-34 NMSA 1978; provided that for contributors, the
3 name of the entity or the first and last names of any
4 individual shall be the full name of the entity or individual,
5 and initials only shall not constitute a full name unless that
6 is the complete legal name;

7 B. the occupation, name and type of business, as
8 applicable, of any individual or entity making contributions of
9 two hundred dollars (\$200) or more in the aggregate per
10 election;

11 C. the amount of the expenditure or contribution or
12 value thereof;

13 D. the purpose of the expenditure;

14 E. the date that the expenditure was made or the
15 contribution was received;

16 F. the opening and closing cash balance for the
17 bank accounts maintained by the reporting individual during the
18 reporting period and the name of the financial institution for
19 each account; and

20 G. the amount of each unpaid debt and the identity
21 of the person to whom the debt is owed, the terms of any loan
22 that a candidate makes to the candidate's campaign committee
23 and evidence of any loan that a candidate makes to the
24 candidate's campaign committee."