AN ACT

RELATING TO PUBLIC ACCOUNTABILITY; ENACTING THE PUBLIC ACCOUNTABILITY ACT; CREATING THE NEW MEXICO ETHICS COMMISSION; PROVIDING FOR AN EXECUTIVE DIRECTOR; PROVIDING FOR THE ISSUANCE OF ADVISORY OPINIONS; REQUIRING PUBLICATION OF CERTAIN REPORTS; AUTHORIZING CERTAIN ACCOUNTABILITY AND ENFORCEMENT FUNCTIONS; PROVIDING FOR THE FILING, INVESTIGATION AND ADJUDICATION OF COMPLAINTS RELATED TO PUBLIC ACCOUNTABILITY; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Public Accountability Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Public Accountability Act:

A. "adjunct agency" means an agency, board,
commission, office or other instrumentality, not assigned to an
elected constitutional officer, that is excluded from any
direct or administrative attachment to a department of state
government and that retains policymaking and administrative
autonomy separate from any other agency of state government;

B. "breach" means an action that is a violation of
any of the laws listed in Section 6 of the Public
Accountability Act;

C. "commission" means the New Mexico ethics
commission;

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

E. "complaint" means a formal written assertion of
a breach;

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

G. "government contractor" means a person who has a
contract with a public body or who has submitted a bid for a
contract with a public body;

H. "instrumentality of the state" means the New
Mexico exposition center authority, New Mexico finance
authority, New Mexico industrial and agricultural finance
authority, New Mexico lottery authority, New Mexico mortgage
finance authority, New Mexico renewable energy transmission
authority, New Mexico state fair and water quality control
commission;

I. "lobbyist" means a person required to register
as a lobbyist pursuant to the Lobbyist Regulation Act;

J. "public body" means a department, commission,
council, committee or agency of the state; a political
subdivision of the state; or an instrumentality of the state;

K. "public employee" means a person employed by a
public body;

L. "public officer" means a person elected or
appointed to an office of or a position with a public body; but
"public officer" excludes judges;

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

N. "respondent" means a person whose conduct or
alleged breach is the subject of a complaint.

SECTION 3. [NEW MATERIAL] NEW MEXICO ETHICS COMMISSION
CREATED--MEMBERSHIP--TERMS--REMOVAL.--

A. The "New Mexico ethics commission" is created as
an adjunct agency under the direction of ten commissioners, no
more than five of whom may be members of the same political
party, appointed as follows:

(1) two commissioners appointed by the
governor, neither of whom shall be of the same political party;
and
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(2) as certified by the chief clerks of the respective chambers:
   (a) two commissioners appointed by the president pro tempore of the senate;
   (b) two commissioners appointed by the minority floor leader of the senate;
   (c) two commissioners appointed by the speaker of the house of representatives; and
   (d) two commissioners appointed by the minority floor leader of the house of representatives.

B. A commissioner shall:
   (1) be a qualified elector of the state;
   (2) not change, or within two years prior to appointment shall not have changed, political party affiliation; and
   (3) not be, or within the two years prior to appointment shall not have been, a state officer or employee in the executive or legislative branch of government, a registered lobbyist or a government contractor.

C. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial appointees shall be appointed such that each appointing authority appoints one commissioner for an initial term of two years and one commissioner for a term of four years. Thereafter, all commissioners shall be appointed for four-year
terms. Commissioners shall serve until their successors are appointed and qualified.

D. A person shall not serve as a commissioner for more than two consecutive terms. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

E. No action shall be taken by the commission unless at least six commissioners concur.

F. 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. The supreme court has exclusive jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed.

SECTION 4. [NEW MATERIAL] COMMISSIONERS--QUALIFICATIONS--LIMITATIONS.--

A. Before entering upon the duties of the office of commissioner, each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and shall file that oath of office with the secretary of state.

B. A commissioner shall not:
(1) seek or hold an office in a political organization required to report pursuant to the Campaign Reporting Act or a qualified political party;

(2) seek or hold elective office of a public body or an appointed position with a public body;

(3) be a public employee, government contractor or lobbyist;

(4) be employed or contracted by a political committee required to file reports pursuant to the Campaign Reporting Act or a person in that person's capacity as a candidate for public office;

(5) publicly endorse or publicly oppose a candidate for public office;

(6) make speeches on behalf of a political committee required to file reports pursuant to the Campaign Reporting Act; or

(7) make a contribution to a candidate or a political committee required to file reports pursuant to the Campaign Reporting Act without disclosing the contribution to the commission.

C. A violation of Subsection B of this section may be found to constitute malfeasance in office in a removal proceeding pursuant to Subsection F of Section 3 of the Public Accountability Act.

SECTION 5. [NEW MATERIAL] COMMISSION--DUTIES AND
POWERS.--

A. The commission shall:

1. meet as necessary to carry out its duties;
2. receive and investigate complaints;
3. hold hearings when necessary to determine whether there has been a breach as alleged in a complaint;
4. administer the applicable compliance provisions of the laws listed in Section 6 of the Public Accountability Act;
5. promulgate rules necessary to implement and administer the provisions of the Public Accountability Act and the applicable compliance provisions of the laws listed in Section 6 of that act;
6. compile, index, maintain and provide access to all advisory opinions and reports required to be made public pursuant to the Public Accountability Act;
7. compile, maintain and provide access to all codes of conduct filed with the commission in accordance with Section 10-16-11 NMSA 1978;
8. draft a proposed code of public accountability and submit the proposed code to each elected public officer and public body for their consideration;
9. appoint an executive director;
10. contract for professional services as necessary to carry out its duties;
have the authority to accept federal funds and other public or private grants to perform duties consistent with the Public Accountability Act; and

(12) prepare an annual report of its activities and report to the legislature its recommendations regarding state ethics or public accountability laws and the scope of the commission's powers and duties and the number of complaints received, dismissed, adjudicated and referred to other authorities.

B. The commission is limited in its authority to those powers granted by the Public Accountability Act or expressly granted in another applicable statute. In carrying out its responsibilities pursuant to the Public Accountability Act, the commission may:

(1) sue and be sued;
(2) initiate complaints;
(3) issue advisory opinions as provided in Section 9 of the Public Accountability Act; and
(4) designate committees of the commission to make recommendations for action to the commission.

SECTION 6. [NEW MATERIAL] COMMISSION JURISDICTION--COMPLIANCE PROVISIONS.--

A. The commission shall have concurrent jurisdiction to enforce the applicable civil compliance provisions of the:

.206908.9
(1) Campaign Reporting Act;
(2) Financial Disclosure Act;
(3) Gift Act;
(4) Procurement Code;
(5) Lobbyist Regulation Act;
(6) Voter Action Act;
(7) School District Campaign Reporting Act;
(8) Governmental Conduct Act; and
(9) Public Accountability Act.

B. The commission shall file any court action to enforce the civil compliance provisions of an act listed in Subsection A of this section in the district court of the county in which the respondent resides.

SECTION 7. [NEW MATERIAL] EXECUTIVE DIRECTOR--APPOINTMENT--DUTIES--POWERS--LIMITATIONS.---

A. The director shall be:

(1) a retired state judge or an attorney licensed to practice law in the state, who is knowledgeable about state laws related to public accountability;

(2) appointed without regard to qualified political party affiliation; and

(3) appointed, retained and reappointed solely on the grounds of fitness to perform the duties of the office.

B. The director shall hold office for a term commencing on the date of appointment through December 31 of .206908.9
the fourth even-numbered year following the director's
appointment.

C. Prior to the end of the director's term of
office, the director may only be removed by the commission for
cause and with the concurrence of at least six commissioners.

D. The director shall:
   (1) take the oath of office required by
   Article 20, Section 1 of the constitution of New Mexico and
   file that oath of office with the secretary of state;
   (2) devote the director's entire professional
time and attention to the duties of that office;
   (3) prepare an annual budget for the
   commission and submit it to the commission for approval;
   (4) make recommendations to the commission of
   proposed rules or legislative changes needed to provide better
   administration of the Public Accountability Act;
   (5) publish the commission's advisory opinions
   and annual reports and a list of persons who failed to file a
   report of expenditures and contributions or a statement of no
   activity or to pay a penalty imposed by the commission; and
   (6) at every meeting of the commission, report
   on the status of all open investigations and investigations
   closed since the commission's last meeting.

E. The director may:
   (1) hire a general counsel and additional
personnel necessary to enable the commission to carry out its duties; and

(2) enter into contracts and agreements on behalf of the commission.

F. The director shall not:

(1) seek or hold an office in a qualified political party; or

(2) seek or hold an elected office of a public body or an appointed position with a public body.

G. A director who seeks or holds an office or position as prohibited in Subsection F of this section is deemed to have resigned as director.

SECTION 8. [NEW MATERIAL] COMMISSIONERS--RECUSAL--DISQUALIFICATION.--

A. A commissioner shall recuse from and not participate in a commission proceeding in which the commissioner cannot render a fair and impartial judgment.

B. The commission may disqualify a commissioner who has not recused from a proceeding in which the commissioner cannot render a fair and impartial judgment with the concurrence of at least six commissioners.

C. The commission's disqualification of a commissioner may be found to constitute malfeasance in office in a removal proceeding pursuant to Subsection F of Section 3 of the Public Accountability Act.
D. If three or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall request the appointment of temporary commissioners from the original appointing authorities that appointed the recused or disqualified commissioners. Appointing authorities shall appoint temporary commissioners within twenty days of the request for appointment.

SECTION 9. [NEW MATERIAL] ADVISORY OPINIONS.--

A. The commission may issue advisory opinions on matters related to the laws listed in Section 6 of the Public Accountability Act. Advisory opinions shall:

(1) be requested in writing;

(2) present a question regarding whether the requester's conduct would violate any of the laws listed in Section 6 of the Public Accountability Act;

(3) be issued within sixty days of receipt of the request, unless the commission notifies the requester in writing of the delay and the reason for the delay, and continues to notify the requester in writing every thirty days until the advisory opinion is issued, which in all cases shall be within one hundred eighty days of the request; and

(4) be published on the commission's website after omitting the requester's name and identifying information.
B. A request for an advisory opinion and the research conducted to formulate the advisory opinion are confidential.

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.

SECTION 10. [NEW MATERIAL] COMPLAINTS--JURISDICTION--INVESTIGATIONS--SUBPOENAS--

A. A complaint alleging a breach may be filed with the commission by any person.

B. The complainant shall set forth in detail the specific allegations against the respondent and the facts that support the allegations. The complainant shall submit any available evidence that supports the complaint, including documents, records, names of witnesses and other evidence. The complaint shall be in writing, signed and sworn by the complainant and notarized.

C. Failure to satisfy a nonsubstantive requirement for filing a complaint does not invalidate the complaint.

D. The commission shall not accept or consider a complaint unless the complaint is filed within two years from the last date on which the alleged breach occurred or from the last date on which a reasonable person would have discovered the facts upon which the complaint is based.
E. The director shall determine whether the conduct alleged in the complaint is within the civil enforcement jurisdiction of the commission and warrants investigation.

F. The director shall recommend that the commission dismiss a complaint that is frivolous, unfounded or outside the commission's civil enforcement jurisdiction.

G. The commission shall issue findings if it dismisses a complaint as frivolous or unfounded and in all cases of dismissal shall notify the complainant and respondent of the dismissal and make public the findings.

H. The director shall seek a response from the respondent, and the complaint and response, if any, shall be made public within thirty days after receipt of the complaint. The director may request that the district court issue subpoenas requiring the attendance of witnesses or the production of books, records, documents or other evidence reasonably related to the investigation. If a person fails to comply with the subpoena, the director may apply to a district court for an order enforcing the subpoena and compelling compliance. The director may interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. A public employee or public official who is a respondent and was acting in an official capacity shall be entitled to representation by the risk management division of the general services department, a local risk management entity.
or other appropriate insurance carrier.

I. Within sixty days of the initiation of an investigation, the director shall, at a public meeting of the commission, recommend that the commission dismiss the complaint or schedule a hearing to adjudicate the complaint; provided that if the respondent is a candidate for office in a contested election, the commission shall complete the hearing process, if any, and issue its findings or decision at least twenty-nine days before the election.

J. 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. The procedures provided in this section and Section 11 of the Public Accountability Act shall be used if those procedures conflict with the procedures provided by any of the laws listed in Section 6 of that act.

SECTION 11. [NEW MATERIAL] PRE-HEARING DISPOSITION--COMMISSION HEARINGS--FINDINGS AND CONCLUSIONS--DISCLOSURE--APPEAL OF DISMISSAL.--

A. Upon the director's recommendation, the commission may:

(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 commission may, at a public meeting of the commission, approve a disposition of a complaint agreed to by the director and the respondent.

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. The respondent has the right to be represented by counsel. The parties may present evidence and testimony, compel the presence of witnesses and examine and cross-examine witnesses.

D. The commission shall issue a written report that shall include findings of fact and conclusions of law. If the commission finds by clear and convincing evidence that the respondent's conduct constituted a breach, the report may include a public reprimand or censure of the respondent or recommendations for disciplinary action against the respondent, and if at least seven commissioners find that the respondent's conduct constituted a willful breach, the commission shall impose any fines provided for by law.

E. The commission shall publicly disclose a report issued pursuant to Subsection D of this section. If the report concerns a willful breach, the commission shall provide the
report, along with all evidence presented to the commission, to
the respondent and the:

(1) speaker of the 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 body if the respondent
is a public employee;
(5) public body with which the respondent has
a government contract if the respondent is a government
contractor; or
(6) respondent's employer if the respondent is
a lobbyist.

F. The commission shall promulgate rules
establishing procedures for hearings.

SECTION 12. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--
A. Except as otherwise provided in the Public
Accountability Act, all records and communications collected or
generated by the director are confidential, unless:
(1) disclosure is necessary at a hearing or
meeting of the commission;
(2) disclosure is required pursuant to the
provisions of the Public Accountability Act; or

(3) they are offered into evidence at a
judicial, legislative or administrative proceeding.

B. Information and reports containing information
made confidential by law or that are exempt from disclosure
pursuant to the Inspection of Public Records Act shall not be
disclosed by the commission or its director, staff or
contractors.

SECTION 13. APPLICABILITY.--The provisions of the Public
Accountability Act apply to conduct that occurs on or after
July 1, 2019.

SECTION 14. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections
1 through 5 and 7 of this act is January 1, 2019.

B. The effective date of the provisions of Sections
6 and 8 through 13 of this act is July 1, 2019.