

STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE and ADMINISTRATION (DFA)  
JOINT POWERS AGREEMENT (JPA) BRIEF

DFA Office of the Secretary  
Bataan Memorial Bldg., Suite 180  
Santa Fe, New Mexico 87501  
(505) 827-4985

Agencies must complete and transmit this form along with all backup documentation to the DFA.

PRIMARY PARTY: State Ethics Commission  
SECONDARY PARTY: Secretary of State  
OTHER PARTY: \_\_\_\_\_  
CONTACT NAME: Jeremy Ferris PHONE: (505) 490 0951  
CONTACT ADDRESS: NASCC, 800 Bradbury Dr SE, Ste. 217, Albuquerque NM 87106

DOCUMENTS ENCLOSED:	AMOUNT:
<input checked="" type="checkbox"/> JPA	Federal Funds \$ _____
<input type="checkbox"/> JPA Amendment	General Fund \$ _____
<input type="checkbox"/> Purchase Document	Other State Funds \$ _____
<input type="checkbox"/> Written Justification	Local Gov. Funds \$ _____
<input type="checkbox"/> Other _____	TOTAL \$ _____

Purpose: To provide for shared authority for enforcement of Voter Action Act  
Term: Perpetuity From: DP& Execution To: Perpetuity

FOR AN AMENDMENT, LIST THE ORIGINAL JPA EXPIRATION DATE:

Statutory Requirements- Agencies must check each blank CERTIFYING to DFA that the JPA:

<input checked="" type="checkbox"/>	jointly exercises a power common to the parties ( <i>Transferring funds from one agency to another does not constitute the joint exercise of power.</i> );
<input checked="" type="checkbox"/>	clearly specifies its purpose;
<input checked="" type="checkbox"/>	establishes the method by which its purpose will be accomplished;
<input checked="" type="checkbox"/>	establishes the manner in which the joint power will exercised;
<input checked="" type="checkbox"/>	provides for strict accountability of all receipts and disbursement;
<input checked="" type="checkbox"/>	addresses disposition, division, distribution and ownership of any property acquired as the result of the joint exercise of power; and
<input checked="" type="checkbox"/>	specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements – Agencies must enter Y (Yes), N (No), or N/A (Not Applicable) to each of the following:

<u>Y</u>	Is one original and at least two copies of the JPA or amendment attached? ( <i>DFA will forward copies to the contact.</i> )
<u>Y</u>	Does the JPA or amendment have original signatures executed by authorized officers, employees or other representatives empowered to bind their respective entities?
<u>NA</u>	Are all exhibits referred to in the JPA attached?
<u>N</u>	Does the JPA provide for the expenditure or transfer of public funds by a state agency? ( <i>All public money must be budgeted.</i> )
<u>N</u>	Does the JPA provide for the transfer of local, state or federal funds to a state agency? If the answer is yes, cite or attach the legislative authority permitting the receiving state agency to increase its budget from such a transfer.
<u>N</u>	If the JPA or amendment start date is prior to the date submitted to DFA or, if the original JPA has expired, is a justification letter requesting retroactive approval attached? ( <i>A detailed, letter explaining the circumstances must be signed by the agency head of one of the parties.</i> )
<u>Y</u>	Has the JPA or amendment been reviewed by legal counsel? If yes, state Who <u>Tonya Herring (SOS)</u> <u>Walker Boyd (SAC)</u>

Agency Head Signature Jeremy Ferris Title Executive Director

**JOINT POWERS AGREEMENT**

**FOR SHARED JURISDICTION UNDER THE VOTER ACTION ACT BETWEEN  
THE NEW MEXICO STATE ETHICS COMMISSION  
AND  
THE NEW MEXICO SECRETARY OF STATE**

**THIS JOINT POWERS AGREEMENT** (“JPA”) is entered into by and between the New Mexico State Ethics Commission (“SEC”) and the New Mexico Secretary of State (“SOS”), collectively the “Parties.”

WHEREAS, the Parties are authorized by the Joint Powers Act, NMSA 1978, Sections 11-1-1 to -7 to enter into this Agreement;

WHEREAS, Article 5, Section 17 of the New Mexico Constitution creates the SEC;

WHEREAS, the Legislature enacted the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 through -16, and enabled the SEC;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(A)(5), confers on the SEC the jurisdiction to enforce the applicable civil compliance provisions of the Voter Action Act for public officials, public employees, candidates, persons subject to the Voter Action Act, government contractors, lobbyists and lobbyists’ employers;

WHEREAS, the Voter Action Act, NMSA 1978, Section 1-19A-15.1(1) confers on the SEC jurisdiction to investigate and adjudicate a complaint alleging a civil violation of the Voter Action Act;

WHEREAS, the Voter Action Act, NMSA 1978, Section 1-19A-15(A) requires the SOS to adopt rules to ensure effective administration of the Voter Action Act;

WHEREAS, the Voter Action Act, NMSA 1978, Section 1-19A-17(A), authorizes the SOS to determine whether a violation of the Voter Action Act has occurred;

WHEREAS, under the Voter Action Act, NMSA 1978, Section 1-19A-15.1(A)(2), and the State Ethics Commission Act, NMSA 1978, Sections 10-16G-9(B), the SOS shall forward complaints it receives alleging violations of the Act to the SEC in accordance with an agreement between the Parties;

WHEREAS, the Voter Action Act, NMSA 1978, Section 1-19A-15.1(2) provides that the SEC shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the SOS as formalized through an agreement;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Sections 10-16G-9(E) provides that the SEC may share jurisdiction with other public agencies, including the SOS, having authority to act on any aspect of a complaint, and that such shared jurisdiction shall be formalized through an agreement;

WHEREAS, the Parties seek to jointly cooperate in the enforcement and administration of the Voter Action Act and the State Ethics Commission Act;

WHEREAS, the Parties agree that it is in their best interests to delineate the shared jurisdiction conferred on them by the Voter Action Act and the State Ethics Commission Act through this Joint Powers Agreement;

WHEREAS, the Parties enter into this JPA to facilitate the Parties' concurrent jurisdiction over the Voter Action Act, as contemplated by NMSA 1978, Sections 1-19A-15.1(A)(2) and 10-16G-9(C)-(E).

**NOW, THEREFORE**, the Parties agree as follows:

**I. DEFINITIONS.**

A. Complainant: a person, who files an external complaint with the SOS or the SEC alleging a violation of the Voter Action Act;

B. Respondent: a person against whom a complaint alleging a violation of the Voter Action Act has been filed;

C. Internal Compliance Violation: a violation of the Voter Action Act that the SOS identifies through its administration of the Voter Action Act, and not through the filing or referral of an external complaint, and which the SOS determines pursuant to the SOS's authority under NMSA 1978, Section 1-19A-17(A).

D. External Complaint: a complaint alleging a violation of the Voter Action Act, which is not generated by the SOS and is filed by a Complainant. External complaints do not include appeals made pursuant to NMSA 1978, Section 1-19A-16.

**II. PARTIES' SHARED JURISDICTION.** The Parties' shared jurisdiction to investigate, adjudicate, and enforce the provisions of the Voter Action Act will be administered according to the following provisions.

A. External Complaints: Where an external complaint alleging a Voter Action Act violation is filed with the SOS or the SEC or contemporaneously with both the SOS and the SEC, the following procedures will apply:

1. If the SEC receives any written complaint alleging a violation of the Voter Action Act, the SEC shall forward that part of the complaint alleging the Voter Action Act violation to the SOS, and the SEC shall promptly inform the complainant and the respondent that the complaint has been referred under the terms of this JPA, as authorized by NMSA 1978, Section 10-16G-9(D).

2. If a complaint alleging a Voter Action Act violation is filed contemporaneously with the SOS and the SEC, the SEC will hold in abeyance any action on the complaint until the SOS has determined whether there is a violation of the Voter Action Act.

3. In accordance with its authority under NMSA 1978, 1-19A-17(A), the SOS will review all external complaints and complaints referred by the SEC that allege a violation of the Voter Action Act.

4. After the SOS has reviewed the written complaint and if applicable, any response provided by the respondent, the SOS will make a determination, within 30 days, as follows:

- a) no Voter Action Act violation has occurred;
- b) a violation of the Voter Action Act has occurred; or
- c) the SOS is unable to make a determination because further investigation and/or fact-finding are needed.

5. If the SOS determines that no violation of Voter Action Act has occurred, the SOS will send its written determination to the complainant and the respondent, and will forward a copy of the complaint and the "no violation" determination to the SEC.

6. If, pursuant to its Section 1-19A-17(A) authority, the SOS determines that a violation of the Voter Action Act has occurred, then the SOS may impose a civil penalty under the act. The SOS shall promptly inform the complainant, the respondent, and the SEC of the SOS's determination and imposition of a penalty. If the respondent fails to comply with the SOS's imposition of the civil penalty, then the SOS may refer the matter to the SEC for potential civil enforcement in district court, pursuant to NMSA 1978, Section 10-16G-9(F).

7. If, after reviewing the complaint forwarded by or also received by the SEC, the SOS is unable to determine whether the respondent has violated the Voter Action Act, then the SOS shall return to the SEC a copy of the complaint and any responding documentation, if available, for the SEC's use in investigating and adjudicating the complaint in accordance with NMSA 1978, Section 1-19A-15.1(A). The SOS will also forward to the SEC any correspondence between the SOS and any person alleged to have committed a Voter Action Act violation.

8. If, after reviewing a complaint that was neither referred by nor also received by the SEC, the SOS is unable to determine whether the respondent has violated the Voter Action Act, then the SOS shall forward to the SEC a copy of the complaint and any responding documentation, if available, for the SEC's use in investigating and adjudicating the complaint in accordance with NMSA 1978, Section 1-19A-15.1(A). The SOS will also forward to the SEC any correspondence between the SOS and any person alleged to have committed a Voter Action Act violation.

B. Internal Compliance Violations. For any violation of the Voter Action Act that the SOS identifies through its administration of the Voter Action Act, and not through the filing or referral of an external complaint, and which the SOS determines pursuant to its authority under NMSA 1978, Section 1-19A-17(A), the following procedures shall apply:

1. The SOS may impose a civil penalty under NMSA 1978, Section 1-19A-17(A).

2. If the person against whom the SOS imposed a civil penalty fails to comply with the SOS's imposition of the civil penalty, then the SOS may refer the matter to the SEC for potential civil enforcement in district court, pursuant to NMSA 1978, Section 10-16G-9(F).

C. Appeals of SOS certification decisions under NMSA 1978, § 1-19A-16. If the SEC receives any complaint, filing, or submission that the SEC interprets as an appeal, pursuant to NMSA 1978, Section 1-19A-16, of an SOS certification decision, or a decision regarding the distribution of matching funds, then the SEC shall promptly forward that appeal to the SOS. If the SOS revokes a candidate's certification or concludes, pursuant to NMSA 1978, 1-19A-16(D) that an appeal was made frivolously or to result in delay or hardship, and, consequent to that conclusion, sanctions the moving party by requiring the party to pay costs of the administrative hearing, the court hearing and the opposing parties, and if the sanctioned party does not comply with the sanction, then the SOS may refer the matter to the SEC for potential civil enforcement in district court, pursuant to NMSA 1978, Section 10-16G-9(F). If a candidate appeals the decision of the SOS to the district court the SOS will refer the case to the SEC.

D. Concurrent Jurisdiction: To facilitate concurrent jurisdiction over complaints that are separately or contemporaneously filed with the Parties, the SOS will forward to the SEC on a monthly basis, a list of the complaints they have received alleging a civil violation of a provision of the Voter Action Act.

1. The SEC and the SOS will confer at least monthly to review the list of complaints forwarded by the SOS to the SEC and those complaints jointly received by both Parties.

2. The SEC will forward to the SOS the disposition of any complaint alleging a violation of the Voter Action Act.

**III. TRAININGS.** The SEC may offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons under the State Ethics Commission Act, Section 10-16G-5(C)(5). The SOS is mandated to publish guidelines outlining permissible campaign-related expenditures and penalties for violations under the Voter Action Act, NMSA 1978, Section 1-19A-9(A). The Parties will coordinate and cooperate when appropriate on ethics training and/or education for SEC members, other public officials, reporting individuals or interested parties as related to the Voter Action Act.

**IV. TERM AND TERMINATION.** This JPA is effective as of the date of the DFA Cabinet Secretary's signature. It shall continue in full force in perpetuity, unless amended or terminated by either Party, which termination shall be accomplished by a Party giving the other Party a minimum of thirty (30) days' advance written notice of the termination.

**V. PROPERTY DISPOSITION.** There will not be any property acquired by either Party under the terms of this JPA. If the Parties acquire any property or funds related to this JPA then “after the completion of the agreement’s purpose any surplus money on hand shall be returned [to the respective Party] in proportion to the contributions made.” NMSA 1978, Section 11-1-4(F).

**VI. RECORDS.** Records acquired during the term of this JPA will be public records and subject to public disclosure under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 12, and the State Ethics Commission Act, Sections 10-16G-1 to 16.

**VII. RESPONSIBILITY.** The SEC and the SOS will be responsible for their own actions under all applicable law and regulations.

**VIII. FINANCIAL CONTRIBUTION.** There shall not be a financial contribution by or to either Party under the terms of this JPA unless otherwise agreed to in writing.

**IX. AMENDMENTS.** The JPA shall not be changed, altered or amended except by an instrument in writing executed by the Parties and with agreement of both Parties and approved by the Department of Finance and Administration.

**X. APPROPRIATIONS.** The Legislature has not appropriated funds to either Party to manage the JPA.

**XI. RESERVATION OF POWER.** Nothing in this agreement may be construed to limit the SEC’s power to initiate a civil action in district court under NMSA 1978, Section 10-16G-9(F) or any investigation related to the exercise of that power.

**XII. THIRD PARTY BENEFICIARIES.** The benefits of the JPA inure only to the Parties. No third party beneficiaries are anticipated or specified under the JPA.

**XIII. GOVERNING LAW.** The JPA shall be governed by the laws of the State of New Mexico.

**XIV. WRITTEN NOTICE.** All notices, demands, requests, consents, and approvals required or permitted to be given pursuant to this JPA will be in writing signed by the notifying party or its agent(s) and will be deemed effective upon delivery or receipt. Parties to be given written notice as necessary are as follows:

State Ethics Commission:  
Jeremy D. Farris, Executive Director  
800 Bradbury Dr. SE, Suite 217  
Albuquerque, NM 87106

Office of the Secretary Of State:  
Maggie Toulouse Oliver, Secretary of State  
325 Don Gasper, Suite 300  
Santa Fe, NM 87501

**XV. AGREEMENT BINDING ON SUCCESSORS.** This JPA shall be binding upon the successors and assigns of the parties hereto.

**XVI. SEVERABILITY.** If any provision of this JPA is held invalid, the remainder of this JPA shall not be affected thereby and such remainder would constitute the Agreement, unless the provision held invalid was such as to make the fulfillment of the purpose of this JPA impossible or impracticable.

**XVII. TORT CLAIMS ACT.** By entering into this JPA, the parties and their "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Section 41-1-4 et seq. do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision in this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

**XVIII. EXECUTION.** This JPA shall be executed in three (3) originals.

IN WITNESS WHEREOF, the parties have executed this JPA which becomes effective as of the date of approval by the Department of Finance and Administration.

By: Maggie Toulouse Oliver  
Maggie Toulouse Oliver  
Secretary of State

Date: 12/12/19

By: Jeremy D. Farris  
Jeremy D. Farris  
State Ethics Commission, Executive Director

Date: 12/12/19

APPROVED:

Department of Finance and Administration  
Olivia Padilla-Jackson  
Olivia Padilla-Jackson, Cabinet Secretary

Date: 12/20/19