

SEC COMMISSION MEETING

October 2, 2020

PUBLIC MATERIALS PACKET

TABLE OF CONTENTS

Agenda for October 2, 2020 Meeting	1
2020-09-14 Commission Meeting Minutes	4
Draft Advisory Opinion 2020-07	6
Draft Advisory Opinion 2020-08	15
Proposed Rules 1.8.1 & 1.8.4 NMAC (with Commission edits)	22
Concise Explanatory Statement for 1.8.1 Amendments	31
Concise Explanatory Statement for 1.8.4	39
New Mexico Ethics Watch Presentation Materials	53



STATE ETHICS COMMISSION

Hon. William F. Lang, Chair
Jeff Baker, Member
Stuart M. Bluestone, Member
Hon. Garrey Carruthers, Member
Ronald Solimon, Member
Dr. Judy Villanueva, Member
Frances F. Williams, Member

October 2, 2020, 9:00 a.m. to 3:00 p.m.

Zoom Meeting

Join Zoom meeting over the internet (browser or Zoom app):
<https://us02web.zoom.us/j/88271049650?pwd=RVAvYXN6Z2dmdWFFVlFXT3JzTmRodz09>

Join telephonically: (669) 900-9128 + Dial-in passcode: 979354,
meeting id: 882 7104 9650; Online Passcode: 1GsXpc

COMMISSION MEETING & PUBLIC RULE HEARING

Chairman Lang Calls the Meeting to Order

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes of September 14, 2020 Commission Meeting

<u>Commission Meeting Items</u>	<u>Action Required</u>
4. Presentation to the Commission by Mayor of Espanola, Javier E. Sánchez	No
5. Presentation to the Commission by New Mexico Ethics Watch (<i>Kathleen Sabo and Tony Ortiz</i>)	No
6. Advisory Opinion 2020-007 (<i>Boyd</i>)	Yes
7. Advisory Opinion 2020-008 (<i>Farris</i>)	Yes

Beginning of Public Rule Hearing

NMSA 1978, § 14-4-5.3 & 1.24.25.13 NMAC

- | | |
|---|----|
| 7. Executive Director presents (i) any written public comments received regarding amendments to Rules 1.8.1.9-10 (informal advisory opinions) and 1.8.1.16 (Commission meetings) and proposed Rule 1.8.4 (code of ethics); and (ii) Commission staff recommended amendments to proposed rules | No |
| 8. Public comment on amendments to Rules 1.8.1.9-10 (informal advisory opinions) and 1.8.1.16 (Commission meetings) and proposed Rule 1.8.4 (code of ethics) | No |

End of Public Rule Hearing & Continuation of Commission Open Meeting for Actions on Rules and Other Matters

1.24.25.14(D) NMAC

-
- | | |
|--|-----|
| 9. Adoption of amendments to Rules 1.8.1.9-10 (informal advisory opinions) and 1.8.1.16 (Commission meetings)
(<i>Farris</i>) | Yes |
| 10. Adoption of proposed Rule 1.8.4 (code of ethics)
(<i>Farris</i>) | Yes |

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)

- | |
|---|
| 11. Discussions regarding Administrative Complaints
(<i>Farris & Boyd</i>) |
| a. Administrative Complaint No. 2020-032 |

Upon applicable motion, Commission returns from Executive Session

-
- | | |
|---|-----|
| 12. Actions on Administrative Complaints
(<i>Farris</i>) | Yes |
| a. Administrative Complaint No. 2020-032 | |
| 13. Determination of next meeting
(<i>Lang</i>) | No |
| 14. Public comment | No |

15. Adjournment

For inquiries or special assistance, please contact Sonny Haquani at Ethics.Commission@state.nm.us

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



Hon. William F. Lang
Jeff Baker
Stuart M. Bluestone
Hon. Garrey Carruthers
Ron Solimon
Judy Villanueva
Frances F. Williams

STATE ETHICS COMMISSION

Commission Meeting Minutes of September 14, 2020 | 4:00pm-5:00pm

Virtually Via Zoom

[View Recording Here](#)

[SUBJECT TO RATIFICATION BY COMMISSION]

1. CALL TO ORDER AND ROLL CALL:

The meeting was called to order by Chair Lang. The roll was called. The following Commissioners were present:

Jeffrey Baker, Commissioner
Stuart Bluestone, Commissioner
Hon. Garrey Carruthers, Commissioner
Ron Solimon, Commissioner
Judy Villanueva, Commissioner
Frances Williams, Commissioner
Hon. William Lang, Chair

Note: Commissioner Bluestone attended the first half of the meeting telephonically and the second half via Zoom.

2. APPROVAL OF AGENDA:

Chair Lang sought a motion to approve the agenda. Commissioner Williams moved to approve the agenda. Commissioner Solimon seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the agenda was approved unanimously.

3. APPROVAL OF AUGUST 28, 2020 COMMISSION MEETING MINUTES:

Chair Lang sought a motion to approve the minutes of the August 28, 2020 meeting. Commissioner Solimon moved to approve the minutes; Commissioner Villanueva seconded. Chair Lang conducted a roll-call vote. All other commissioners voted in the affirmative, and the minutes were approved.

4. EXECUTIVE SESSION

- Chair Lang sought a motion to enter a closed executive session to discuss pending administrative complaints pursuant to the Open Meetings Act, NMSA 1978, § 10-15-1(H)(3), and the State Ethics Commission Act, NMSA 1978, §§ 10-16G-10 & 13(B). Commissioner Baker moved to enter executive session; Commissioner Williams seconded. Chair Lang conducted a roll-call vote.

All commissioners voted in the affirmative, and the Commission entered closed executive session at 4:06pm.

- The Commission discussed the following matters during executive session:
 - o Discussion related to potential civil enforcement actions under the Campaign Reporting Act (CRA) (Farris & Boyd)
- The matters discussed in the closed meeting were limited only to those specified in the motion to enter executive session. After concluding its discussion of these matters, the Commission resumed public session.

The Commission re-entered open public session at 4:48pm.

5. ACTIONS RELATED TO POTENTIAL ENFORCEMENT OF THE CRA

- Director Farris sought a motion to send a demand letter and authorization to file a civil enforcement action under the Campaign Reporting Act, and to memorialize that authorization by way of a resolution that would be attached to a complaint if and when filed in state court.
- Commissioner Carruthers moved to authorize the filing of a civil enforcement action against the Committee to Protect New Mexico Consumers; Commissioner Solimon seconded. Chair Lang conducted a roll-call vote and the Commissioners voted as follows:
 - o Commissioner Baker, Yes
 - o Commissioner Bluestone, Yes
 - o Commissioner Carruthers, Yes
 - o Commissioner Solimon, Yes
 - o Commissioner Villanueva, No
 - o Commissioner Williams, Yes
 - o Chair Lang, Yes

6. PUBLIC COMMENTS

Members of the public were invited to provide comments to the Commission.

- **Nat Dean** stated that the state needed to improve accessibility accommodations within the judicial system for those who suffer from traumatic brain injuries.
- No other public comments were offered.

7. ADJOURNMENT

Chair Lang sought a motion to adjourn. Commissioner Bluestone moved to adjourn; Commissioner Williams seconded. Chair Lang conducted a roll-call vote. All Commissioners voted in the affirmative, and the meeting was adjourned.

[SUBJECT TO RATIFICATION BY COMMISSION]



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2020-07

October 2, 2020¹

QUESTION PRESENTED

Some members of the New Mexico Council for Purchasing from Persons with Disabilities (“Council”) are not employed by the state. Can those Council members participate in the Council’s vote to award State Use Act contracts to themselves or companies they own? If not, what actions should the Council take to ensure its members do not engage in such acts of self-dealing?

FACTS²

The State Use Act, NMSA 1978, §§ 13-1C-1 to -7 (2005) (“Act”) “encourage[s] and assist[s] persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements.” § 13-1C-2. The Act is inspired by the Wagner-O’Day Act of 1938, which established a federal preference for the disabled in certain categories of public procurements. *See* Wagner-O’Day Act of 1938, Pub. L. No. 739, ch. 697, 52 Stat. 1196, 1196 (1938) (codified as amended at 41 U.S.C.

¹This 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 acts in good faith and in reasonable reliance on the opinion. NMSA 1978, § 10-16G-8(C).

²The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue.” *See* NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)).

§§ 8501-8506 (2018)); *see generally* Christopher McCrudden, *Using public procurement to achieve social outcomes*, 28 Nat. Res. Forum 257, 258 (2004) (providing a history of procurement preferences for disabled workers in the United States).

The Act establishes the Council, which is comprised of:

1. the state purchasing agent or their designee;
2. two persons who represent state agencies that purchase significant amounts of goods and services from the private sector;
3. a state-employed vocational rehabilitation counselor who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services;
4. two persons with disabilities;
5. a person who is familiar with employment needs of persons with disabilities and with current pricing and marketing of goods and services; and
6. two persons who represent community rehabilitation programs that provide employment services to persons with disabilities.

See § 13-1C-4(A). “Except for the regular pay of public employee members, council members shall serve without compensation or cost reimbursement.” § 13-1C-4(D). While the State compensates Council members in categories 1-3 by virtue of their qualifications, the State neither compensates nor reimburses Council members in the remaining categories. *Id.*

In general, under the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended 2019), state agencies and local public bodies procure services from third parties through invitations to bid or requests for proposals. *See* Advisory Opinion No. 2020-04, at 3 (June 5, 2020) (explaining how state agencies procure goods and services). But the Act establishes a preference for services providers who employ persons with disabilities. *See* § 13-1C-7(A). Procurements under the Act are “exempt from the provisions of the Procurement Code.” *Id.*

The Council implements the Act’s procurement preference by “determin[ing] which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies[.]” § 13-1C-5(A)(1)-(2). After identifying suitable services, the Council determines the prices of those services, balancing the need to provide the “best value for state agencies and local public bodies” against “the benefits associated with employing persons with disabilities[.]” § 13-1C-5(A)(3); *see also* § 13-1C-7(A) (noting the Council’s authority to establishes prices for

eligible services). The Council establishes a procedure “to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies” and to place qualified programs or individuals on the list of suitable services. § 13-1C-5(A)(4).

A state agency or local public body does not directly contract for services with qualified community rehabilitation programs or other persons. Instead, the Council “establish[es] a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies” among other things. *See* § 13-1C-5(A)(1), (5). Thus, a state agency procuring services under the Act does not contract directly with the Council or a qualified provider of services; instead, the central nonprofit agency “hold[s]” the contract with the state agency and subcontracts for services from qualified programs or individuals, thereby “facilitat[ing] the equitable distribution of orders for services” among qualified programs or individuals.

According to the request, “a few years ago there were Council members who voted to approve contracts for hundreds of thousands of dollars that directly benefited themselves and their own companies.” The Commission’s limited understanding of the situation is as follows: a state agency had procured services through a request for proposals. After a contract had been awarded to the winning offeror, a Council member contacted and informed the agency that the services the agency had procured were on the Council’s list of services suitable for provision by the central nonprofit. The agency canceled the procurement and obtained the services from the central nonprofit. The central nonprofit selected a company owned by the Council member, and the Council member voted to approve the award.

The request states: “[w]hen professionalism is [so] compromised . . . the question of what recourse the Council might have arises because the [Governmental Conduct Act] does not apparently apply to certain members [of the Council].” The request asks the Commission to opine on whether “there is an ethical loophole in the [Governmental Conduct Act], whether or not these facts would violate any statute or rule,” and to provide “recommendations on possible solutions which may include among others, legislative action for a statutory change, an administrative rule, or a policy action.”

ANSWER

Self-dealing by non-state-employed Council members does not violate the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended

2019), or the Procurement Code.³ If the Council wishes to prohibit a member from participating in a decision to award a contract to the member or a company the member owns, the Council can (1) amend its rules to eliminate Council votes on individual contract awards; (2) amend its rules to require conflicted Council members to recuse from votes affecting their financial interests; or (3) suggest amendments to the Act that would subject the Council’s contract award decisions to the Procurement Code’s conflict-of-interest provisions.

ANALYSIS

We appreciate the diligence and ethical concerns expressed by the requester in bringing this matter to our attention. We also agree with their expression that when self-dealing like that described occurs, “professionalism is . . . compromised,” and when that occurs in our judgment public confidence in the ethical operation of government suffers. We are nevertheless constrained by the laws under which we operate only to determine if a law currently in effect has been violated, not whether we believe every action we may be asked about is ethical.

Given that limitation, we are compelled to conclude that self-dealing by non-state-employed Council members, while it may offend a sense of morality, does not, as the law is currently written, violate the Governmental Conduct Act. Most of the members of the Council do not receive compensation or cost reimbursements from the state, and therefore are not subject to the Governmental Conduct Act’s conflict-of-interest provisions or the Financial Disclosure Act’s disclosure requirements. Similarly, the Act exempts contracts awarded pursuant to that Act from the provisions of the Procurement Code. As a result, the Procurement Code’s conflict of interest provisions also do not prohibit a Council member from participating in an award of a contract subject to the Act. To address the potential for self-dealing, the Council should consider either amending its rules so that Council members are no longer involved in approving or disapproving specific contracts, or by

³The Commission notes that self-dealing by non-state-employed Council members might violate the criminal code’s kickback or unlawful-interest-in-public-contract provisions. *See* NMSA 1978, § 30-41-1 (kickbacks); *see also* NMSA 1978, § 30-23-6 (unlawful interest in public contract). The Commission, however, will not opine on the applicability of the criminal code to facts presented in a request for an advisory opinion. Under NMSA 1978, Section 10-16G-8(A), the Commission may issue advisory opinions “on matters related to ethics.” “Such ‘matters related to ethics’ are both informed and circumscribed by the nine laws that the Commission currently may enforce.” State Ethics Comm’n, Advisory Op. No. 2020-05, at 1 n.2 (Aug. 7, 2020).

recommending amendments to the Act which subject the Council's members to the Procurement Code's conflict-of-interest prohibitions.

1. Governmental Conduct Act

As the request notes, Council members are required to serve "without compensation or cost reimbursement," § 13-1C-4(D); as such, they do not fall within the Governmental Conduct Act's definition of "public officer or employee." See § 10-16-2(I) (defining "public officer or employee" as "any elected or appointed official or employee of a state agency or local government agency *who receives compensation in the form of salary or is eligible for per diem or mileage* but excludes legislators") (emphasis added). This means that a Council member who is not otherwise employed or receiving compensation from the State would not be subject to the Governmental Conduct Act's conflict-of-interest prohibitions. Cf. §§ 10-16-3(A) (prohibiting a "public officer or employee" from using "the powers and resources of public office . . . to obtain personal benefits or pursue private interests").⁵

The Governmental Conduct Act also prohibits a state agency from entering into a contract

with a public officer or employee of the state, with the family of the public officer or employee[,] or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process.

§ 10-16-7(A). But this prohibition does not apply to State Use Act contracts involving uncompensated and unreimbursed Council members for two reasons. First, an uncompensated and unreimbursed Council member is not a "public officer

⁵A Council member who receives compensation from the state in the form of salary or per diem would be subject to the Governmental Conduct Act and, therefore, is precluded from voting to award a contract that implicates a financial interest. See NMSA 1978, §§ 10-16-3(A) & 10-16-7(A).

or employee” as defined by the Governmental Conduct Act. § 10-16-2(I).⁶ Second, under the Act, the designated “central nonprofit agency” holds contracts, not the Council. *See* § 13-1C-5(A)(5). State agencies contract with the central nonprofit agency, not with a business in which the Council member has a substantial interest. *See id.*

2. Procurement Code

The Procurement Code separately provides that it is “unlawful for any state agency or local public body employee, as defined in the Procurement Code, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee’s immediate family has a financial interest in the business seeking or obtaining a contract.” *See* § 13-1-190(A). The Procurement Code defines “employee” broadly, such that the term encompasses all Council members. *See* § 13-1-54 (defining “employee” as “an individual receiving a salary, wages or per diem and mileage from a state agency or a local public body whether elected or not and any noncompensated individual performing personal services as an elected or appointed official or otherwise for a state agency or a local public body.”). Yet, the Procurement Code’s conflict-of-interest section is unavailing because procurements under the Act are exempted from the requirements of the Procurement Code. *See* § 13-1C-7(A); *see also* § 13-1-98(Z) (exempting from the Procurement Code any “procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act”). Accordingly, the Procurement Code’s conflict-of-interest prohibition does not extend to a decision by a Council member to award a subcontract to themselves or to a company in which they have a financial interest.

3. Suggested amendments to Council rules or statutes

The request states that the Council currently functions under a kind of honor system: members are expected (but not required) to recuse themselves from votes “regarding contracts that might directly affect their businesses[.]” The request asks the Commission to opine on how the Council should pursue a more formal prohibition against conflicted transactions.

⁶Uncompensated and unreimbursed council members are not subject to the disclosure requirements of the Financial Disclosure Act for the same reason. Under the Financial Disclosure Act, only state officials or employees who receive compensation in the form of salary or per diem and mileage are subject to its requirements. *See* NMSA 1978, §§ 10-16A-2(F).

In large part potential conflicts of interest stem from the Council’s own rules, which give Council members the authority to approve or disapprove specific contracts. Specifically, the Council’s rules state the Council’s “authority to make final contract distribution decisions,” ostensibly to ensure that contracts are distributed to “as broad a base of eligible participants as possible . . . as well as any other unique factors or special circumstances.” *See* 2.40.5.14(A), (B) NMAC. The Act, by contrast, does not directly confer on the Council express authority to approve specific contracts. *See* § 13-1-5(A). Nor is it obvious that the Act implies that authority. *See id.* Rather, the Act endows the Council with authority to adopt rules that “determine which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies” and “establish a procedure to certify eligible community rehabilitation programs and qualified individuals that have services suitable for procurement by state agencies and local public bodies” §§ 13-1C-5(A)(1), (A)(4). The Act seems to contemplate that individual contracts are the business of “a central nonprofit agency,” which “hold[s] contracts [and] facilitate[s] the equitable distribution of orders for services to be procured by state agencies and local public bodies” § 13-1C-5(A)(5).⁷

The requester has asked the Commission to offer recommendations that would prevent Council members from approving contracts involving their own financial interests. The Commission commends this request and the concern it demonstrates for governmental ethics. In the Commission’s view, this can be accomplished in several ways:

First, the Council’s four state-employee members could recuse from any vote to approve a contract in which *any* Council member has a financial interest. Such a recusal policy might deter other, non-state-employee Council members from voting to approve any contract that involves self-dealing. Furthermore, the refusal of state-employee Council members to vote on any contract that implicates a financial interest of any Council member is entirely consistent with the duties that Section 10-16-3 of the Governmental Conduct Act requires of public employees to “use the

⁷Horizons of New Mexico is the nonprofit entity selected by the Council to hold contracts and perform other functions assigned to the “central nonprofit agency” under the Act. § 13-1C-5(A)(5). But Horizons of New Mexico has an unclear status. Its website lists members of the Council on its “About Us” page. *See* Horizons of New Mexico, *About Us*, <http://horizonsofnewmexico.org/about.html> (last accessed October 1, 2020). Horizons of New Mexico, however, uses the same Federal tax identification number as Workquest, a Texas-based 501(c)(3) nonprofit.

powers and resources of public office only to advance the public interest” and to disclose “real or potential conflicts of interest.” § 10-16-3(A) & (B).

Second, the Council could amend its rules so that its members no longer exercise approval authority over individual contracts. These amendments are arguably required by the Act, which gives the Council explicit authority only to determine which services are suitable for provision and set eligibility criteria for service providers and which accord on the “central nonprofit agency” the role of “hold[ing] contracts” and “facilit[ating] the equitable distribution of orders for services” provided by qualified programs and individuals. § 13-1C-5(A)(5); *see generally* § 13-1C-5(A) (providing the Council’s rulemaking authority); *N.M. Bd. of Pharmacy v N.M. Bd. Of Osteopathic Medical Examiners*, 1981-NMCA-034, ¶ 8, 95 N.M. 780, 626 P.2d 854 (“An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.”). These amendments would leave individual acts of contracting to the procuring state agency or local public body, the central nonprofit, and the subcontracted, qualified service provider—perhaps restoring the scheme contemplated by the statute.

Third, even if the Council retains authority over contract approvals, the Council could nevertheless amend its rules to prohibit its members from participating in votes to approve or disapprove specific contracts. *See* § 13-1C-5(A)(7) (giving Council the authority to “adopt rules . . . [to] address any other matter necessary to *the proper administration* of the State Use Act”) (emphasis added). As compared to the foregoing option, this amendment would perhaps require less sweeping changes to the Council’s practices. This option, however, would require Council members to make detailed financial disclosures to enable meaningful enforcement.

Fourth, at the Council’s request, the Commission could ask the legislature to amend the Act, either to include a specific recusal requirement for Council members for conflicted transactions, or to incorporate the conflict-of-interest prohibitions in the Governmental Conduct Act or the Procurement Code by reference.⁸ These statutory amendments would enable law enforcement agencies such as the State Ethics Commission or the Office of the Attorney General to investigate potential violations. Enforcement would likely arise from violations reported by Council

⁸Under the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019), the Commission must make an annual report, which includes “any recommendations regarding state ethics laws . . . in December of each year to the legislature and the governor.” § 10-16G-5(B)(5).

members or disappointed third-party vendors that sought procurement from state agencies or local public bodies.

CONCLUSION

We commend the requester for bringing these ethical concerns to our attention. We also share the stated concern about the dangers of self-dealing in public procurement. We can opine, however, only about what the law currently provides rather than offering general views of what we believe is moral or ethical. Given that, we are constrained to conclude that the Governmental Conduct Act and the Procurement Code do not, as currently written, prohibit a Council member from voting to approve a contract subject to the Act between a state agency or local public body and the Council member or a company in which the Council member has a financial interest. To remedy this gap, the Council could either amend its rules or recommend to the legislature (through or in concert with the Commission) that the legislature extend the Procurement Code's conflict-of-interest prohibition to Council members by appropriate statutory amendment.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFF BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. GARREY CARRUTHERS, Commissioner

RONALD SOLIMON, Commissioner

JUDY VILLANUEVA, Commissioner

FRANCES F. WILLIAMS, Commissioner



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2020-08

October 2, 2020¹

QUESTION PRESENTED

Where a school district has awarded contracts for legal services to three law firms based upon competitive sealed proposals, does the Procurement Code allow a school district to procure legal services in excess of \$40,000 from a law firm that was not awarded a contract through the school district's competitive-sealed-proposal process?

FACTS²

In 2019, a school district issued a request for proposals to establish professional services contracts for legal services. On July 18, 2019, after evaluating competitive sealed proposals, the school district awarded legal services contracts to three firms: Firm A, Firm B, and Firm C.

¹This 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).

²The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue." *See* NMSA 1978, § 10-16G-8(A)(2) (2019). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n, Advisory Op. No. 2020-01, at 1-2 (Feb. 7, 2020) (quoting § 10-16G-8(A)(2)). On July 8, 2020, the Commission received a request for an advisory opinion that detailed facts as presented herein. The request was submitted by a public official who has the authority to submit a request. *See generally* NMSA 1978, § 10-16G-8(A)(1).

A week after awarding these contracts, the school district created a purchase order in the amount of \$7,500 to secure legal services from Firm D, which was not awarded a contract based on the request for proposals. Firm D employed an attorney who, while practicing law at Firm A, had represented the school district regarding a personnel issue. During the course of the representation, this attorney left Firm A and joined Firm D, and the school district chose to continue with the attorney's representation in regard to the limited personnel matter.

On March 30, 2020, the school district superintendent's office directed the school district's buyer to increase the purchase order for Firm D by \$10,000. The buyer requested the billing detail and was informed that the increase related to Firm D's work on the personnel matter. The buyer increased the purchase order at the superintendent's direction.

In April 2020, the superintendent's office again directed the buyer to increase the purchase order. Because the Firm D attorney had appeared at open board meetings, seemingly acting as legal counsel to the board, the school district's buyer questioned whether the increase related to the original, limited personnel matter or to other legal services. Again, the buyer was informed that the billing detail was confidential, and the buyer increased the purchase order based on the chief financial officer's approval.

In June 2020, after the superintendent's office changed leadership, the acting superintendent and school board president requested another increase to the purchase order for Firm D. Although the school district's purchasing department did not approve the increase, the purchasing department implemented the increase at the acting superintendent's and president's direction. By the end of fiscal year 2020, the school district had paid \$32,861.53 to Firm D. According to the request, this payment was compensation for legal services relating to the limited personnel matter as well as other legal services to the school board.

At a July 21, 2020 school board meeting, a school board member inquired why the school district had paid Firm D, considering that Firm D had not been awarded a contract under the request for proposals. The school district's chief financial officer and chief procurement officer explained that the payment was made upon a purchase order that had been established to cover attorney services relating to the limited, personnel matter.

On August 18, 2020, the school board approved an \$11,000 increase to the purchase order for Firm D for a total of in excess of \$42,000. During discussion on

the motion to increase the purchase order, a board member noted that the purchase order was created in fiscal year 2020 and that the purchase order and corresponding services are “rolling into” fiscal year 2021.

ANSWER

Yes. Under the Procurement Code, a school district can procure legal services from a law firm without using a competitive-sealed-proposal process, so long as the total contract amount does not exceed \$60,000 (excluding applicable state and local gross receipts taxes) and the procurement accords with the professional services procurement rules promulgated by the school district’s central purchasing office.

ANALYSIS

The Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended 2019), controls how school districts and local school boards may purchase legal services. The Code applies “to every expenditure . . . for the procurement of items of tangible personal property, services [whether professional or non-professional], and construction” made by “every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted by the Procurement Code.” NMSA 1978, § 13-1-30(A) (1984, as amended 2005); NMSA 1978, § 13-1-67 (1984, as amended 2003).

When procuring legal services, a school district or a local school board generally must use competitive sealed proposals. *See* NMSA 1978, § 13-1-111(A) (1984, as amended 2007) (“[W]hen . . . a local public body is procuring professional services . . . a procurement shall be effected by competitive sealed proposals.”); NMSA 1978, § 13-1-76 (1984, as amended 1997) (defining “professional services” to include the services of lawyers). If, however, the school district or local school board seeks to procure legal services having a value not exceeding \$60,000, exclusive of gross receipts tax, then the Procurement Code does not require the school district or board to use competitive sealed proposals to award the contract. *See* NMSA 1978, § 13-1-125(B) (1984, as amended 2019).³ Instead, the school

³Section 13-1-102(B) of the Procurement Code provides the basis for this small-purchase exception to Section 13-1-111(A)’s requirement that professional services be procured by competitive sealed proposals. While Section 13-1-102(B) expressly excepts small purchases from procurement “by competitive sealed *bid*,” § 13-1-102 (emphasis added), both the Office of the Attorney General and the State Purchasing Division of the General Services Department have

district or board may procure the legal services “in accordance with professional services procurement rules promulgated by the general services department or a central purchasing office with authority to issue rules.” *Id.*

Before turning to the local rules for the procurement of professional services that the Procurement Code requires local public bodies to issue,⁴ we make two observations about Section 13-1-125(B)’s \$60,000 limit on small-purchase professional services contract that are exempt from a competitive proposal process. First, reasons of administrative efficiency justify the exemption of small purchases of professional services from a competitive sealed bidding process. *See* Model Procurement Code for State and Local Governments § 3-204 cmt. (Am. Bar Ass’n 2000) (“This Section recognizes that certain public purchases do not justify the administrative time and expense necessary for the conduct of competitive sealed bidding. Streamlined procedures, to be set forth in regulations, will make small purchases administratively simpler to complete and yet ensure competition.”). Second, under Section 13-1-125(D), procurements of professional services “shall not be artificially divided so as to constitute a small purchase . . .” § 13-1-125(B). Consequently, a governmental entity may not execute two or more professional service contracts (regardless of whether the contracts are executed at the same time or in different fiscal years), the aggregate value of which exceeds the \$60,000 (exclusive of applicable gross receipts taxes) limit, for the same or similar work with the same contractor. *See* § 13-1-125(B).

interpreted the Procurement Code to except small purchases of professional services from procurement by competitive sealed *proposals* also, *see* 1.4.1.52 NMAC (providing that purchases of professional services shall comply with the provisions for professional-service-contract approval as stated in 2.40.2 NMAC); N.M. Att’y Gen. Advisory Ltr. (June 14, 2011), 2011 WL 7070175, at 2 (“Section 13-1-125 requires that a public body must issue a Request for Proposals when the contract amount exceeds \$50,000.”); N.M. Att’y Gen. Advisory Ltr. (June 14, 2011), 2011 WL 7070176, at 3 n.1 (“At the time of the original contract, the Procurement Code treated professional services having a value of \$30,000 or less as a small purchase exempt from the requirements for competitive sealed proposals.”); N.M. Att’y Gen. Advisory Ltr. (December 1, 2010), 2010 WL 5494052, at 1 (“Were the services contracted actually “professional services” totaling over \$50,000, they would have been procured through a competitive sealed proposal process.” (citing NMSA 1978, §§ 13-1-102 and 13-1-125)); *see also* Laws 2013, ch. 70, § 7 (increasing the maximum threshold for small purchases of professional services from \$50,000 to \$60,000).

⁴Section 13-1-117.1(A) provides that “each local public body shall adopt regulations regarding its selection and award of professional service contracts,” and Section 13-1-125(B) requires the central purchasing offices of local public bodies to procure small purchases of professional services in accordance with those rules. *See* §§ 13-1-117.1(A) & 13-1-125(B).

We now turn to local procurement rules that Section 13-1-125(B) authorizes. The professional service procurement rules promulgated by the General Services Department apply to state agencies, but they do not apply to school districts and local school boards. *See* 1.4.1.2(B)(7) NMAC; *see also* § 13-1-67.⁵ Instead, school districts and local school boards are subject to the professional services procurement rules promulgated by their respective central purchasing offices. *See* § 13-1-125(B); *see also* NMSA 1978, § 13-1-37 (1984, as amended 2013) (defining central purchasing office). Under Section 125(B) of Procurement Code, therefore, so long as the school district's own rules do not require otherwise, a school district or board may procure legal services having a value not exceeding \$60,000 (excluding applicable gross receipt taxes) without using competitive sealed proposals. *See id.*

The school district at issue promulgated the following professional services procurement rule:

The services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accounts, lawyers, psychologists, planners, researchers and persons of businesses providing similar services having a value of - sixty thousand dollars (\$60,000) or more excluding applicable state and local gross receipts taxes shall be subject to competitive bid/proposal, excluding procurements for emergency (Sec. 13-1-127), sole source (Sec. 13-1-126), under existing contracts (Sec. 13-1-129), and any other procurement exemption (Sec. 13-1-98-13-1-99) per the NM Procurement Code, NMSA 1978.

The . . . Board of Education shall approve all professional service contract(s) having a value of forty thousand dollars (\$40,000) or more when such contract(s) have been authorized by the Board. When such contract(s) have been authorized by the Board, the contract may be signed by the Superintendent or his/her designee.

⁵Under 1.4.1.52 NMAC, state agencies may procure professional services having a value not to exceed \$60,000 subject to the provisions of 1.4.1.52(B)-(D) NMAC and 2.40.2.1-17 NMAC, which do not require the use of competitive sealed proposals. *See* 1.4.1.52(A) NMAC.

3.15.2.1.1. Professional Services Contracts (citation omitted).

Under Section 13-1-125(B), this is the local rule that controls how the school district or board can procure professional services having a value not exceeding \$60,000, exclusive of gross receipts tax. While the State Ethics Commission lacks the authority to enforce this local rule, *see* NMSA 1978, § 10-16G-9(A), this local rule seems to allow the procurement of legal services having a value of less than \$60,000 without the procurement being based on competitive sealed proposals; provided that, if the legal services contract has a value of \$40,000 or more, the school board must have authorized and approved it. *See* 3.15.2.1.1. Professional Services Contracts (citation omitted; local school district identifying information omitted). Under the facts presented in the request, that approval appears to have occurred. But, again, the board's ability to forego a competitive sealed process and authorize professional service contracts of \$40,000 or more is constrained by the \$60,000 limit that the Procurement Code imposes. *See* § 13-1-125(B) & (D).⁶

CONCLUSION

Under the Procurement Code, a school district can procure legal services from a law firm without using a competitive-sealed-proposal process, so long as the total contract amount does not exceed \$60,000 (excluding applicable state and local gross receipts taxes) and the procurement accords with the professional services procurement rules promulgated by the school district's central purchasing office.

SO ISSUED.

HON. WILLIAM F. LANG, Chair
JEFF BAKER, Commissioner
STUART M. BLUESTONE, Commissioner

⁶The Procurement Code allows for both civil and criminal penalties to enforce this limit. *See* NMSA 1978, § 13-1-196 (1984, as amended 2019) ("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."); *see also* NMSA 1978, § 13-1-199 (1984, as amended 2013) (providing for criminal penalties for willful violations of the Procurement Code). The Procurement Code empowers both the appropriate district attorney and the State Ethics Commission "to bring a civil action for the enforcement of any provision of the Procurement Code." *Id.* Criminal penalties, by contrast may be pursued, as appropriate, by the Office of the Attorney General or the relevant district attorney. *See, e.g.,* NMSA 1978, § 8-5-2 (1933, as amended 1975).

HON. GARREY CARRUTHERS, Commissioner
RONALD SOLIMON, Commissioner
JUDY VILLANUEVA, Commissioner
FRANCES F. WILLIAMS, Commissioner

September 24, 2020

Changes to 1.8.1 & 1.8.4, post notice and public comment

Changes made to this document must be reflected in CES for either 1.8.1 or 1.8.4

The proposed amendments to 1.8.1 NMAC are as follows: amendments to 1.8.1 NMAC, Sections 1, 3, and 12, adding new Sections 9, 10 and 16 and renumbering subsequent existing sections, effective xx/xx/2020.

1.8.1.1 ISSUING AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 21[7]5, Albuquerque, NM 87106.
[1.8.1.1 NMAC-N, 1/1/2020; A, xx/xx/2020]

1.8.1.3 STATUTORY AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Section 10-16-13.1, Governmental Conduct Act, Section 10-16-1 NMSA 1978, Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.
[1.8.1.3 NMAC-N, 1/1/2020; A, xx/xx/2020]

1.8.1.7 DEFINITIONS:

A. “Advisory opinions” are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission’s jurisdiction apply to specific fact situations.

B. “Interagency agreement” means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

C. “Joint powers agreement” as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

D. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC ~~or the State Ethics Commission Act, NMSA 1978, § 10-16G-1 to -16.~~
[1.8.1.7 NMAC-N, 1/1/2020]

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

A. Advisory opinions. The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the commission must provide the requester with a written confirmation of receipt.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission’s decision; or

(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) The commission, if it issues an advisory opinion in response to a request for an advisory opinion, must issue the opinion within 120 days of receipt.

(5)€. 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.

B. Informal advisory opinions. ~~A person authorized to request an advisory opinion who desires a response in fewer than 60 days for the purpose of deliberation and decision making~~ may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental

Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(12) An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request.

(23) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(34) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, xx/xx/2020]

1.8.1.[42]13 ADDRESS FOR FILING DOCUMENTS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 21[7]5, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 21[7]5, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.

[1.8.1[42]14 NMAC-N, 1/1/2020; A, xx/xx/2020]

~~1.8.1.10 INFORMAL ADVISORY OPINIONS:~~

~~A. A person authorized to request an advisory opinion who desires a response in fewer than 60 days for the purpose of deliberation and decision making may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request. An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request. The commission shall treat as confidential the request and the informal advisory opinion issued in response.~~

~~B. Any informal advisory opinion issued pursuant to this rule is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.~~

~~C. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.~~

[1.8.1.10 NMAC-N, xx/xx/2020]

1.8.1.15 COMMISSION MEETINGS: The time, location, and format of commission meetings is determined in accordance with this section.

A. **Time, place, and duration.** The commission chair, in consultation with the director, shall determine the time, place, **format**, and duration of commission meetings necessary to conduct the commission's business. **Unless permitted by this Section, the Commission shall meet in person.**

B. **Executive Session.** Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. **Virtual meetings.** With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting **should** occur on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating **shall** be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. **Virtual attendance by individual commissioners.** An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference, when it is difficult for the commissioner to attend the meeting in person, provided that each commissioner participating by conference

telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.

E. Maintaining order. The commission chair may take reasonable steps to ensure the commission is able to fairly and efficiently conduct its business, including adopting parliamentary procedure, imposing reasonable limitations on public comment, and excluding members of the public who disrupt commission meetings.

[1.8.1.16 NMAC-N, xx/xx/2020]

1.8.4.1 NMAC (“Proposed Code of Ethics”): This new proposed rule will create proposed code of ethics for public officials and public employees, to be submitted to each elected public official and public agency for adoption, pursuant to Paragraph (4) of Subsection B of Section 10-16G-5 NMSA 1978. The proposed code of ethics will compile in a single rule the ethics provisions of state laws and rules governing the conduct of state officers and employees. Topics to be addressed in the proposed code include the definition of and restrictions on: conflicts of interest, acceptance of gifts, business relations with employees or regulated entities, procurement issues, limitations on former employees, public access to records and meetings of state bodies, allowable political activity and ethical conduct in the workplace, among other subjects.

The proposed 1.8.4 NMAC is as follows:

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 8 STATE ETHICS COMMISSION
PART 4 CODE OF ETHICS

1.8.4.1 ISSUING AGENCY: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.

[1.8.4.1 NMAC-N, xx/xx/2020]

1.8.4.2 SCOPE: This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other institutions and instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies’ control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such as contractors.

[1.8.4.2 NMAC-N, xx/xx/2020]

1.8.4.3 STATUTORY AUTHORITY: Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

[1.8.4.3 NMAC-N, xx/xx/2020]

1.8.4.4 DURATION: Permanent.

[1.8.4.4 NMAC-N, xx/xx/2020]

1.8.4.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.4.5 NMAC-N, xx/xx/2020]

1.8.4.6 OBJECTIVE: The objective of this part is to provide the executive and legislative branch agencies of state government and other institutions and instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency’s officers and employees, the violation of which could form the basis for discipline by the adopting agency, **including dismissal, demotion or suspension, in accordance with state law.**

[1.8.4.6 NMAC-N, xx/xx/2020]

1.8.4.7 **DEFINITIONS:** The following terms apply to this part unless their context clearly indicates otherwise:

- A.** **“Agency” or “this Agency”** means the agency that has adopted this proposed code of ethics.
- B.** **“Business”** means any person, company or other organization that buys, sells or provides goods or services, including non-governmental, not-for-profit organizations.
- C.** **“Code”** means this proposed code of ethics.
- D.** **“Commission”** means the State Ethics Commission.
- E.** **“Confidential information”** has the same meaning as defined by Subsection B of Subsection 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, namely, information that by law or practice is not available to the public.
- F.** **“Family member”** means a first-degree, second-degree or third-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.
- G.** **“Financial interest”** means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.
- H.** **“Gift”** has the same meaning as defined by Subsection B of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:
 - (1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;
 - (2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;
 - (3) compensation for services rendered or capital invested that is:
 - (a) normal and reasonable in amount;
 - (b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;
 - (c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and
 - (d) not otherwise prohibited by law;
 - (4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;
 - (5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;
 - (6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;
 - (7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;
 - (8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;
 - (9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or
 - (10) a retirement gift.
- I.** **“Immediate family member”** means a first-degree or second-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.
- J.** **“Indirectly”** means to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance.
- K.** **“Market value”** means the amount for which a good or service can be sold on the relevant market.
- L.** **“Official act”** means any act or omission to act that would not be possible but for the actor's official position or state employment.

M. “Public officer or employee” means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

N. “Restricted donor” has the same meaning as defined by Subsection D of Section 2 of the Gift Act, Section 10-16B-1 NMSA 1978, namely, a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee’s official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee’s official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.

O. “Sensitive personal information” means information about an individual who has provided the information for use by this agency and who may suffer harm or adverse consequences from disclosure of the information to persons outside the agency.

P. “Shall” means must, and **“must”** means shall.

Q. “Substantial financial interest” means an ownership interest that is greater than twenty percent.

R. Any other terms shall be defined for purposes of this rule as they are defined in Section 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.
[1.8.4.7 NMAC-N, xx/xx/2020]

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:

A. This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

B. The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission’s website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this Code. If this Code does not resolve the issue, further guidance might be found in the Commission’s separately published commentary.

[1.8.4.8 NMAC-N, xx/xx/2020]

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS: This Code is based on, and should be interpreted to advance, the following principles of public ethics:

A. Honest services. An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

B. Proportionality. When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

C. Impartiality and fairness. The conduct of an officer or employee shall never be guided by:

(1) personal, family or financial interests;

(2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or

(3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

D. Consistency. Like cases shall be treated alike. An officer or employee shall behave consistently with the agency’s normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has acted in similar circumstances unless there is a rational basis for the change.

E. Diligence. An officer or employee shall ensure that every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

F. Respect. An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

G. Transparency. The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

H. Fallibility and openness to change. Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.

[1.8.4.9 NMAC-N, xx/xx/2020]

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

A. Outside employment.

(1) Duty to avoid conflicts from outside employment. An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

(2) Disclosure of outside employment. An officer or employee having permissible outside employment shall:

(a) file with the employee's supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

(b) the disclosure statement shall include the name of the officer or employee, the name and general nature of the business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer's or employee's public duties;

(c) in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee's work with the business.

B. Disclosure of potential conflicts of interest and disqualification.

(1) Disclosure of financial interests.

(a) Mandatory financial disclosure by officers and agency heads. An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

(b) Disclosure of financial interests: contents; when filed. The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within thirty days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual's spouse, for the prior calendar year:

(i) current employer and the nature of the business or occupation, including self-employment information;

(ii) all sources of gross income over \$5,000, identified by one of the following general category descriptions that disclose the nature of the income: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other," with a general description of the other income source;

(iii) real estate owned in the state other than the personal residence;

(iv) other business interests of \$10,000 or greater value in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(v) memberships on boards of for-profit businesses in New Mexico;

(vi) New Mexico professional licenses held;

(vii) sales to state agencies exceeding \$5,000 for the prior year; and

(viii) state agencies before which clients were represented or assisted during the prior year.

(c) Officers and employees required to disclose potentially conflicting financial interests; when filed. An officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential

conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

(d) Financial disclosure statements are public records. All disclosures required under this subsection are public records.

(2) Disqualification from acts affecting financial interests.

~~(a)~~ An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer's or employee's financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.

~~(b) — An officer or employee of this agency is not disqualified from taking an official action under 1.8.4.10(B)(2)(a) NMAC if the benefit of the official act to the officer's or employee's financial interest is proportionately equal to or less than the benefit to the general public.~~

C. Business with regulated entities.

(1) Sales to regulated persons. An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

(2) No acceptance of job or contract offers from regulated entities. An officer or employee of this agency may not accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

(3) Ordinary transactions at market rates allowed. Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

D. Accepting or Giving Gifts.

(1) Gifts from restricted donors. An officer or employee of this agency may not, directly or indirectly, solicit a gift from, and shall decline any gift offered by, a restricted donor or by any person who gives a gift because of the donee's status as an officer or employee of this agency.

(2) Gifts and business from subordinates. An officer or employee of this agency may not, directly or indirectly:

(a) accept a gift from an employee having a lower ~~grade~~ or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

(b) solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

(3) Soliciting gifts for charities. An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

(4) Declining permissible gifts. An officer or employee of this agency shall consider declining an otherwise permissible gift, if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

(a) the gift has a high market value;

(b) the timing of the gift creates the appearance that the donor is seeking to influence an official action;

(c) the gift ~~is~~ offered by a person or business entity who has interests that ~~may be substantially affected by~~ the performance or nonperformance of the officer or employee's duties; and

(d) acceptance of the gift would provide the donor with significantly disproportionate access.

(5) Disclosure of offers of gifts from restricted donors. If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency unintentionally receives a gift from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

(6) Certain donations of private funds prohibited. No officer or employee of this agency may give:

(a) a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

(b) a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.

(7) **Certain donations of public funds prohibited.** No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

(a) is a service appreciation award of de minimis value; or

(b) does not violate the Anti-Donation Clause, **Section 14 of Article 9 of the New Mexico Constitution.**

E. Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.

(1) An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

F. Timekeeping, reimbursement, and use of state property.

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

G. Procurement.

(1) **Fair and equitable treatment of persons involved in public procurement.** An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) **Maximizing the value of public funds.** An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) **Conflicts of interest prohibited; Intra-agency waiver.**

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(d) **This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.**

(e) **The requirement to make public disclosure pursuant to subparagraphs (c) and (d) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.**

(4) **Due diligence by agency.**

(a) **Participation by person submitting bid or proposal.** An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) Campaign contribution disclosure and prohibition. An officer or employee of this agency who participates, directly or indirectly, in procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) discloses all campaign contributions, where such contributions in the aggregate exceed \$250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

H. Former officers and employees.

(1) Contracting. This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency **within two years of the date of the officer's or employee's separation from this agency**, if the contract or action has a value of \$1,000 or more and is the direct result of the officer or employee's official act; or

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This subparagraph applies regardless of the value of the contract or action, or the length of time since the officer or employee left the agency.

(c) **Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.**

(2) Restrictions on former officers or employees representing a person in the person's dealings with this agency.

(a) A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b) A former officer or employee of this agency may not, for one year after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.

[1.8.4.10 NMAC-N, xx/xx/2020]

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

A. An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

B. An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.

[1.8.4.11 NMAC-N, xx/xx/2020]

1.8.4.12 POLITICAL ACTIVITY

A. An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

B. An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

C. An officer or employee of this agency may not serve as an officer of a political organization.

D. An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected office, political party, or other partisan political organization.

E. An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

F. **An employee whose salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency is covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] and, therefore, may not be a candidate for a partisan political elective office.**

G. An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

- (2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and
- (3) being a candidate in an election for or holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.
- [1.8.4.12 NMAC-N, xx/xx/2020]

1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION

A. An officer or employee of this agency shall not use or disclose confidential information acquired by virtue of the officer's or employee's position with the agency for the officer's or employee's or another person's private gain.

B. An officer or employee of this agency shall not disclose to anyone outside the agency sensitive personal information acquired by virtue of the officer's or employee's position with the agency unless disclosure is required by law, necessary to carry out the functions of the agency or expressly authorized by the person whose information would be disclosed.

[1.8.4.13 NMAC-N, xx/xx/2020]

1.8.4.14 NEPOTISM

A. This agency shall not permit the hiring, promotion, or direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

B. For the purposes of Subsection A of this Section:

(1) First-degree relatives include an individual's parents, siblings, and children.

(2) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(3) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles, great aunts, and first cousins.

[1.8.4.14 NMAC-N, xx/xx/2020]

1.8.4.15 SEXUAL HARASSMENT

A. Officers and employees of this agency shall refrain from sexual harassment of any other employee or any other person having business with this agency.

B. Examples of sexual harassment include, but are not limited to:

(1) sexual innuendo or sexually oriented verbal abuse;

(2) sexual jokes, sexist jokes, vulgar jokes or abusive sexual teasing;

(3) unwanted physical contact such as hugging, patting, stroking or grabbing body parts;

(4) statements or acts of a sexual nature about a person's physical attributes or sexual activity;

(5) displaying sexually suggestive pictures, objects or materials;

(6) using disparaging, demeaning or sexist terms to refer to any person;

(7) making obscene gestures or suggestive/insulting sounds;

(8) indecent exposure; and

(9) suggesting or demanding sexual favors or activity in relation to any condition of employment.

C. Officers and employees of this agency shall investigate all instances of alleged sexual harassment and sexual assault and take prompt and appropriate action, and make every effort to remove sexual harassment and sexual assault from the workplace.

[1.8.4.15 NMAC-N, xx/xx/2020]

1.8.4.16 SUBSTANCE ABUSE

A. This agency shall appoint a substance abuse coordinator as required by Subsection A of 1.7.8.10 NMAC, who shall be responsible for the agency's drug and alcohol abuse program under 1.7.8 NMAC.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

(1) dangers of drug and alcohol abuse;

(2) availability of counseling, rehabilitation, and employee assistance programs; and

(3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the drug and alcohol testing duties required by 1.7.8 NMAC.
[1.8.4.16 NMAC-N, xx/xx/2020]

1.8.4.17 ENFORCEMENT AND INTERPRETATION

A. Violations of the provisions of this code of conduct shall constitute cause for dismissal, demotion or suspension as provided by Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978.

B. This agency shall establish a written internal complaint procedure by which employees can seek to remedy violations of the provisions of this agency's code of conduct.

C. Agency complaint procedures shall:
(1) provide the respondent to a complaint notice of the complaint and an opportunity to be heard;

(2) be made available to all officers and employees of the agency;

(3) ensure that officers and employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal;

(4) ensure that adjudication of internal agency complaints accord with due process; and

(5) utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships among officers and employees.

D. If an agency adopts a code of conduct that mirrors provisions set forth in 1.8.4 NMAC, then any officer or employee of the adopting agency may request an advisory opinion from the state ethics commission regarding the interpretation or application of any adopted code provision pursuant to Subsection A of Section 8 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

E. Any remedy or discipline available through internal agency complaint procedures established under this provision does not preclude other remedies or sanctions available at law.
[1.8.4.17 NMAC-N, xx/xx/2020]

1.8.4.15 ~~ETHICAL CONDUCT IN THE WORKPLACE~~

~~A. An officer or employee of this agency with supervisory responsibility shall:~~

~~(1) manage the hiring of new employees fairly and equitably;~~

~~(2) diligently investigate allegations of misconduct;~~

~~(3) refrain from unsolicited private business dealings with supervised employees, either directly or indirectly; and~~

~~(4) ensure all visitors and staff can access this agency's services.~~

~~B. An officer or employee of this agency shall:~~

~~(1) treat colleagues with respect;~~

~~(2) learn about what behavior constitutes harassment, and make efforts to remove it from the workplace;~~

~~(3) report violations of this code of ethics or other laws to responsible authorities within this agency or to the Commission; and~~

~~(4) learn how to recognize, report and prevent substance abuse among this agency's personnel.~~

~~[1.8.4.13 NMAC-N, xx/xx/2020]~~

History of 1.8.4 NMAC: [RESERVED]



STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.1 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Submitted to New Mexico State Records Center and Archives: October __, 2020

1. **Citation to authority authorizing rule:** Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.
2. **Effective date of rule:** Date of final publication in *New Mexico Register*, likely Vol. XXXI, Issue 20 (October 27, 2020).
3. **Date of adoption of rule:** October 2, 2020
4. **Date of meeting at which agency voted to approve rule:** October 2, 2020
5. **Reasons for adopting rule:**
 - a. **1.8.1.9 & 1.8.1.10:** To establish a procedure whereby persons authorized to request advisory opinions may submit a request for an informal advisory opinion and receive the opinion from either the Commission's General Counsel or Executive Director before the next-scheduled Commission meeting.
 - b. **1.8.1.16:** To authorize virtual Commission meetings via web or teleconference in accordance with the Open Meetings Act, NMSA 1978, Section 10-15-1(C).

6. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

Section 1.8.1.1 ISSUING AGENCY

No changes.

Section 1.8.1.3 STATUTORY AUTHORITY

1.8.1.3: Included reference to Section 10-16-13.1 of the Governmental Conduct Act.

Rationale: Under the Governmental Conduct Act, the State Ethics Commission is required to “advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties.” § 10-16-13.1(A). But local government officers and employees are not authorized to request formal advisory opinions. Commission staff believes the best way to reconcile the Commission’s duty to advise all persons subject to the Governmental Conduct Act of their duties with the restrictions in the State Ethics Commission’s power to issue formal advisory opinions is to permit local government officers and employees to request informal advisory opinions. Section 10-16-13.1 provides this authority.

Section 1.8.1.7 DEFINITIONS

1.8.1.7(D): Included reference to definitions contained in the State Ethics Commission Act.

Rationale: The Commission received comments pointing out that the terms “director” and “general counsel” are not defined in 1.8.3.7 NMAC. This change directs the reader to the State Ethics Commission Act for those terms as well as any other defined terms.

Section 1.8.1.9 ADVISORY OPINIONS

1.8.1.9: Combined Section 1.8.1.9 with Section 1.8.1.10, and divided the rule into new subsection A (dealing with advisory opinions) and new subsection B (dealing with informal advisory opinions). New subsection A(1) sets forth what qualifies as a request for an advisory opinion and the confidentiality requirements for identifying information contained in the request. New subsection (A)(2)-(4) sets out the requirements for the commission’s issuance of an advisory opinion: the commission must either (1) issue an advisory opinion within 60 days of receiving a request; (2) inform the requester that the commission will not issue an opinion and provide a written explanation of its decision; or (3) inform the requester that the commission requires more than 60 days to issue an opinion, keep the requester updated on the status of the request, and in any event (4) issue an opinion no more than 120 days after receiving the request. New subsection 1.8.1.9(B) is similar to proposed section 1.8.1.10, with the following substantive edits: delete the vague phrase “for deliberation and decisionmaking” as unnecessary; addition of a new subsection 1.8.1.9(B)(1) to authorize persons subject to the Governmental Conduct Act to request informal advisory opinions.

Rationale: Commission staff recognized that there is a potential for members of the public to be confused about the difference between advisory opinions and informal advisory opinions, and that the rules for advisory opinions and informal advisory opinions are not organized to correspond to the process for requesting and receiving advisory opinions or informal advisory opinions. In addition, Commission staff believes that in order to discharge the Commission’s obligation to “advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties,” persons subject to the Governmental Conduct Act should be permitted to request informal advisory opinions. These concerns are addressed with the changes described above.

New Mexico Ethics Coalition argued for a rule that creates “a cap on the length of time it will take for an advisory opinion to be issued. 60 days is reasonable by delays with a 30-day notice should not extend beyond 4 months.” This public comment is well-taken.

Section 1.8.1.10 INFORMAL ADVISORY OPINIONS

1.8.1.10: This section was deleted and merged with Section 1.8.1.9, for the reasons set forth above.

Rationale: See above.

Section 1.8.1.14 ADDRESS FOR FILING DOCUMENTS

No changes.

Section 1.8.1.16 COMMISSION MEETINGS

1.8.1.16: This section was revised to include an introductory statement, to clarify that the format of commission meetings (i.e., in-person, virtual, or telephonic) is determined by this section. The section was further revised to state that the Commission “should” (as opposed to “shall”) schedule virtual meetings on a platform that allows members of the public to observe and participate.

Rationale: The existing rule did not have a clarifying introductory provision that would assist the reader to understand how the rule governs commission meetings. The existing introductory provision, which contains substantive requirements for the time, place, and duration of meetings, was more sensibly included in a discrete subsection. Additional edits are designed to ensure that this section does not impose requirements on the commission that stricter than the requirements of the Open Meetings Act.

7. **Reasons for not accepting substantive arguments made through written pre-filed public comment:**

Section 1.8.1.1 ISSUING AGENCY

No comments received.

Section 1.8.1.3 STATUTORY AUTHORITY

No comments received.

Section 1.8.1.9 ADVISORY OPINIONS

1.8.1.9(A)(1): New Mexico Ethics Watch argued that “the list of who can request an advisory opinion be expanded to include members of the public.” New Mexico Ethics Coalition similarly argued to “expand the list of those who can request advisory opinions to members of the public.”

Rationale: This comment is declined because its adoption would conflict with statute—specifically, NMSA 1978, Section 10-16G-8(A)(1). *See* NMSA 1978, § 14-4-5.7 (“No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.”).

1.8.1.9(A): New Mexico Ethics Watch argued for “the listing of criteria for when an advisory opinion is to be issued, in order to create an objective basis for the issuance of an advisory opinion.” New Mexico Ethics Coalition similarly argued that the Commission should provide “clear decision rules or criteria for when an advisory opinion is warranted . . . [to] provide a public reference and avoid the perception that decisions to review in an advisory way are arbitrary or subjective.”

Rationale: This comment is declined because the State Ethics Commission currently issues advisory opinions response to every valid request. Should the Commission cease issuing advisory opinions in response to every valid request, at that point, sound and publicly-available decision criteria are advisable for the aforementioned reasons.

1.8.1.9(B): New Mexico Ethics Coalition argued for a rule that provides additional clarification “why requests for advisory opinions are confidential and how each party benefits from this confidentiality.”

Rationale: This comment is declined because, at NMSA 1978, Section 10-16G-8(B), the Legislature requires that “[a] request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act.” *See generally* § 14-4-5.7 (“No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.”). The Commission does not know the reasons why the Legislature as a corporate entity, or particular legislators, voted in favor of this statutory provision.

Section 1.8.1.10 INFORMAL ADVISORY OPINIONS

1.8.1.10(A): New Mexico Ethics Watch argued that members of the public should be able to request an informal advisory opinion, either through a hotline or through whatever channels are currently being employed by Commission staff. New Mexico Ethics Coalition also makes this argument.

Rationale: This comment is declined because its adoption might conflict with NMSA 1978, Section 10-16G-8(A)(1). The proposed rule would provide a way to circumvent the Legislature's limit on who may request advisory opinions of the State Ethics Commission. The Commission declines to promulgate the proposed rule to avoid a conflict between the Commission's rules and the State Ethics Commission Act. *See* § 14-4-5.7.

1.8.1.10(A): New Mexico Ethics Watch argued for "the listing of criteria for when an advisory opinion is to be issued, in order to create an objective basis for the issuance of an advisory opinion." New Mexico Ethics Coalition similarly argued that the Commission should provide "clear decision rules or criteria for when an advisory opinion is warranted . . . [to] provide a public reference and avoid the perception that decisions to review in an advisory way are arbitrary or subjective."

Rationale: This comment is declined because the State Ethics Commission currently issues advisory opinions response to every valid request. Should the Commission cease issuing advisory opinions in response to every valid request, at that point, sound and publicly-available decision criteria are advisable for the aforementioned reasons.

Section 1.8.1.14 ADDRESS FOR FILING DOCUMENTS

No public comments received.

Section 1.8.1.16 COMMISSION MEERTINGS

1.8.1.16(C): New Mexico Ethics Watch argued that the rule should specifically allow virtual attendance by members of the public even when the Commission meets in person. New Mexico Ethics Coalition also makes this argument.

Rationale: While the Commission will make every effort to facilitate attendance by members of the public at every Commission meeting, the Commission declines to adopt the suggestion as a rule binding on the Commission at this time. There are several reasons: First, as in the past, the Commission might hold future in-person meetings in venues around New Mexico, and Commission staff might not have adequate control of the venue's internet and AV capabilities to ensure compliance with the rule in each instance. Second, the Commission has not yet gained experience with conducting a simultaneous in-person and virtual meeting. Third, the Commission currently lacks the technology that would enable live broadcasting in-person meetings in a way that allows

for contemporaneous public participation; however, the Commission is researching such technology. For these reasons, while the Commission intends to pursue this suggestion, it declines to promulgate it as a rule.

1.8.1.16(C): New Mexico Ethics Coalition argues that the Commission should make meetings available on YouTube for viewing later.

Rationale: The Commission currently makes video recordings of meetings available on its website. See www.sec.state.nm.us/transparency/. The Commission declines to codify this practice as a rule.

1.8.1.16(D): New Mexico Ethics Coalition argues that the Commission should have clear guidelines to “avoid the perception that limits are set arbitrarily or with the intent to stifle civic engagement. Specifically how time limits will be determined would be useful.”

Rationale: The rule codifies the Commission Chair’s authority to run Commission meetings in a fair and efficient manner. As New Mexico Ethics Coalition notes in its pre-filed public comment, “[t]he Commission has done an excellent job of planning in-person and virtual meetings to allow for public comment.” In light of the Chair’s current handling and accommodation of public participation and public comment, the Commission declines to adopt the proposed rule as unnecessary at this time.



STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR AMENDMENTS TO 1.8.4 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Submitted to New Mexico State Records Center and Archives: October __, 2020

I. **Citation to authority authorizing rule:**

Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

II. **Effective date of rule:** Date of final publication in *New Mexico Register*, likely Vol. XXXI, Issue 20 (October 27, 2020).

III. **Date of adoption of rule:** October 2, 2020

IV. **Date of meeting at which agency voted to approve rule:** October 2, 2020

V. **Reasons for adopting rule:**

Section 10-16G-5(B)(4) of the State Ethics Commission Act requires the Commission to issue a proposed code of ethics for state agencies. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Section 10-16-11(C) of the Governmental Conduct Act or a code of ethics under Section 10-16G-5(B)(4) of the State Ethics Commission Act for employees subject to the adopting agencies' control.

VI. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

1.8.4.1 ISSUING AGENCY

No changes.

1.8.4.2 SCOPE

No changes.

1.8.4.3 STATUTORY AUTHORITY

No changes.

1.8.4.4 DURATION

No changes.

1.8.4.5 EFFECTIVE DATE

No changes.

1.8.4.6 OBJECTIVE

1.8.4.6: Changes “violations” to “violation”.

Rationale: Grammar.

1.8.4.6: Adds “, including dismissal, demotion or suspension, in accordance with state law”

Rationale: Additional language specifies the potential administrative consequences of a violation of a code provision if and when adopted by adopting agency.

1.8.4.7 DEFINITIONS

1.8.4.7(B): Replaces definition of “business” to mean any “person, company or other organization that buys, sells or provides goods or services, including non-governmental, not-for-profit organizations.”

Rationale: Original definition was not clear and did not specify whether not-for-profit organizations were included. New definition clarifies that not-for-profit organizations are included in the definition of “business” and implies that governmental entities are not included. The new language clarifies that conflicts of interest might exist for public officers and employees through their affiliations with not-for-profit organizations.

1.8.4.7(E): Adds new provision: “**Confidential information**’ has the same meaning as defined by Subsection B of Subsection 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, namely, information that by law or practice is not available to the public.” Renumbers accordingly.

Rationale: Provides a definition to facilitate the inclusion of 1.8.4.13(A)-(B) *infra*, which creates duties on officers and employees not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed. State officers and employees, by virtue of their positions in public office, might have access to the private and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.7(F): Adds new provision “Family member” and defines that term by reference to first-degree, second-degree, and third-degree relative, as defined in the nepotism rule at 1.8.4.14(B) NMAC, *infra*. Renumbers accordingly.

Rationale: New Mexico Ethics Coalition recommended a definition of family or close personal relationships, because, without definition, the use of these terms “may become confusing given [New Mexicans’] highly relational and family-centric cultural norms.” The definition makes the meaning of “family member” precise.

1.8.4.7(I): Adds new provision “Immediate family member” and defines that term by reference to first-degree and second-degree relatives, as defined in the nepotism rule at 1.8.4.14(B) NMAC, *infra*. Renumbers accordingly.

Rationale: New Mexico Ethics Coalition recommended a definition of family or close personal relationships, because, without definition, the use of these terms “may become confusing given [New Mexicans’] highly relational and family-centric cultural norms.” The definition makes the meaning of “family member” precise.

1.8.4.7(J): Regarding the definition of “Indirectly”, deletes: “in a roundabout manner; coming about or resulting otherwise than directly or immediately, as effects or consequences”; and adds: “to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance”

Rationale: Commissioner Villanueva requested a clearer definition of “Indirectly”. The definition serves to clarify indirect action when used in 1.8.4 NMAC.

1.8.4.7(O): Adds new provision: “**Sensitive personal information**’ means information about an individual who has provided the information for use by this agency and who may suffer harm or

adverse consequences from disclosure of the information to persons outside the agency.”
Renumbers accordingly.

Rationale: Provides a definition to facilitate the inclusion of 1.8.4.13(A)-(B) *infra*, which creates duties on officers and employees not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed. State officers and employees, by virtue of their positions in public office, might have access to the private and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.10(Q): Adds a new provision: “**Substantial financial interest**’ means an ownership interest that is greater than twenty percent.”

Rationale: Adds a definition of *substantial* financial interest to distinguish it from the definition of financial interest. This definition follows the analogous definition of “substantial interest” in Section 10-16-2(L) in the Governmental Conduct Act.

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY

No changes.

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS

1.8.4.9(H): Deletes: “**Fallibility and reversibility.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, an officer or employee shall endeavor to take official acts and make decisions in ways that are deliberative, open to review and, where appropriate, reversible.” Replaces deleted material with: “**Fallibility and openness to change.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.”

Rationale: Clarity in meaning. The change is intended to convey a similar principle in more familiar language.

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

1.8.4.10(B)(1)(b)(i): Added “, including self-employment information” to the disclosure requirement for “current employer and the nature of the business or occupation.”

Rationale: Addition clarifies that self-employment information is included in the scope of disclosure requirements about the current employment of an officer or agency head and their spouse. New Mexico Ethics Coalition recommends the addition.

1.8.4.10(B)(1)(b)(ii): Added general category descriptions for sources of income over \$5,000 to parallel the disclosure requirements under Section 10-16A-3(D)(2) of the Financial Disclosure Act.

Rationale: This addition makes the rule provision on disclosure of income sources parallel the disclosure under Section 10-16A-3(D)(2) of the Financial Disclosure Act. New Mexico Ethics Coalition recommends the addition.

1.8.4.10(B)(1)(b)(iv): Added “in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity”.

Rationale: This addition makes the rule provision on disclosure of income sources parallel the disclosure required by Section 10-16A-3(D)(4) of the Financial Disclosure Act. The addition resolves a discrepancy that the New Mexico Ethics Coalition and New Mexico Ethics Watch noted in written comment.

1.8.4.10(B)(1)(b)(v): Replaces “for-profit boards” with “boards of for-profit businesses in New Mexico”.

Rationale: This addition adds clarity in the rule and makes the rule parallels the disclosure required by Section 10-16A-3(D)(5) of the Financial Disclosure Act.

1.8.4.10(B)(2): Deletes former 1.8.4.10(B)(2)(b); renumbers accordingly.

Rationale: In its comments on 1.8.4.10(B)(2)(b), New Mexico Ethics Coalition asserts that “the phrase ‘proportionately equal to or less than the benefit to the general public’ is concerning especially on multi-million dollar deals as this allows for economic gain beyond what has been earned.” Former section 1.8.4.10(B)(2)(b) mirrors Section 10-16-4(B) of the Governmental Conduct Act. After review, the Commission concludes the better approach to disqualification is simply the disqualification rule stated in former 1.8.4.10(B)(2)(a), without any exception for those officers and employees who stand to benefit in a way that is “proportionately equal to or less than the benefit to the general public.” Not only is the “proportionately” language of former section 1.8.4.10(B)(2)(b) and NMSA 1978, section 10-16-4(B) unclear, but also the Commission notes a tension between former section 1.8.4.10(B)(2)(b) and NMSA 1978, Section 10-16-3(A), which requires public officers and employees to use the powers and resources of public office *only* to advance the public interest.

1.8.4.10(D)(2)(a): Replaces “rank” with “grade”

Rationale: The term “grade” is used by the state personnel system to define which employees are under the supervision of others.

1.18.4.10(D)(4)(c): After “gift”, inserts “is”; and after “interests”, strikes “may substantially affect” and inserts “that may be substantially affected by”.

Rationale: Grammar.

1.8.4.10(G)(3)(d): Adds a new paragraph that addresses contracts between an agency and a business in which an agency’s officer or employee has a substantial financial interest, specifically: “This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.”

Rationale: The added language clarifies that the law also prohibits an agency from contracting with a business in which *any* officer or employee of the agency holds a financial interest, apart from employees involved in contracting. This prohibition, unlike the prohibition against contracting with officers or employees involved in procurement, may be waived under the Governmental Conduct Act. The original version of the model rule only stated that in the commission commentary, but the Commission believes that both the prohibition and the possibility of waiver should be explicit in the rule.

1.8.4.10(G)(3)(e): Adds a new paragraph defining acceptable “public disclosure”, specifically: “The requirement to make public disclosure pursuant to subparagraph (c) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.”

Rationale: The new language is adapted from an unsuccessful 2019 legislative proposal to combine the ethics provision of the Governmental Conduct Act and the Procurement Code into a single statute. Public disclosure is required by the Governmental Conduct Act to obtain an exception from conflict of interest rules that prevent agency personnel from applying for contracts. The Act, however, does not define acceptable public disclosure. This rule offers such a definition, thereby providing guidance for how to comply with statutory disclosure requirements.

1.8.4.10(G)(4)(b)(ii): Replaces “disclose” with “discloses”; and after “exceed”, strikes “over”.

Rationale: Grammar

1.8.4.10(H)(1)(a): Strikes “within the preceding year”, and replaces that language with: “within two years of the date of the officer’s or employee’s separation from this agency”

Rationale: The new language strengthens and clarifies the proposed code’s revolving door provision. Both Commissioners Villanueva and Williams recommended changes to this rule provision.

1.8.4.10(H)(1)(c): Adds a new paragraph clarifying that former employees of an agency may contract directly with their former employers, specifically: “Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.”

Rationale: To prevent misinterpretation of the preceding two paragraphs of the proposed code. The rules in subsection H prohibit, under certain circumstances, contracts by agencies with businesses with which former agency employees are associated. These rules, in the Governmental Conduct Act, may create the misimpression that former employees are prohibited from entering into direct contracts with their former agencies. The statutory limitations are intended to prevent former employees from lending their connections and inside knowledge to outside businesses, at least until after some time has elapsed after their separation. If an agency determines that the services of a former employee are needed, nothing in these rules or ethics laws prevents the agency from contracting directly with the former employee. *See generally* NMSA 1978, § 10-16-8(A).

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

No changes.

1.8.4.12 POLITICAL ACTIVITY

1.8.4.12(F): Adds a new paragraph to cover duties imposed by the Hatch Act, 5 U.S.C §§ 1501-1508, regarding the inability for employees whose salary is paid completely by the United States or a federal agency, either through grants or loans, from contesting a partisan elective office.

Rationale: The addition is necessary to provide guidance for employees whose salaries are paid completely by federal loans or grants regarding the application of the Hatch Act. This addition was inspired by Commissioner William’s reference to the potential application of the Hatch Act for some state employees whose positions are completely funded by federal dollars.

1.8.4.12(G)(3): Adds “being a candidate in an election for or”.

Rationale: The additional language provides a more complete statement of how an officer or employee may participate in political activities while off duty.

1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION

1.8.4.13(A)-(B): Adds two paragraphs to create duties on officers and employees not to disclose confidential information for private gain; and not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed.

Rationale: State officers and employees, by virtue of their positions in public officer, sometimes have access to confidential information and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.14 NEPOTISM

1.8.4.14(A): Adds a nepotism rule that prohibits hiring, promotion and direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

Rationale: This rule works to prevent the emergence of moral conflicts that public officers and employees might experience if they were forced to make choices between the public good and the special regard and partiality that persons rightly have for members of their family. The rule, therefore, protects the public good from being disregarded in lieu of partiality between family members who occupy positions of public power. For these reasons, the State Ethics Commission believes that a nepotism rule belongs in any code of ethics for public employees.

1.8.4.14(B): Provides extensional definitions of familial relationships in the first, second or third degree.

Rationale: Defines familial relationships in the first, second or third degree in the same way as those terms are defined by the federal regulations corresponding to the Genetic Information Nondiscrimination Act of 2008, at 29 CFR § 1635.3(a)(2).

1.8.4.15 SEXUAL HARASSMENT

1.8.4.15(A)-(C): Deletes entirety of former 1.8.4.15 “Ethical Conduct in the Workplace” and separates and amplifies provisions of that rule in separate rule sections. Adds a rule provision that imposes duties on officers and employees to refrain from sexual harassment of any other employee or persons having business with the agency; provides examples of sexual harassment; and requires officers and employees to learn about what behavior constitutes sexual harassment and to make efforts to remove it from the workplace.

Rationale: The State Ethics Commission believes that a substantive sexual harassment rule belongs in any state agency code of conduct. The rule does not specify the details of sexual harassment trainings, or who should provide those trainings; those decisions are best left to the individual agencies.

1.8.4.16 SUBSTANCE ABUSE

1.8.4.16(A)-(C): Adds rule provisions that point state agencies to the extant NMAC provisions regarding substance abuse and, in particular, the role of an agency’s designated substance abuse coordinator, required by 1.7.8 NMAC.

Rationale: According to the Centers for Disease Control and Prevention, New Mexico has the highest per capita number of alcohol-related deaths of any state in the union. Consistent with efforts to ameliorate this public problem, Commissioner Williams recommended the addition of provision of the proposed code that deals with the problem of substance abuse in the workplace. The proposed code adverts to already existing rules in 1.7.8 NMAC that pertain to detection and treatment of substance abuse in state agencies.

1.8.4.17 ENFORCEMENT AND INTERPRETATION

1.8.4.17(A)-(E): Adds rule provisions that: (i) specify the categories of discipline that are available for code violations; (ii) require internal complaint procedures and provide requisite details regarding internal complaint procedures; (iii) clarify that officers and employees of agencies adopting proposed code provisions can request advisory opinions from the State Ethics Commission; and (iv) make clear that the disciplinary remedies that corresponded to violations of the proposed code do not preclude other remedies available at law.

Rationale: A provision that specifies the procedures for enforcement and interpretation of substantive code provisions is necessary to the functioning of any code of conduct.

VII. Reasons for not accepting substantive arguments made through written pre-filed public comment:

1.8.4.1 ISSUING AGENCY

No comments received.

1.8.4.2 SCOPE

1.8.4.2: New Mexico Ethics Coalition objects to the use of the word “consider” and asserts (incorrectly) that “[t]he code is clearly meant as a requirement, and should be consistently stated as such.”

Rationale: The State Ethics Commission lacks the rulemaking authority to promulgate a code of conduct that directly binds the officers and employees of other state agencies. At most, the Commission has the rulemaking power to issue a proposed code of conduct and require other agencies to consider the Commission’s proposed code when adopting their own specific codes.

1.8.4.3 STATUTORY AUTHORITY

No comments received.

1.8.4.4 DURATION

No comments received.

1.8.4.5 EFFECTIVE DATE

No comments received.

1.8.4.6 OBJECTIVE

1.8.4.6: New Mexico Ethics Coalition recommends clarification as to whether the proposed code “carr[ies] the weight of a rule which can be violated or is it simply a standard which one may or may not meet.”

Rationale: Sections 1.8.4.2 and 1.8.4.6 make clear that the rules provide a proposed code that agencies may adopt. The proposed code provisions are binding upon officers and employees of state agencies if and only if the agencies adopt the proposed code’s provisions. *See* 1.8.4.6 (“If adopted, this Code will furnish standards of conduct for the adopting agency’s officers and employees, the violation of which could form the basis for discipline by the adopting agency, including dismissal, demotion or suspension, in accordance with state law.”).

1.8.4.7 DEFINITIONS

1.8.4.7(E): New Mexico Ethics Watch and New Mexico Ethics Coalition argued that the definition of “financial interest” be expanded to include “holding an ownership stake, investing in, and at risk of losing \$10,000 or more”.

Rationale: The Commission believes that the proposed language would work to constrict, rather than expand, the definition of financial interests which should be disclosed. The current definition of financial interest is not set at a \$10,000 minimum amount.

1.8.4.7(F): New Mexico Ethics Coalition notes that the definition of Gift “seems to mix categories,” because the definition “refers to both reimbursement for services and compensation for services.”

Rationale: The definition of “gift” both in the Gift Act and the proposed code provisions provide for several exceptions, including exceptions for (i) compensation for services rendered and (ii) reimbursement for out-of-pocket expenses incurred in providing a service. Neither compensation or reimbursement for incidental expenses is a gift, under legal definitions or common parlance.

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY

1.8.4.8(B): New Mexico Ethics Coalition recommends the use of technology that connects readers with the commentary that accompanies the proposed code.

Rationale: The State Ethics Commission appreciates this suggestion and plans to act upon it once these rules are promulgated and published in the New Mexico Administrative Code.

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS

No comments received.

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

1.8.4.10: New Mexico Ethics Coalition argues for a rule change that requires “each and every contract for public service should have a provision that states all of the records produced by the contractor are subject to the Inspection of Public Records Act.”

Rationale: The State Purchasing Division and the Contracts Review Bureau of the General Services Department are the state agencies better positioned to consider and promulgate such a rule.

1.8.4.10(A)(2): New Mexico Ethics Watch and New Mexico Ethics Coalition encourage the Commission to create a model outside employment disclosure form.

Rationale: The State Ethics Commission notes and appreciates this recommendation as an addendum to the promulgated 1.8.4 NMAC.

1.8.4.10(B)(1)(b)(iv): New Mexico Ethics Coalition argues that this section should require disclosure of membership on non-profit boards.

Rationale: Membership on non-profit boards ordinarily does not redound to the financial interest of the board members; to the contrary, membership on non-profit boards ordinarily carries an expectation that the board member will make a financial contribution to the non-profit organization.

1.8.4.10(B)(1)(b)(ii): New Mexico Ethics Watch recommends the requirement that sources of incomes be reported under “broad general categories” be jettisoned in favor of requiring disclosure of specific details of sources of income in excess of \$5,000.00.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of

the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that expands collateral filing requirements to include domestic partners and other family or household members. New Mexico Ethics Coalition similarly suggests an "expansion to include disclosure information for some level of family members, not just spouse, and also include 'life partners' or some other title that fits better."

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that require reporting of income under bands of income so that it is clear how significant holding a particular asset or financial interest is.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that tighten requirements surrounding reporting of the filer's residence, requiring a spouse or domestic partner to report their residence address; requiring the filer of the form to indicate whether the residence is owned or rented, and, if rented, from whom, and requiring owned residences to be declared along with other real property holdings.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of

the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that require elected officials appointed to file a financial disclosure within 30 days of appointment, as state agency heads and other appointed officials.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that remove present limitations on reporting membership on boards, business interests, professional licenses, and similar associations to New Mexico, arguing that such licenses, board memberships, and business interests should be reported wherever they occur.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(D)(4): New Mexico Ethics Coalition notes that the proposed duty to consider declining an otherwise permissible gift that would make a reasonable person question the officer or employee's integrity or impartiality "is another area in which cultural and relational practices might not be defined in the same way by 'reasonable' people."

Rationale: While the State Ethics Commission agrees that reasonable standards, which pervade the law, are open-textured and subject to reasonable disagreement, the comment does not provide enough detail to recommend or to support replacement language for 1.8.4.10(D)(4) NMAC.

1.8.4.10(F)(3): New Mexico Ethics Coalition argues that this “section should clarify how surplus materials, equipment, supplies, and art is discarded.”

Rationale: This topic is addressed by statute outside of the Commission’s jurisdiction. *See generally* NMSA 1978, §§ 13-6-1 to -8 (concerning the sale and disposition of state property).

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

1.8.4.11: New Mexico Ethics Coalition argues that this section “should comply with IPRA and OMA.”

Rationale: An employee code of conduct must have limits; it cannot both replicate the New Mexico Statutes Annotated in every pertinent part and remain useful as a guide for state employees. Neither the Inspection of Public Records Act nor the Open Meetings Act are within the Commission’s jurisdiction. For those reasons, the Commission declines to issue more specific rule provisions regarding state officer and employee conduct regarding public disclosure and public meetings.

1.8.4.12 POLITICAL ACTIVITY

No comments received.

1.8.4.13 ETHICAL CONDUCT IN THE WORKPLACE

No comments received.



September 28, 2020

Dear Commissioners and Commission Staff,

We appreciate and welcome the opportunity to appear before you to discuss our work regarding potential reforms to the Financial Disclosure Act, Section 10-16A-1 NMSA 1978, et. seq. and the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978, et. seq.

We submit the following documentation in support of our discussion (includes hyperlinks):

- I. [Financial Disclosure Act](#)
 - a. September 28, 2020 letter to the NM Secretary of State (SOS) re: Inaccessible Financial Disclosure Statements for 2020 General Election Candidates.
 - b. Portions of [New Mexico Ethics Watch's \(NMEW's\) September 2018 report re: Financial Disclosure Act](#) compliance, including recommendations for reform.
 - c. Current [Financial Disclosure Statement form](#) and sample Financial Disclosure Statements filed by candidates found in [SOS database](#) as public records .
 - d. [NMEW's mock financial disclosure statement form](#) submitted to the Secretary of State.
- II. [Lobbyist Regulation Act](#)
 - a. Memorandum re: Lobbyist Regulation Act and suggested reforms pulled from [NMEW's January 2020 lobbying report](#) and [NMEW's and Common Cause NM's March 2020 oil and gas report](#).
 - b. [Discussion draft of legislation](#) reforming the Lobbyist Regulation Act.

We look forward to our time before the Commission on Friday, October 2, 2020.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen A. Sabo". The signature is fluid and cursive, with the first name being the most prominent.

Kathleen A. Sabo
Executive Director, New Mexico Ethics Watch

I. Financial Disclosure Act

- A. NMEW Letter to the Secretary of State
- B. Abridged NMEW Financial Disclosure Report No. 3
- C. Financial Disclosure Statement Instructions & Filed Statements
- D. NMEW Mockup Financial Disclosure Statement

September 28, 2020

Re: Inaccessible Financial Disclosure Statements

Dear Secretary Toulouse Oliver,

During a review of 2020 general election candidates' financial disclosure statements, it has come to our attention that disclosure statements for the following candidates for State Senate cannot be found in the database on the Office of the Secretary of State's website (<https://portal.sos.state.nm.us/FinancialDisclosure/search.aspx>):

Aguayo, Susan
Clark, John
Fryzel, Melissa
Gallus, David
Martinez-Parra, Neomi
Olive, Angela
Roberts, John
Sanchez, Joshua
Skaggs, Kimberly
Storment, Diamantina
Wendler, Charles
Williams, James

Section 10-16A-3(B) NMSA 1978, within the Financial Disclosure Act, provides the following:

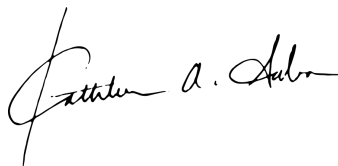
B. A candidate for legislative or statewide office who has not already filed a financial disclosure statement with the secretary of state in the same calendar year shall file with the proper filing officer, as defined in the Election Code [Chapter 1 NMSA 1978], a financial disclosure statement at the time of filing a declaration of candidacy. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within three days.

Additionally, Section 10-16A-5(B) of the Financial Disclosure Act requires the Secretary of State to first seek to ensure voluntary compliance with the requirements of the Act.

We are aware that the missing disclosures may have been misfiled, or that they may never have been transmitted, as required, from a County Clerk in receipt of the filing. Nevertheless, the missing financial disclosure statements cannot be accessed within the database in which they are required to reside.

Respectfully, we request that you please make the missing disclosure statements promptly available in the database, through refiling appropriately, or through requesting that the candidates either immediately request transmission of a timely-filed disclosure statement from the appropriate county clerk or immediately submit a late financial disclosure statement. Please confirm when the listed candidates' statements are available for viewing in the database.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen A. Sabo". The signature is fluid and cursive, with the first name being the most prominent.

Kathleen A. Sabo
Executive Director, New Mexico Ethics Watch

new mexico
**ETHICS
WATCH**

Abridged NMEW Financial Report No. 3



PO Box 30586 Albuquerque, NM 87190 • (505) 274-2442
ksabo@nmethicswatch.org • www.nmethicswatch.org

THIRD TIME, NO CHARM

Continuing Issues

with

The Financial Disclosure Act

A Report from New Mexico Ethics Watch

(Abridged NMEW Financial Disclosure Report No. 3

Pages 1-18, 385-389)

By Kathleen Sabo & Teri Arevalo



September 27, 2018

TABLE OF CONTENTS

TABLE OF CONTENTS	i
EXECUTIVE SUMMARY.....	1
INTRODUCTION.....	4
I. THE FINANCIAL DISCLOSURE ACT (FDA).....	7
A. Requirements	7
B. Amendments	11
C. Attempts to Amend the Financial Disclosure Act	12
II. THE FORMS	13
A. Revisions for 2018 Reporting and Resulting Issues	13
B. The Cabinet Secretaries	18
1. No Filing	20
2. Completed Early	21
3. Missing and Illegible Date Stamps	22
4. Filed on Time.....	23
5. Multiple Forms	24
6. Late Filing	28
7. Discrepancies	28
C. The Governor and Lieutenant Governor	55
1. Governor	55
2. Lieutenant Governor.....	55
D. Legislators	59
1. No Filing	59
a. Representatives.....	59
i. Annual Filing.....	59
ii. Candidate Filing (Incumbents)	60
iii. Candidate Filing (Non-Incumbents)	60
b. Senators.....	60
i. Annual Filing.....	60
2. Completed Early	60
a. Representatives.....	60
i. Annual Filing.....	60
ii. Candidate Filing (Incumbents).....	61
iii. Candidate Filing (Non-Incumbents)	61
b. Senators.....	61
i. Annual Filing.....	61
3. Missing and Illegible Date Stamps	62
a. Representatives.....	62
i. Annual Filing.....	62
ii. Candidate Filing (Incumbents).....	63
iii. Candidate Filing (Non-Incumbents)	64
b. Senators.....	64
i. Annual Filing.....	64
4. Filed on Time.....	65
a. Representatives.....	65
i. Annual Filing.....	65
ii. Candidate Filing (Incumbents).....	67
iii. Candidate Filing (Non-Incumbents)	68
b. Senators.....	68
i. Annual Filing.....	68

5. Multiple Forms	70
a. Representatives.....	70
i. Annual Filing.....	70
ii. Candidate Filing (Incumbents).....	71
iii. Candidate Filing (Non-Incumbents)	71
b. Senators.....	71
i. Annual Filing.....	71
6. Late Filing	71
a. Representatives.....	71
i. Annual Filing.....	71
ii. Candidate Filing (Incumbents).....	71
iii. Candidate Filing (Non-Incumbents)	71
b. Senators.....	71
i. Annual Filing.....	71
7. Discrepancies	73
a. Representatives.....	74
b. Senators.....	229
c. Candidates.....	289
III. FINANCIAL DISCLOSURE ACT LEGISLATION BEST PRACTICES	362
A. Income	364
B. Gifts and Honoraria	374
C. Client Identification	374
D. Household Members.....	375
E. State Agency Connections	378
F. Lobbyist Connections.....	382
IV. CONCLUSIONS AND RECOMMENDATIONS	385
A. Conclusions	385
B. Recommendations for the Legislature	386
C. Recommendations for the Secretary of State.....	387
V. APPENDICES.....	390
Appendix A: Spreadsheet Methodology	390
Appendix B: Completed Early Screenshots and Lists.....	391
1. Cabinet Secretaries.....	391
2. Legislators	393
3. Candidates	394
Appendix C: Missing and Illegible Date Stamp Screenshots and Lists.....	395
1. Cabinet Secretaries.....	395
2. Legislators	398
3. Candidates	400
Appendix D: Listing of Discrepancies.....	401
1. Cabinet Secretaries.....	401
2. Legislators	404
3. Candidates	404
Appendix E: SOS FDS Database Discrepancies	405
Appendix F: Attempts to Amend the FDA	406

EXECUTIVE SUMMARY¹

INTRODUCTION

More than a year removed from the publishing of NMEW's first Financial Disclosure Act (FDA) report, detailing compliance with the FDA by cabinet secretaries and legislators, New Mexico Ethics Watch (NMEW) conducted a follow-up examination. The 2018 statements examined require reporting of 2017 sources of income, business and real estate interests, and business with and representation before state agencies, for the following state officials and their spouses: cabinet secretaries, the governor and lieutenant governor, legislators, and candidates for the legislature. While most financial disclosure statements NMEW reviewed contained reportable discrepancies on their face, NMEW used distinct criteria in determining whether to conduct further inquiry into what was or was not reported on a statement, in order to gain clarity and information and a full picture of an official's compliance with the FDA.

All of the information examined by NMEW is available to the public, either through the Internet or as a public record. Each financial disclosure statement available for viewing in the Secretary of State's (SOS's) database and examined by NMEW was completed and provided by the public official filing the statement, often by hand, and in their own words.²

I. THE FINANCIAL DISCLOSURE ACT³

The FDA was enacted in 1993, after being heard and vetted in six legislative committees (three House and three Senate committees). The FDA is brief, but contains very specific requirements. Importantly, the Act does not specifically permit or require the SOS to promulgate rules and regulations to achieve the aims of the Act.⁴ Although the Act has been amended several times, the FDA has remained mostly unchanged since its passage 25 years ago. Despite the mostly static requirements of the Act, many who are required to file disclosure statements seem to struggle with the requirements and the best way to fill out the form.

II. THE FORMS

The SOS, whose office compiles the database of completed statements, does not provide detailed instructions on filling out the forms. Most of the instructions are on the form itself, and some are ambiguous or even faulty.⁵

A. Revisions for 2018 Reporting

¹ Section letters and numbers correspond to those in the full report, below.

² Section 10-16A-3(E) NMSA 1978 provides that "financial disclosure statements filed pursuant to this section are public records..."

³ Section 10-16A-1 NMSA 1978 et seq.

⁴ See, e.g., in contrast, Section 1-19-26.2 NMSA 1978, permitting the SOS to adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act, and Section 1-19A-15 NMSA 1978, requiring the SOS to adopt rules to ensure effective administration of the Voter Action Act.

⁵ See <http://www.sos.state.nm.us/uploads/files/2018%20Financial%20Disclosure%20Form.pdf>.

Changes to the form for clarity before the 2018 reporting period seemed to cause confusion for filers. The form was even corrected sometime between the January 2018 annual reporting period and the March 13, 2018, filing date for candidates for the State House.

B. The Cabinet Secretaries

The governor's website lists 29 individuals holding cabinet secretary or acting secretary positions. The FDA requires each cabinet secretary to file a financial disclosure statement with the SOS within 30 days of appointment and then annually, during the month of January.

When NMEW first reviewed the statements of all secretaries in late April, we found that 7 of the 29 listed secretaries and acting secretaries had not filed 2018 financial disclosure statements. As of September 14, 2018, there are still 7 secretaries and acting secretaries who have not filed in their capacity as a department head, despite the FDA's provision that, for a state agency head, the filing of the required financial disclosure statement is a condition of entering upon and continuing in state employment or holding an appointed position.⁶

In addition to looking for the basic filing, NMEW examined forms to see whether they had been completed early, were filed on time or early or late, were missing or had illegible date stamps, were rendered confusing by the filing of multiple forms, and/or contained or led to discrepancies.

NMEW's investigation and reporting on discrepancies constitutes the bulk of this report. In searching and reading the cabinet secretaries' 2018 financial disclosure statements in the SOS's database, NMEW found discrepancies in all but 2 of the 29 financial disclosure statements examined.

C. The Governor and Lieutenant Governor

NMEW examined the 2018 annual filings for the Governor and Lieutenant Governor, both of which were filed on time.

D. Legislators

As with NMEW's investigation and reporting of cabinet secretaries' financial disclosure statements, our reporting on discrepancies constitutes the bulk of our writings regarding legislative compliance with the FDA. NMEW examined the statements filed by senators and representatives. All members of the House are up for re-election in November 2018. Those incumbents seeking re-election were required to file an annual statement in January, and then a candidate statement in March, upon declaration of candidacy. NMEW examined both statements for representatives running for re-election.

Those candidates for the State House not currently in office were required to file upon declaration of candidacy. NMEW examined all state representative candidate filings and noted

⁶ Section 10-16A-3(H) NMSA 1978

several instances where candidates – including incumbents – did not file as required by the FDA, and for which the Act provides the consequence of omission from the ballot.⁷

III. FINANCIAL DISCLOSURE ACT LEGISLATION BEST PRACTICES

Each legislative session presents an opportunity for amendment of the FDA, in order to provide New Mexicans with a clearer, more precise financial picture of their public officials. At their best, the statements could become a useful, go-to tool for voters in evaluating both candidates and incumbents. Most states require public officials to disclose financial information, although the specific requirements vary widely. NMEW reports on financial disclosure best practices across the nation.

IV. CONCLUSIONS AND RECOMMENDATIONS

The issues outlined in this report fall along these lines:

- Issues with the construction of the Act
- Issues with the form on which public officials report
- A seeming lack of understanding and education about filling out the form and complying with the FDA
- A lack of oversight and quality control by the receiving agency, the SOS
- A lack of enforcement by those required to apply the law and levy the consequences set out in the Act

NMEW has included a list of recommendations for the legislature in amending the current FDA. Additionally, NMEW makes recommendations for the SOS in creating the financial disclosure database and the form on which public officials report.

Regardless of the outcome of this November's vote on the constitutional amendment creating an independent ethics commission, the FDA will continue to guide public officials in filing required financial disclosure statements. Let's get it right!

⁷ Section 10-16A-3(G) NMSA 1978

INTRODUCTION

During each campaign season, required financial disclosures by public officials draw more interest and scrutiny than usual. This seasonal inspection may be politically motivated, but it does serve a purpose. It makes the public aware of the business ties, dealings, and income sources of elected officials – whether reported or not – that could possibly influence or bias their decision-making.⁸

Elected officials are one class of public servants who are required to file annual financial disclosure statements with the Secretary of State (SOS). New Mexico's Financial Disclosure Act⁹ (FDA) requires several additional classes of public servants/officials to file these annual disclosure statements, including cabinet secretaries, candidates for legislative or statewide public office, and members of boards and commissions requiring senate confirmation.

In early 2017, New Mexico Ethics Watch (NMEW) published a report detailing compliance with the FDA by cabinet secretaries, the governor and lieutenant governor, and members of the New Mexico Legislature. Titled “*Learning to Walk: New Mexico's Anemic Financial Disclosure Regimen*”,¹⁰ the report detailed numerous examples of incomplete, incorrectly populated forms, sometimes with the same mistakes being copied and repeated from year to year. (Per statute, NM's SOS sends out the previous year's statements to those who are required to file them.¹¹) NMEW's report contained numerous recommendations directed to the SOS and the Legislature for strengthening the monitoring of compliance and for enforcing the requirements of the FDA.¹²

In early 2018, NMEW released our second report detailing compliance with the FDA. Titled “*Not Yet Walking – Compliance with the Financial Disclosure Act by Members of Boards and Commissions*”,¹³ the report detailed lack of compliance and found that many state commission and board members had not filed the required annual disclosure form, while others had filed late. Again, the report contained recommendations – in this instance, for the Governor's Office and the Secretary of State – of ways that greater and timely compliance with the FDA could be achieved.¹⁴

For this, our third FDA report, NMEW examined the financial disclosure forms required to be filed in 2018 by cabinet secretaries, legislators, the Governor and Lieutenant Governor, and State House candidates regarding their 2017 sources of income, business, and real estate interests, as well as business with and representation before state agencies.

All of the information examined by NMEW is available to the public, either through the Internet or as a public record. Each financial disclosure statement available for viewing in the

⁸ 2018 is an election year for the full New Mexico House of Representatives and various other statewide and local offices. For a 2018 General Elections Contest/Candidate List compiled by the NM SOS, see <https://candidateportal.servis.sos.state.nm.us/CandidateList.aspx?eid=2698&cty=99>.

⁹ Section 10-16A-1 NMSA 1978 et seq.

¹⁰ http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf

¹¹ Section 10-16A-3(D) NMSA 1978

¹² http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf, pp. 32-34

¹³ <http://nmethicswatch.org/wp-content/uploads/2018/02/Not-Yet-Walking-NMEW-FDA-Report-2.pdf>

¹⁴ *Id.*, pp. 15-17

*Secretary of State's (SOS's) database and examined by NMEW was completed and provided by the public official filing the statement, often by hand, and in their own words.*¹⁵

Our results follow.

A. Criteria

In many instances, our initial observation of a financial disclosure statement led us to further investigation in order to gain clarity and information. NMEW used the following criteria to evaluate whether the information contained in a financial disclosure statement needed a closer look:

1) If the filer or his or her spouse was listed as a CEO, owner, or trustee of a company, we looked for income from that position. In the course of looking for income from that company to be reported, we may have noted other income sources. If it was unclear what those sources were, we investigated them. If someone who did not work directly for a New Mexico state agency reported income from the State of NM, we researched the source of that income on the state's Sunshine Portal.

2) If information on the form was illegible or didn't make sense, we returned to the database to look at the filer's statement from the previous year (if they were previously required to file a statement). If the previous year's statement raised questions due to apparent inconsistency with the current year's statement, we investigated the information reported.

3) Patterns (the absence of which triggered investigation and/or questioning):

- If the filer owned a business, we expected reported income from it.
- If the filer owned rental or commercial real estate, they may have brought in income from it.
- Any employment should be listed in Section 5 (if it brought in income in excess of \$5,000).
- If the filer had income sources other than employment, we questioned where that income was coming from.
- If the filer listed anything in the section requiring reporting of goods and services provided to agencies, we attempted to verify this by researching the Sunshine Portal. If the filer reported work with an agency that did not seem to jive with the filer's work, career, or license, this triggered deeper scrutiny.

Observing these patterns sparked our desire to see the filer's whole picture rather than a part, and we undertook an inquiry into what the filer should have disclosed.

4) Basic facial discrepancies on a statement (e.g., blank spaces in the spouse information section) triggered further research.

5) Inconsistencies and a lack of clarity in reporting income triggered further research.

¹⁵ Section 10-16A-3(E) NMSA 1978 provides that "financial disclosure statements filed pursuant to this section are public records..."

6) If the filer was both a candidate and an incumbent, inconsistencies between statements triggered further research.

7) How the filer filled out the form (e.g., how they listed the source of income) might have triggered a further look, especially when we compared forms from multiple years or multiple required forms (e.g. incumbent v. candidate).

8) The filer's board memberships or trusteeships triggered research to see if the filer was paid for this board or trustee work, if this was not listed in the income section.

9) If the filer reported having a license but reported no income from the use of the license, this triggered a further look.

10) If the filer wrote something like, "no longer accept state contracts", we checked the Sunshine Portal for confirmation.

I. THE FINANCIAL DISCLOSURE ACT (FDA)

New Mexico's FDA was enacted in 1993. According to legislative history, it was introduced by Representative John Underwood, then heard and vetted in the following legislative committees: the House Voter and Election Committee, the House Judiciary Committee, the House Appropriations and Finance Committee, the Senate Judiciary Committee, the Senate Rules Committee, and the Senate Finance Committee. The Act was approved by both the House and Senate, sent to then-Governor Bruce King, and signed into law on March 18, 1993.¹⁶

While brief, the FDA is also very specific. Importantly, the Act does not specifically permit or require the SOS to promulgate rules and regulations to achieve the aims of the Act.¹⁷

A. Requirements

The FDA requires the following information to appear in a financial disclosure statement, for both the required filer, and the person's spouse (the information requested on the form is in bold and the Act's requirements are below in footnoted bullet points):

1) Name (official, spouse, and employer of each), **Address** (mailing, residence, and employer), **Title or Position** (including description of nature of business or occupation) – Sections 1 through 4 on the form

- The full name, mailing address, and residence address of each person covered in the disclosure statement, except that the spouse's address need not be disclosed.¹⁸
- The name and address of the filer's and spouse's employer and the title or position held.¹⁹
- A brief description of the nature of the business or occupation.²⁰

¹⁶ Journal of the House of Representatives, 41st Legislature, 1993, First Session, and Journal of the Senate, 41st Legislature, 1993, First Session.

¹⁷ See, e.g., in contrast, Section 1-19-26.2 NMSA 1978, permitting the SOS to adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act, and Section 1-19A-15 NMSA 1978, requiring the SOS to adopt rules to ensure effective administration of the Voter Action Act.

¹⁸ Section 10-16A-3(C)(1) NMSA 1978

¹⁹ Ibid.

²⁰ Ibid.

2018 Financial Disclosure Statement

1. REPORTING INDIVIDUAL – Contact Information			
Please provide all information requested in the space below.			
Last Name	First Name	Middle	
Residence Address		Email Address	
City	State	Zip	
Mailing Address (If different from above)			
City	State	Zip	
2. REPORTING INDIVIDUAL – Current Filing Status			Date assumed office (for current term): or Date of current appointment/ employment:
Please check the appropriate box and fill in <u>all</u> requested information as it is applicable on today's date.			
<input type="checkbox"/> CANDIDATE FOR: or <input type="checkbox"/> INCUMBENT IN:	Office: District (if applicable):		
<input type="checkbox"/> APPOINTED TO: <input type="checkbox"/> EMPLOYEE OF:	Board or Commission (subject to Senate Confirmation): State agency:		
3. REPORTING INDIVIDUAL - Employer Information			
Employer		Employer's Phone Number	
P.O. Box or Street Address of Employer		City	State Zip
Title or Position held by reporting individual		Nature of business or occupation	
4. SPOUSE OF REPORTING INDIVIDUAL – Employer Information			
Last Name	First Name	Middle	
Name of Spouse's Employer			
Address of Spouse's Employer			
City	State	Zip	
Spouse's title or position held		Nature of business or occupation	

2

2) Sources of Income – Sections 5 through 7 on the form

- All sources of gross income of more than \$5,000.00 to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in listed broad categories. (Law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods, and the category “other”, with direction that the income source be similarly described.)²¹

²¹ Section 10-16A-3(C)(2) NMSA 1978

- Direction that, in describing a law practice, consulting operation, or similar business of the person or the spouse, the major areas of specialization or income sources are required to be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was, during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed.²²

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)	
Sources of Gross Income over \$5,000.00*	
*For the list of all sources, see page 4.	
In the space provided below, indicate all sources of gross income of more than \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.	
Please note: Only the source(s) of income need to be reported. You do not need to report the amount received. If 'other', please include a brief description.	
Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):
6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization	
If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:	
Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):
7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying	
If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:	
Client name & address:	Represented by: <i>List the name of the reporting individual's firm or spouse's firm.</i>

3) Real Estate – Section 8 on the form

- A general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located.²³

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate		
Real estate owned in New Mexico (other than personal residence):		
Owner	County	General Description

²² Ibid.

²³ Section 10-16A-3(C)(3) NMSA 1978

4) Other New Mexico Business Interests – Section 9 on the form

- All other New Mexico business interests not otherwise listed of \$10,000.00 or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity.²⁴

9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business Business Interests over \$10,000.00			
List any other business interests in New Mexico of \$10,000 or more in the space provided:			
Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):

5) Memberships (boards of for-profit businesses) – Section 10 on the form

- All memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico.²⁵

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE Board Membership	
Memberships held by reporting individual or their spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):

6) Professional Licenses – Section 11 on the form

- All New Mexico professional licenses held.²⁶

11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Professional License(s)	
Professional licenses held in New Mexico:	
Type of license:	Individual holding license (list the name of the reporting individual or spouse):

7) Business with State Agencies – Section 12 on the form

- Each state agency that was sold goods or services in excess of \$5,000.00 during the prior calendar year by a person covered in the disclosure statement.²⁷

²⁴ Section 10-16A-3(C)(4) NMSA 1978

²⁵ Section 10-16A-3(C)(5) NMSA 1978

²⁶ Section 10-16A-3(C)(6) NMSA 1978

²⁷ Section 10-16A-3(C)(7) NMSA 1978

12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE Goods and/or Services Provided to State Agencies	
State agencies to which the reporting individual or their spouse provided goods or services to in <u>excess of \$5,000</u> during the prior calendar year:	
State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):

8) Representation or Assistance Before State Agencies – Section 13 on the form

- Each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year.²⁸

13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE State Agency Representation	
List each state agency before which you or your spouse represented or assisted a client during the past year: (do not include courts)	
State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):

9) General Category for Disclosure – Section 14 on the form, the final numbered section before the signature and date lines.

- A general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.²⁹

14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – General Information
Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:

B. Amendments

The FDA, specifically Section 10-16A-3 NMSA 1978, governing required disclosures for certain candidates and public officers and employees, has been amended several times, as follows:

1995: Effective June 1, 1995, in Subsection A, inserted “or nominating petition” and “on a prescribed form” in the first sentence, deleted the language beginning with “or a subsequent” and ending with “this section” in the second sentence, and substituted “within seventy-two hours” for

²⁸ Section 10-16A-3(C)(8) NMSA 1978

²⁹ Section 10-16A-3(C)(9) NMSA 1978

“promptly” in the last sentence; at the end of Subsection B, added “that he holds public office”; in Subsection C(2), inserted “law practice or consulting operation or similar business” following “categories”; rewrote Subsection D; in Subsection F, substituted “statement” for “report”; in Subsection G, inserted “provided for in the Election Code”; and made stylistic changes throughout the section.³⁰

1997: Effective June 20 1997, in the second sentence of Subsection D, changed “mail each person” to “mail each elected official”.³¹

2015: Required financial disclosure statements from members of the insurance nominating committee.³²

Not only was the FDS thoroughly vetted by six legislative committees prior to passage, the FDA has remained mostly unchanged since its passage in 1993. Neither the information required to be disclosed nor the amounts and situations triggering disclosure have been altered in the 25 years since it was enacted. Why, then, do those who are required to file disclosure statements seem to struggle with the requirements and the best way to fill out the form?³³

C. Attempts to Amend the Financial Disclosure Act

Multiple attempts to amend the FDA have been made over the years, with more than a handful being proposed as recently as the 2017 legislative session.³⁴ (See description of attempted amendments in Appendix F.)

³⁰ The legislative bill finder database can only be searched as far back as 1996. The report of this amendment can be found in the annotated statutes and is evidenced in the current Act.

³¹ See SB 229, 1997 Regular Session. An additional 1997 amendment to Section 10-16A-6(C) and (D) NMSA 1978 did not alter required disclosure information.

³² See SB 3, 2015 Regular Session

³³ See, for example, http://www.santafenewmexican.com/news/local_news/financial-disclosures-tripping-up-new-mexico-legislators/article_a82b186b-a0ed-544c-b125-6a233d024be1.html. See also <https://www.abqjournal.com/1155512/records-new-mexico-lawmaker-didnt-disclose-state-contracts.html>, and Rep. Herrell’s guest column at <https://www.abqjournal.com/1159348/yvette-herrell-secretary-of-state-says-no-further-action-needed.html>.

³⁴ Please see Appendix F for a compilation of legislation proposing amendments to the FDA.

II. THE FORMS

A. Revisions for 2018 Reporting and Resulting Issues

The financial disclosure statement form was revised by the Secretary of State for reporting due by January 31, 2018.³⁵ The changes to the form, and the issues noted as a result of the changes, are as follows:

Top of form: On the 2018 form, the check boxes for immediate identification of the type of filing being made – whether “Annual Filing”, “Filing with Declaration of Candidacy”, or “Within 30 days of Appointment or Employment”, which appeared on the form previously – were removed.

Issue(s):

- The removal of the check boxes has, in some cases, led to a guessing game for the public as to which is a filing related to candidacy and which is an annual filing for an officeholder. In theory, filings by the same person for both candidacy and an annual filing should contain the same reported information. (Financial disclosure statements report information for a prior year. No matter when a form was filed in 2018, the information reported for 2017 should be the same.) However, NMEW discovered instances of differences between same-year forms filed for those who are both candidates and required to file annually.

2017 Financial Disclosure Statement

☐ Annual Filing

☐ Filing with Declaration of Candidacy

☐ Within 30 days of Appointment or Employment

Top of the 2017 Financial Disclosure Statement

³⁵ The form may be found on the SOS’s website at <http://www.sos.state.nm.us/uploads/files/2018%20Financial%20Disclosure%20Form.pdf>. The form, a fillable PDF, may be completed online and then printed out and submitted to the SOS. Preceding the fillable PDF is a one-page sheet with headings stating: “What to file:”; “When to file:”; and “Where to file”. The instructions under “What to file:” are limited, pointing the filer to the Financial Disclosure Act in statute and providing the definition for the term “financial interest”.



**STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE**

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

2018 Financial Disclosure Statement

1. REPORTING INDIVIDUAL – Contact Information

Please provide all information requested in the space below.

Top of the 2018 Financial Disclosure Statement

Section 2: On the 2018 form, filing status was given a section number, rather than listed as a portion of Section 1, “Reporting Individual”. Also, on the 2018 form, the selection of “Public Officer With” was deleted, and other changes were made to the organization scheme of the form with regard to where dates of office assumption, employment, or appointment were listed.

Issue(s):

- The reorganization of Section 2 has made it more difficult to observe and understand dates.

Section 3: On the 2018 form, “Reporting Individual’s Employer Information” was given a section number, rather than listed as a portion of Section 1, “Reporting Individual”.

Section 4: Previously Section 2, “Spouse of Reporting Individual” was relabeled “Spouse of Reporting Individual – Employer Information”.

Issue(s):

- The addition of “Employer Information” proved problematic with several filers, as it appears this direction was interpreted that the spouse needed to be listed in Section 4 only if employed. (See Section II(B)(7), Discrepancies, Fox, Jack) Section 10-16A-3(C)(1) NMSA 1978 requires the inclusion of the full name of a spouse on a financial disclosure statement.

Section 5: Previously Section 3, the reworded instructions appear to ask a filer to indicate “not applicable” for a filer or spouse who has no gross income source(s) of more than \$5,000.

Issue(s):

- The addition of this language appears to have not been noted by multiple filers, as often a spouse is not even listed in Section 5, when the form appears to ask for a listing of a spouse, even if reporting a gross income source of more than \$5,000 is “not applicable”. (See Section II(B)(7), Discrepancies, Fox, Jack)
- Additionally, there is a reference, both right below the section heading and in the column “Income Source” to “see page 4”, as well as an asterisk in the section heading. This appears to be meant to be a reference to the footnote/asterisk found just above the affirmation on page 4 of the disclosure statement form. A clearer reference would be to say, “See footnote, p. 4”. Clearer, still, would be to put the footnote on p. 3 of the form,

where Section 5 is contained, rather than to muddy up the affirmation with the footnote pertaining to a section on a previous page.

Section 6: Previously Section 4, “Reporting Individual & Reporting Individual’s Spouse – Areas of Specialization”.

Issue(s):

- The requested information is true to the language of the statute.³⁶ However, some filers have used Section 6 as the sole place to report a spouse’s income, rather than to elaborate on what has already been reported in Section 5, “Income Source(s)”, which requires reporting of “**all** sources of gross income of **more than** \$5,000...” (Emphasis in original.) Although it aligns with statutory language, the requirement to (again) report income sources appears to have led to confusion in reporting. Additionally, the column heading “Received by” is an awkward way to word the information requested in instances where filers are reporting areas of specialization rather than sources of income.

Section 7: Previously Section 5.

Issue(s):

- On the 2018 form, the subtitle “Consulting and/or Lobbying” was added. This subtitle may have confused filers. The instructions require disclosure of client names and addresses, “if the spouse or a person in the reporting person’s or spouse’s law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years”. If neither the spouse nor a person in the filer’s law firm, consulting operation, or similar business is or was a registered lobbyist in the past two years, no information need be reported in Section 7.
- Despite the addition of the subtitle noted above, most of the issues NMEW noted with regard to this section may not be connected to anything specific about the 2018 form. Rather, we found what seem to be perpetual issues, such as not reporting a client address, as required; listing the filer’s own business rather than the client’s name; not listing the person representing the client; using this section to report something other than lobbying activity; and reporting information that does not bear any relation to the information requested.

Section 8³⁷: Previously Section 6.

Issue(s):

- Filers have listed “rental property”, “rental house”, or “commercial property” in Section 8, without listing income from the property in Section 5, “Income Source(s)”. It could be

³⁶ Section 10-16A-3(C)(2) NMSA 1978

³⁷ The first version of the revised form mistakenly contained two sections labeled “Section 8”, calling for both real estate information and other business interest over \$10,000. At some point, the mistake was corrected by the SOS’s Office, and now Section 8 is labeled “Reporting Individual & Reporting Individual’s Spouse – Real Estate” and Section 9 is labeled “Reporting Individual & Reporting Individual’s Spouse – Other Business”. When reporting on discrepancies, NMEW will note when a filer completed the “old form”, with two Section 8s, the first revision of the 2018 form.

that the property has not produced gross income of more than \$5,000, but, absent a box requiring affirmation that the property has or has not produced gross income of sufficient amount required to be reported, there is no way to determine from the form whether the filer has listed all rental or commercial property bringing in gross income of more than \$5,000. Some filers have also listed property addresses under “General Description”, thus providing no information about whether the property was a rental property potentially producing reportable income. (See Section II(B)(7), re: Superintendent Unthank statement discrepancies for example)

Section 9: Previously Section 7, requiring reporting of business interests in New Mexico over \$10,000. (The previous form required reporting of interests of “\$10,000 or more”.)

Issue(s):

- It is unclear whether the form is asking for the reporting of an investment of \$10,000 or more in a New Mexico business, the reporting of ownership in a New Mexico business worth or valued at \$10,000 or more, the reporting of ownership in a New Mexico business that produced \$10,000 or more of income, or for a reporting of any or all of the three instances. Section 10-16A-2 NMSA 1978 defines “financial interest” but not “business interest”. Section 10-16A-3(C)(4) requires reporting of “all other New Mexico business interests *not otherwise listed* of ten thousand dollars (\$10,000) or more in a New Mexico business or entity...” (emphasis added). Section 9 instructions seek information regarding “any *other* business interests in New Mexico of \$10,000 or more...” (emphasis added). Some filers have been confused by these instructions.
- Also, NMEW found instances where an interest was disclosed as “Investment”, yet no reporting of income apparently occurred associated with the investment. Absent a check box requiring affirmation that the interest produced gross income over \$5,000, it cannot be determined whether a business interest reported in Section 9 produced gross income requiring Section 5 reporting, or not.
- The section heading requests information regarding business interests of “more than \$10,000”, while smaller print requests information about business interests of “\$10,000 or more”.³⁸

Section 10: Previously Section 8.

Issue(s):

- For many of those filing in January 2018, Section 10’s subtitle reads “*Non-Profit* Board Membership” (emphasis added), while the instructions required reporting of “Memberships held by reporting individual or their spouse of boards of *for-profit* businesses in New Mexico”. Section 10-16A-3(C)(5) NMSA 1978 requires reporting of “all memberships held by the reporting individual and the individual’s spouse on boards of *for-profit* businesses in New Mexico”. (Emphasis added.) By the time candidates for state representative filed in March, however, the subtitle had been changed to read simply, “Board Membership”. NMEW still noted confusion on the part of filers, with many reporting non-profit board membership.

³⁸ Yes, it is a \$1 difference, but it is a careless mistake.

9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Non-profit Board Membership	
Memberships held by reporting individual or their spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):
2/1/14	

2018 (Old form) with sub-header showing "Non-profit Board Membership"

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Board Membership	
Memberships held by reporting individual or their spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):

2018 (Revised form) with sub-header without "Non-profit"

Section 11: Previously Section 9.

Issue(s):

- The issues NMEW found in Section 11 seem to be related to filers not following the instructions, rather than the instructions being inadequate, confusing, or misleading. NMEW noted instances where license numbers were reported instead of listing the license holder, as required. Also, sometimes filers reported holding "multiple licenses" rather than reporting the type of license, as required.

Section 12: Previously Section 10.

Issue(s):

- The wording of the requirement is grammatically incorrect, requiring reporting of "State agencies *to which* the reporting individual or *their* spouse provided goods or services *to* in excess of..." (emphasis added). NMEW found at least confusion on the part of some filers with regard to whether "goods or services" included renting property to the state, and whether reporting was required if the entity receiving the rents were a company in which the filer was an owner, rather than the filer receiving the rents directly.

Section 13: Previously Section 11.

Issue(s):

- Some filers chose to list the agency for which they work.

Section 14: Previously Section 12.

Issue(s):

- In part, Section 14 requires reporting of "other financial interest". Section 10-16A-3(9) also requires reporting of "other financial interest". In Section 10-16A-2(C), "financial interest" is defined to mean "an interest held by an individual or his spouse that is: (1) an ownership interest in business; or (2) any employment or prospective employment for which negotiations have already begun". It seems likely, based on the reporting – or lack

thereof – that NMEW reviewed in Section 14, that many or most filers are unaware that the phrase “financial interest” is specifically defined and requires specific reporting. Also, although the instructions (and statute) require reporting of “other” financial interest, some filers seemed to be confused as to what information was being sought in Section 14, especially given the Section 9 requirement to report “other business interests in New Mexico of \$10,000 or more”. The reporting NMEW did encounter seemed to be in response to that portion of Section 14’s instructions requiring reporting of “additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts”.

IV. CONCLUSIONS AND RECOMMENDATIONS

In three reports now on New Mexico's Financial Disclosure Act (FDA) compliance and enforcement¹⁷⁸, NMEW has listed numerous recommendations for the Legislature, for the Secretary of State, and, with regard to compliance by boards and commissions in our second report, for the Governor.¹⁷⁹ In spite of continuing scrutiny of and reporting on public officials' financial disclosures by NMEW, the press and even the Office of the State Auditor¹⁸⁰, the same issues seem to arise. This is highlighted in particular during an election year such as 2018.

Once again, NMEW draws conclusions and presents recommendations for both the Legislature and the Secretary of State. Our recommendations are common-sense reforms requiring the Legislature to make minor but important changes to the FDA, and requiring the Secretary of State's Office to exercise quality control and to perform its duties under the law.

A. Conclusions

- There is widespread confusion regarding how to complete certain sections of the form.
- Some state agencies and agency heads do not take the Section 10-16A-3(H) NMSA 1978 restriction upon entering upon and continuing in state employment or holding an appointed position absent the filing of a required financial disclosure statement seriously¹⁸¹.
- Monitoring and enforcement of compliance with the financial disclosure statement filing requirement is almost nonexistent.
- The SOS is hamstrung by both the detailed specificity of the FDA and the lack of statutory authority to promulgate rules and regulations with regard to the FDA.
- The wording of the revised financial disclosure statement form contributes (whether true to statutory language or extrapolating upon it), in some instances, to the confusion and misunderstanding regarding completion of the form.
- Permitting forms to be completed and filed early fosters incomplete and inaccurate reporting for a calendar year.
- The requirement that the SOS send out the previous year's statement may contribute to the perpetuation of mistakes.
- Filers need to be educated on how to properly complete the form.
- The legislature could amend the FDA to eradicate confusion as to how to complete the form and to strengthen the disclosure requirements, using the laws and experiences of other states as models for clarity and strength.

¹⁷⁸ See NMEW's previous two reports at http://nmethicswatch.org/wp-content/uploads/2017/01/NMEW_FinancialDisclosures_WalkingBeforeRunning_WEB5.pdf and <http://nmethicswatch.org/wp-content/uploads/2018/02/Not-Yet-Walking-NMEW-FDA-Report-2.pdf>.

¹⁷⁹ NMEW's second financial disclosure report, "Not Yet Walking" (see link above) examined compliance with the FDA by members of boards and commissions required to be confirmed by the Senate.

¹⁸⁰ See *New Mexico Elected Officials: 2018 Financial Disclosures at a Glance*, at https://www.saonm.org/media/uploads/GAO_Report_Financial_Disclosures_FINAL_2018-04-11.pdf.

¹⁸¹ Section 10-16A-3(H) NMSA 1978 provides that the filing of the financial disclosure statement required by this section is a condition of a state agency head entering upon and continuing in state employment or holding an appointed position.

- Filers, the public, and those charged with monitoring and enforcing the FDA will benefit from online filing and completion within the statutory filing period.
- The law requiring that candidates must file upon declaration of candidacy, and that those who have not completed a form by a designated date are prohibited from appearing on the ballot, is not being enforced.
- The more complex a filer's financial situation is, the less helpful the current form is.

B. Recommendations for the Legislature

- Require the reporting of names, addresses, and employers of filer, spouse/domestic partner, children, children's spouses, and household members. (Requires Section 10-16A-3(C) NMSA 1978 amendment.)
- Require that the relationship between co-owners of real estate be revealed.
- Create consequences for legislators who do not file on time or at all.¹⁸²
- Clarify if and when a new statement needs to be filed when a public official assumes a new position requiring filing upon appointment or declaration of candidacy. (This is particularly important when the new position is assumed upon the resignation of an agency head or the withdrawal of another candidate's candidacy.)
- Require specificity when reporting income sources so that it is clear that sources reported throughout the form are captured in the income source reporting. (Requires Section 10-16A-3(C)(2) NMSA 1978 amendment.)
- Include definition of "state agency" in Section 10-16A-2 NMSA 1978, including in the definition whether a reference to a "state agency" is limited to a New Mexico state agency.
- Define in Section 10-16A-2 NMSA 1978 what is meant by the term "business interest", as used in Section 10-16A-3(C)(4) NMSA.
- Require, in Section 10-16A-3(C)(1) NMSA 1978, a listing of each employer from the prior calendar year, dates of employment for each employer reported, and a listing of the previous employer if the filer has retired during the previous calendar year.
- Provide the SOS with statutory authority to promulgate rules and regulations regarding the FDA.
- Require reporting of tiers of economic interest for all disclosures: income, real estate, etc., so that it is clear how significant a reported financial interest is.
- Tighten the requirements surrounding reporting of the filer's residences, requiring a spouse or domestic partner to report their residence address; requiring the filer to indicate whether their residence is owned or rented, and if rented, from whom; and requiring owned residences to be declared along with other real property holdings.
- Require elected officials appointed to their positions to have to file a financial disclosure within 30 days of appointment, as state agency heads and other appointed officials must.

¹⁸² Section 10-16(A)-(G) NMSA 1978 provides that a candidate for legislative or statewide office who fails or refused to file a statement before the final date for the withdrawal of candidates shall not have the candidate's name printed on the election ballot. Subsection (H) provides that the filing of the required statement is a condition of entering upon and continuing in state employment or holding an appointed position, for a state agency head, an official whose appointment to a board or commission is subject to confirmation by the Senate or a member of the insurance nominating commission. The FDA does not provide a consequence or penalty for a legislator who does not file his or her annual statement.

- Remove the present limitations on reporting membership on boards, business interests, professional licenses, and similar associations to New Mexico. Such licenses, board memberships, and business interests should be reported wherever they occur.
- Remove the requirement that the prior year's forms of elected officials be mailed to the official. It is the elected official's responsibility to file these forms, and they should be responsible enough to keep copies of their prior filings. The Secretary of State's Office is overburdened as it is without this requirement, which only serves, at best, to replicate errors.
- Remove the requirement that the financial disclosure forms be retained for only five years. There is no good reason for this requirement. All forms filed for an official should be available as long as that official is in office or a position of authority, and should be retained under normal state records retention law.
- Review the research regarding states' financial disclosure laws and implement best practices, based upon the unique characteristics of the state and with guidance from the laws and experiences of other states.
- Require specific education for all filers and provide that, once the required education is completed, fines will be levied for noncompliance.

C. Recommendations for the Secretary of State

1. Database Search and Display

- Add a column indicating "Amended" to the database display.
- Distinguish, in the database display, between a candidate filing and an annual filing for a legislator.
- Provide a complete database listing, including "Received Date" for each filer.
- Devise a way for text that exceeds the limits of each physical text box to be displayed or provided, or at least provide a notification that there is more text than appears in the database and provide a description of how to obtain the additional text.
- To avoid confusion in retrieving information from a statement for the database listing, change the column heading currently listed as "Position" to "Filing Status", to conform to Section 2 of the form. List additional filing statuses in "Filing Status" column, including, for example, "Candidate" or "Board Member".
- Add an additional column that reflects the type of filing being listed. (e.g., "Filing Type" as "Annual Filing", "Filing with Declaration of Candidacy", "Filing Within 30 days of Appointment or Employment", and "Amended Filing".¹⁸³)
- Include as a general search category within the database, "Cabinet Secretaries".
- Allow for the multi-year retrieval of statements for the same filer in one search.
- Perform proactive research re: required filers who have not met their filing deadline, and list such filers in the database with the filing status "Unfiled" or "No Filing".

¹⁸³ The 2017 form included all but the "Amended Filing" checkbox at the top of the form. These checkboxes were removed from the 2018 form.

2. Form and Instructions

- Require all filers to both complete and submit financial disclosure statements online.
- Permit online completion only during the month of January, in order to accurately and completely capture income and business interest information for the previous calendar year.
- Consider the disclosure statement to be filed immediately upon submission.
- Permit the system to recognize when an amendment to a previously completed form is being filed, in order to automatically populate the database display to show the amendment.
- Create a mechanism for identifying amended sections of or information on a disclosure statement, perhaps by including a checkbox labeled “Amended” next to each section.
- Include a checkbox or an additional column labeled “Commercial Property”.
- Include a checkbox in Sections 8 (“Real Estate”), 9 (“Other Business”), and 10 (“Board Membership”) as to whether an entry generated income sufficient to require reporting in Section 5, “Income Source(s)”. Alternatively, include another column labeled “Income generating over \$5,000” in Sections 8 and 10, and “Income generating” in Section 9.
- Improve the wording of instructions and column headings to avoid misunderstandings and the capturing of erroneous or duplicate information.
- Require all acronyms to be spelled out.
- Prohibit previously filed statements from being refiled in later years as a substitute for a newly completed statement.
- Provide instructions in Section 5 re: the broad categories of income required to be reported by Section 10-16A-3(C)(2) NMSA 1978 (if the statute is not amended as recommended to require more specificity in describing income sources).
- Provide instructions in Section 5 to include any income sources listed in Sections 8, 9, and 10 that produced more than \$5,000 in gross income.
- Indicate whether the form is seeking reporting of information only about New Mexico income sources, consulting activities, lobbying activities, provision of goods and services, representation, and general information (in Sections 5, 6, 7, 12, 13, and 14, respectively)—or whether the form is seeking reporting on activities conducted out of state as well. (Instructions in Sections 8, 9, 10, and 11 limit reporting to New Mexico property ownership, business interest, board membership, and licenses, respectively, per the FDA.)
- Permit a filer to list information for more than one employer, and make sure the public can see all of the employer information when accessing the statement in the SOS’s database.
- Provide a checkbox in Sections 3 and 4, requiring reporting of employer information, to indicate whether employment from each employer listed produces income meeting the Section 5 threshold for reporting. Alternatively, each time a filer lists an employer, have that information carry over to Section 5 and make a filer affirmatively deselect each entry that does not produce income meeting the Section 5 threshold for reporting.

- Upon receipt, review a filer’s statement to see if it is legible (look for both handwriting and type contrast issues), and reject or return the statement if it is not.
- Create a detailed instruction sheet for completion of the form, referencing sections on the form and within the FDA, and append it to the top of the blank, online form.
- Review all scanned and copied documents before uploading to the database and review the database view of a statement once it is uploaded. If any part of the public record, including the date stamp, is illegible for any reason related to scanning, printing, or uploading, repeat the process until the statement is legible in the database. (See bullet point above re: illegibility related to filer’s statement completion.)
- Require filers to indicate which filing(s) they are amending and include instructions to only complete what they are amending.¹⁸⁴
- Require a filer to make a mark – either “N/A” or “None” – in each section when the filer does not have any required information to report.
- Require the reported information to be typewritten when the form is not completed online.
- Modify the form to make reporting requirements clearer, such as including an affirmative statement with a checkbox stating that a lawyer or consultant had no clients required to be reported.
- In Section 7, consider revising the instructions to require a candidate who was a registered lobbyist during the previous two years to report lobbying information, in addition to information regarding a spouse or a person in the filer’s or spouse’s law firm, consulting operation, or similar business.
- Standardize the SOS date stamp used.

3. Enforcement

- Structure the existing Ethics Bureau within the SOS’s Office so as to provide robust oversight and enforcement of FDA compliance.¹⁸⁵

New Mexico’s legislators have responded to the public’s desire for a strong, ethical culture and are working to increase transparency and accountability in our government by placing a constitutional amendment creating an independent State Ethics Commission on the ballot this November. New Mexico voters will decide whether to approve the proposed constitutional amendment.

Regardless of the outcome of this November’s vote on the constitutional amendment creating an independent ethics commission, the FDA will continue to guide public officials in filing required financial disclosure statements. Let’s get it right!

¹⁸⁴ In 2017, filers could file a “2017 Supplemental Disclosure Form” that instructed to only complete those sections being amended. The SOS’s database then listed “2017 Supplemental FDS” in the “Position” column. See, for example, Billy Tongate’s 2017 statement listings within the SOS’s database.

¹⁸⁵ In 2015, the Center for Public Integrity noted, with regard to New Mexico’s ethics enforcement agencies, “[l]ack of resources or staff is not the primary reason that ethics enforcement is weak at the Secretary of State’s Office, the Attorney General’s Office or the legislative ethics committees. These entities are not structured to provide robust oversight or enforcement. If they were, they would certainly require more resources and staff.”



STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

2020 Financial Disclosure Statement

What to file:

The Financial Disclosure Act, NMSA 1978 §10-16A-1 to 10-16A-8, requires the disclosure of specific financial interests by certain individuals as described below. You may find this form along with additional information on the Office of the New Mexico Secretary of State's website: [Financial Disclosure Overview](#). Please contact the Bureau of Elections with any questions.

The term "financial interest" is defined as "interest held by an individual or his/her spouse that is (1) an ownership interest in business; or (2) any employment or prospective employment for which negotiations have already begun."

When to file:

Who Must Disclose	Submit Disclosure Statement
Candidates for legislative and statewide offices.	At the time a declaration of candidacy or nominating petition is filed, <i>unless a candidate for legislative or statewide office who has not already filed a financial disclosure statement with the Secretary of State in the same calendar year.</i> Section 10-16A-3 (B), NMSA 1978; 2019 ch. 212 § 214.
Incumbents in legislative and statewide offices.	During the month of January.
A state agency head or official whose appointment to a board or commission is subject to senate confirmation. Member of the insurance nominating committee.	Within 30 days of appointment and during the month of January every year thereafter.
State employees and public officials with financial interests that may be affected by their employment or service, but who are otherwise not required to file.	Prior to entering employment or assuming office and during the month of January every year thereafter.

Where to file:

Who Must Disclose	Proper Filing Officer
Candidates for statewide office: Candidates for legislative office:	Office of the NM Secretary of State Applicable County Clerk's Office
Incumbents for statewide office: Incumbents for legislative office:	Office of the NM Secretary of State
A state agency head or official whose appointment to a board or commission is subject to senate confirmation. Member of the insurance nominating committee.	Office of the NM Secretary of State
State employees and public officials with financial interests that may be affected by their employment or service, but who are otherwise not required to file.	Office of the NM Secretary of State



STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

08:11:30 AM
JAN 30 2007
NM SOS RECEIVED

2020 Financial Disclosure Statement

1. REPORTING INDIVIDUAL – Contact Information					
Please provide all information requested in the space below.					
Last Name	López	First Name	Linda	Middle	Marie
Residence Address	9132 Suncrest Ave. SW		Email Address		
City	Albuquerque	State	NM	Zip	87121
Mailing Address (If different from above)	Same as above				
City		State		Zip	
2. REPORTING INDIVIDUAL – Current Filing Status				Date assumed office (for current term): or Date of current appointment/ employment:	
Please check the appropriate box and fill in all requested information as it is applicable on today's date. <u>Note: If Section 4 through 14 do not apply, please indicate with, <u>Not Applicable</u>.</u>					
<input type="checkbox"/> CANDIDATE FOR: or <input checked="" type="checkbox"/> INCUMBENT IN:	Office: State Senator District (if applicable): District 11				
<input type="checkbox"/> APPOINTED TO:	Board or Commission (subject to Senate Confirmation):				
<input type="checkbox"/> EMPLOYEE OF:	State agency:				
3. REPORTING INDIVIDUAL - Employer Information					
Employer	Linda M. López Consulting		Employer's Phone Number	(505) 831-4148	
P.O. Box or Street Address of Employer	9132 Suncrest Ave. SW		City	State	Zip
			Albuquerque	NM	87121
Title or Position held by reporting individual	Owner		Nature of business or occupation	Organizational development	
4. SPOUSE OF REPORTING INDIVIDUAL – Employer Information					
Last Name	First Name		Middle		
Name of Spouse's Employer	N/A				
Address of Spouse's Employer					
City	State		Zip		
Spouse's title or position held			Nature of business or occupation		

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)
Sources of Gross Income over \$5,000.00*

**See bottom of page 4 for the list of all sources.*

In the space provided below, indicate **all** sources of gross income of **more than** \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.

Please note: Only the source(s) of income need to be reported. **You do not need to report the amount received.**

If 'other', please include a brief description.

Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):
N/A	N/A

6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization

If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:

Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):
N/A	N/A

7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying

If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:

Client name & address:	Represented by: <i>List the name of the reporting individual's firm or spouse's firm.</i>
N/A	N/A

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate

A general description of the type of Real Estate owned in New Mexico (other than personal residence):

Owner	County	General Description
N/A		

9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business
Interests over \$10,000.00

List all other New Mexico business interests not otherwise listed of \$10,000 or more in the space provided:

Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):
N/A			

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Board Membership	
All Memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):
N/A	
11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Professional License(s)	
All New Mexico Professional licenses held:	
Type of license:	Individual holding license (list the name of the reporting individual or spouse):
N/A	
12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Goods and/or Services Provided to State Agencies	
State agencies to which the reporting individual or their spouse provided goods or services to, in <u>excess of \$5,000</u> , during the prior calendar year:	
State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):
N/A	
13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
State Agency Representation	
List each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year:	
State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):
N/A	
14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – General Information	
Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:	

**Pursuant to NMSA 1978 § 10-16A-3 (D), income sources include: law practice or consulting operation or similar businesses, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described.*

I hereby swear or affirm under penalty of perjury that the foregoing information is true, correct and complete to the best of my knowledge.

Signature: _____

Date: _____

Printed Name: _____

Linda M. Lopez

1/30/2020



STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

RECEIVED
JAN 13 2013

2020 Financial Disclosure Statement

1. REPORTING INDIVIDUAL – Contact Information

Please provide all information requested in the space below.

Last Name <i>Moore</i>	First Name <i>Mark</i>	Middle <i>D</i>
Residence Address <i>6501 San Antonio #4701</i>		Email Address
City <i>Albuquerque</i>	State <i>NM</i>	Zip <i>87109</i>
Mailing Address (If different from above)		
City	State	Zip

2. REPORTING INDIVIDUAL – Current Filing Status

Please check the appropriate box and fill in all requested information as it is applicable on today's date. Note: If Section 4 through 14 do not apply, please indicate with, Not Applicable.

Date assumed office
(for current term):

or

Date of current
appointment/ employment:

<input type="checkbox"/> CANDIDATE FOR:	Office: <i>Senate</i>	<i>1/2013</i>
<input checked="" type="checkbox"/> INCUMBENT IN:	District (if applicable): <i>21</i>	
<input type="checkbox"/> APPOINTED TO:	Board or Commission (subject to Senate Confirmation):	
<input type="checkbox"/> EMPLOYEE OF:	State agency:	

3. REPORTING INDIVIDUAL - Employer Information

Employer <i>PCAM</i>	Employer's Phone Number <i>575-626-6957</i>
P.O. Box or Street Address of Employer <i>Multiple</i>	City State Zip
Title or Position held by reporting individual <i>Partner</i>	Nature of business or occupation <i>Health care</i>

4. SPOUSE OF REPORTING INDIVIDUAL – Employer Information

Last Name PCAM <i>Moore</i>	First Name <i>Lisa</i>	Middle
Name of Spouse's Employer <i>PCAM</i>		
Address of Spouse's Employer <i>Multiple</i>		
City	State	Zip
Spouse's title or position held <i>Partner</i>	Nature of business or occupation <i>Health care</i>	

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)**Sources of Gross Income over \$5,000.00*****See bottom of page 4 for the list of all sources.*

In the space provided below, indicate **all** sources of gross income of **more than** \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.

Please note: Only the source(s) of income need to be reported. **You do not need to report the amount received.**

If 'other', please include a brief description.

Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):
Salaries	PCAM
Side	PCAM
Treatment	Charles Schach

6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization

If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:

Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):
N/A	

7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying

If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:

Client name & address:	Represented by: List the name of the reporting individual's firm or spouse's firm.
N/A	

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate

A general description of the type of Real Estate owned in New Mexico (other than personal residence):

Owner	County	General Description
N/A		

**9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business
Interests over \$10,000.00**

List all other New Mexico business interests not otherwise listed of \$10,000 or more in the space provided:

Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):
PCAM	Partners	Health care	

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Board Membership	
All Memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):
PCAM	Self
PCAM	Spouse
11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Professional License(s)	
All New Mexico Professional licenses held:	
Type of license:	Individual holding license (list the name of the reporting individual or spouse):
12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Goods and/or Services Provided to State Agencies	
State agencies to which the reporting individual or their spouse provided goods or services to, in <u>excess of \$5,000</u> , during the prior calendar year:	
State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):
Medicaid	Hac Thy Care Services
13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
State Agency Representation	
List each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year:	
State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):
N/A	
14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – General Information	
Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:	
We provide Hac Thy Care Services paid for by TISUSA Conference Facility, Medicaid & Medicare.	

**Pursuant to NMSA 1978 § 10-16A-3 (D), income sources include: law practice or consulting operation or similar businesses, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described.*

I hereby swear or affirm under penalty of perjury that the foregoing information is true, correct and complete to the best of my knowledge.

Signature: _____

Date: _____

Printed Name: _____



STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

MAR 10 2020 PM 4:36

2020 Financial Disclosure Statement

1. REPORTING INDIVIDUAL - Contact Information			
Please provide all information requested in the space below.			
Last Name VARGAS	First Name RICARDO	Middle ARTURO	
Residence Address 2247 Calle Cagque NW		Email Address RICK.VARGAS742@gmail.com	
City SANTA FE	State NM	Zip 87505	
Mailing Address (If different from above)			
City	State	Zip	
2. REPORTING INDIVIDUAL - Current Filing Status			Date assumed office (for current term): or Date of current appointment/ employment:
Please check the appropriate box and fill in all requested information as it is applicable on today's date. <u>Note: If Section 4 through 14 do not apply, please indicate with, Not Applicable.</u>			
<input checked="" type="checkbox"/> CANDIDATE FOR: or <input type="checkbox"/> INCUMBENT IN:	Office: State Senate District (if applicable): 25		
<input type="checkbox"/> APPOINTED TO:	Board or Commission (subject to Senate Confirmation):		
<input type="checkbox"/> EMPLOYEE OF:	State agency:		
3. REPORTING INDIVIDUAL - Employer Information			
Employer ALTERRA HOME LOANS	Employer's Phone Number (505) 428-7748		
P.O. Box or Street Address of Employer 1533 S. ST. FRANCIS DRIVE SUITE E	City SANTA FE	State NM	Zip 87505
Title or Position held by reporting individual MORTGAGE LOAN ORIGINATOR	Nature of business or occupation MORTGAGE		
4. SPOUSE OF REPORTING INDIVIDUAL - Employer Information			
Last Name	First Name	Middle	
Name of Spouse's Employer			
Address of Spouse's Employer			
City	State	Zip	
Spouse's title or position held		Nature of business or occupation	

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)

Sources of Gross Income over \$5,000.00*

*See bottom of page 4 for the list of all sources.

In the space provided below, indicate all sources of gross income of more than \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.

Please note: Only the source(s) of income need to be reported. You do not need to report the amount received.

If "other", please include a brief description.

Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):
ALTERA HOME LOANS	RICARDO VARGAS

6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization

If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:

Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):

7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying

If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:

Client name & address:	Represented by: List the name of the reporting individual's firm or spouse's firm.

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate

A general description of the type of Real Estate owned in New Mexico (other than personal residence):

Owner	County	General Description

9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business

Interests over \$10,000.00

List all other New Mexico business interests not otherwise listed of \$10,000 or more in the space provided:

Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):

MAR 10 2020 PM 4:35

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Board Membership	
All Memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):
11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Professional License(s)	
All New Mexico Professional licenses held:	
Type of license:	Individual holding license (list the name of the reporting individual or spouse):
12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Goods and/or Services Provided to State Agencies	
State agencies to which the reporting individual or their spouse provided goods or services to, in <u>excess of \$5,000</u> , during the prior calendar year:	
State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):
13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
State Agency Representation	
List each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year:	
State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):
14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - General Information	
Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:	

**Pursuant to NMSA 1978 § 10-16A-3 (D), income sources include: law practice or consulting operation or similar businesses, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described.*

I hereby swear or affirm under penalty of perjury that the foregoing information is true, correct and complete to the best of my knowledge.

Signature:  Date: March 10 2020

Printed Name: RICARDO A. VARAS



STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

MSOS RECEIVED
20 JAN 21 PM 4:35

2020 Financial Disclosure Statement

1. REPORTING INDIVIDUAL – Contact Information			
Please provide all information requested in the space below.			
Last Name Garcia	First Name Harry	Middle	
Residence Address 31 Garcia Blvd.		Email Address hgarcia69@gmail.com	
City Grants	State New Mexico	Zip 87020	
Mailing Address (If different from above) P. O. Box 226			
City Grants	State New Mexico	Zip 87020	
2. REPORTING INDIVIDUAL – Current Filing Status			Date assumed office (for current term): or Date of current appointment/ employment:
Please check the appropriate box and fill in all requested information as it is applicable on today's date. <u>Note: If Section 4 through 14 do not apply, please indicate with, Not Applicable.</u>			
<input type="checkbox"/> CANDIDATE FOR: or <input checked="" type="checkbox"/> INCUMBENT IN:	Office: House of Representatives District (if applicable): District 69	January 14, 2019	
<input type="checkbox"/> APPOINTED TO: <input type="checkbox"/> EMPLOYEE OF:	Board or Commission (subject to Senate Confirmation): State agency:		
3. REPORTING INDIVIDUAL - Employer Information			
Employer Retired		Employer's Phone Number	
P.O. Box or Street Address of Employer		City	State Zip
Title or Position held by reporting individual		Nature of business or occupation	
4. SPOUSE OF REPORTING INDIVIDUAL – Employer Information			
Last Name Martinez-Garcia	First Name Grace	Middle Marie	
Name of Spouse's Employer Mi Casitas, LLC		& Cibola County Probate Judge	
Address of Spouse's Employer 2800 North Hiway 605		700 East Roosevelt Ave., Suite 50	
City Milan, NM 87021	State	Zip Grants, NM 87020	
Spouse's title or position held Owner Probate Judge		Nature of business or occupation Manufacturing Portable Sheds Probate Judge	

5. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Income Source(s)**Sources of Gross Income over \$5,000.00*****See bottom of page 4 for the list of all sources.*

In the space provided below, indicate **all** sources of gross income of **more than** \$5,000 during the prior calendar year to each person covered by this disclosure, i.e., reporting individual or their spouse or indicate not applicable.

Please note: Only the source(s) of income need to be reported. **You do not need to report the amount received.**

If "other", please include a brief description.

Income source (*see pg. 4):	Received by (list the name of the reporting individual or spouse):
Social Security	Harry Garcia
VA	Harry Garcia
Interest	Harry Garcia and Grace Marie Martinez-Garcia
Rents	Harry Garcia and Grace Marie Martinez-Garcia
Real Estate Contracts/Notes	Harry Garcia and Grace Marie Martinez-Garcia

6. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Areas of Specialization

If the reporting individual or their spouse is involved in a law practice, consulting operation or similar business, please include the information in the space provided below or indicate not applicable:

Describe the major areas of specialization or sources of income.	Received by (list the name of the reporting individual or spouse):
n/a	

7. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE - Consulting and/or Lobbying

If the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was a registered lobbyist in the previous two years, disclose all clients represented:

Client name & address:	Represented by: <i>List the name of the reporting individual's firm or spouse's firm.</i>
n/a	

8. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Real Estate

A general description of the type of Real Estate owned in New Mexico (other than personal residence):

Owner	County	General Description
Harry Garcia and Grace Marie Martinez-Garcia	Cibola	12 Commercial Properties; 1 330 Acre Ranch
Harry Garcia and Grace Marie Martinez-Garcia	Cibola	12 Houses; 10 Vacant Lots; 1 Trailer Park
Harry Garcia	Cibola	2 Houses and 5 Acres
Grace Marie Martinez-Garcia	Cibola	1 House

**9. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Other Business
Interests over \$10,000.00**

List all other New Mexico business interests not otherwise listed of \$10,000 or more in the space provided:

Name of business:	Position held:	General statement of business purpose:	Received by (list the name of the reporting individual or spouse):
Mi Casitas, LLC	Owner	Manufacturing Portable Sheds	Grace Marie Martinez-Garcia

10. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Board Membership	
All Memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico:	
Name of business:	Board member (list the name of the reporting individual or spouse):
n/a	
11. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – Professional License(s)	
All New Mexico Professional licenses held:	
Type of license:	Individual holding license (list the name of the reporting individual or spouse):
GS29 Construction License	Marie Garcia
Modular-Manufacturing License	Marie Garcia
12. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
Goods and/or Services Provided to State Agencies	
State agencies to which the reporting individual or their spouse provided goods or services to, in excess of \$5,000, during the prior calendar year:	
State agency to which goods and/or services were provided:	Individual providing goods or services (list the name of the reporting individual or spouse):
n/a	
13. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE	
State Agency Representation	
List each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year:	
State agency (other than a court):	Individual assisting client (list the name of the reporting individual or spouse):
n/a	
14. REPORTING INDIVIDUAL & REPORTING INDIVIDUAL'S SPOUSE – General Information	
Provide other financial interest or additional information you believe should be noted to describe potential areas of interest that should be disclosed, or (as applicable) you believe or have reason to believe, may be affected by your official acts:	
Rental of a Commercial Office to Cibola Communities Economic Development Foundation Inc.	

**Pursuant to NMSA 1978 § 10-16A-3 (D), income sources include: law practice or consulting operation or similar businesses, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described.*

I hereby swear or affirm under penalty of perjury that the foregoing information is true, correct and complete to the best of my knowledge.

Signature:

Date: 1-18-2020

Printed Name:

Harry Garcia



**STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE**

Bureau of Elections, Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87501
Phone: (505) 827-3600 Toll-Free: (800) 477-3632
Fax: (505) 827-8403

2020 Financial Disclosure Statement

TYPE OF FILING AND CURRENT FILING STATUS				
Please select the appropriate filing and provide all requested information for the prior calendar year. *If filing an amendment, please provide only the amended information.				
<input type="checkbox"/> Filing an annual statement	<input type="checkbox"/> Amendment to annual statement			
<input type="checkbox"/> Filing with declaration of candidacy	<input type="checkbox"/> Amendment to declaration of candidacy filing			
<input type="checkbox"/> Filing within 30 days of appointment	<input type="checkbox"/> Amendment to within 30-days of appointment filing			
Please provide the requested information for the appropriate filing status for the prior calendar year.				
A. Annual filing for legislator, statewide office holder, agency head, senate confirmed member of a board or commission, member of the insurance nominating committee, or certain public officers and employees:	State agency, board, commission, or Legislative or Judicial position	District	Start date of current employment, appointment, or term	Year of initial filing of financial disclosure statement
B. Candidate for legislative or statewide office	Office	District	Date first assumed office	
C. Filing within 30 days of appointment (subject to Senate Confirmation)	State agency, board or commission	Length of term	Start date of current employment or appointment	
1. Contact Information				
A. Reporting Individual		Please provide all requested information		
Last name	First name	Middle		
Residence Address		Email address		
City	State	Zip		
Mailing address (if different from above)				
City	State	Zip		
B. Spouse – if no spouse, indicate “N/A”		<input type="checkbox"/> Check if you had a spouse during prior calendar year		
Last name	First name	Middle		

2. Employer Information			
Please provide all requested information for each employer including self-employment. *Attach a separate sheet if employer information exceeds space provided below.			
If earn more than \$5,000 from an employer or self-employment, the income must be reported under Section 3, "Sources of Gross Income Over \$5,000."			
A. Reporting Individual		Number of employers (including self-employment):	
Employer Name (indicate if self-employed)		Employer Phone Number	
P.O. Box or Street Address of Employer		City	State Zip
Title or Position		Nature of Business	
2 nd Employer Name		2 nd Employer Phone Number	
P.O. Box or Street Address of 2 nd Employer		City	State Zip
Title or Position		Nature of Business	
B. Spouse – if no spouse, indicate "N/A"		Number of Employers (including self-employment):	
Employer Name (indicate if self-employed)		Employer Phone Number	
P.O. Box or Street Address of Employer		City	State Zip
Title or Position		Nature of Business	
2 nd Employer Name		2 nd Employer Phone Number	
P.O. Box or Street Address of 2 nd Employer		City	State Zip
Title or Position		Nature of Business	
3. Sources of Gross Income Over \$5,000			
Identify sources of income by the following categories: law practice or consulting operation or similar business; finance and banking; farming and ranching; medicine and healthcare; insurance (as a business); oil & gas; transportation; utilities; general stock market holdings; bonds; government; education; manufacturing; real estate; or consumer goods sales (describe goods with a general description). If "Other" income received, provide a similar general description. You do not need to list the amount received. *Attach a separate sheet if sources of gross income over \$5,000 exceed space provided below.			
If income was received jointly, report under "A. Reporting Individual" and mark as joint income.			
A. Reporting Individual		Number of Total Income Sources	
1 st Income Source		Brief description if consumer goods sales or "Other" source	
<input type="checkbox"/> Check if income source is jointly received			
2 nd Income Source		Brief description if consumer goods sales or "Other" source	
<input type="checkbox"/> Check if income source is jointly received			

3 rd Income Source	Brief description if consumer goods sales or "Other" source		
<input type="checkbox"/> Check if income source is jointly received			
B. Spouse– if no spouse, indicate "N/A"	Number of Total Income Sources		
1 st Income Source	Brief description if consumer goods sales or "Other" source		
2 nd Income Source	Brief description if consumer goods sales or "Other" source		
3 rd Income Source	Brief description if consumer goods sales or "Other" source		
4. Law Practice, Consulting Operation or similar business			
A. Reporting Individual	Indicate "N/A" if not applicable	<input type="checkbox"/> Check if registered lobbyist	
Major area of Specialization		Income Source	
Client Name(s) – if registered lobbyist *Attach a separate sheet if number of clients exceed space below.		Client Address(es) – if registered lobbyist	
B. Spouse– if no spouse, indicate "N/A"	Indicate "N/A" if not applicable	<input type="checkbox"/> Check if registered lobbyist	
Major area of Specialization		Income Source	
Client Name(s) – if registered lobbyist *Attach a separate sheet if number of clients exceed space below.		Client Address(es) – if registered lobbyist	
5. Real Estate Owned in New Mexico (other than personal residence)			
*If investment property or rental property is producing more than \$5,000 gross income, the income must be reported under Section 3, "Sources of Gross Income Over \$5,000."			
A. Reporting Individual	If property is jointly owned, report under "A. Reporting Individual" and mark as joint property.		
General Description *Attach a separate sheet if real estate listings exceed space below.	Indicate with whom the property is jointly owned	County	
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.

B. Spouse— if no spouse, indicate “N/A”		If property is jointly owned, report under “A. Reporting Individual” and mark as joint property.	
General Description *Attach a separate sheet if real estate listings exceed space below.		Indicate with whom the property is jointly owned	County
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.
<input type="checkbox"/> Check if jointly owned			<input type="checkbox"/> Check if producing gross income greater than \$5,000.
6. New Mexico Business Interests Not otherwise listed and in which the reporting individual holds an ownership stake, has invested, has a financial interest in, or is at risk of losing \$10,000 or more. *Attach a separate sheet if business interests exceed space below.			
A. Reporting Individual		If business interests are producing gross income over \$5,000, report in Section 3, “Sources of Gross Income Over \$5,000.”	
Name of Business or Entity *Please spell out acronyms		Position Held	General statement of business/entity purpose
	<input type="checkbox"/> Check if business interest produces gross income over \$5,000		
	<input type="checkbox"/> Check if joint interest with spouse		
	<input type="checkbox"/> Check if business interest produces gross income over \$5,000		
	<input type="checkbox"/> Check if joint interest with spouse		
B. Spouse – if no spouse, indicate “N/A”		If business interests are producing gross income over \$5,000, report in Section 3, “Sources of Gross Income Over \$5,000.”	
Name of Business or Entity *Please spell out acronyms		Position Held	General statement of business/entity purpose
	<input type="checkbox"/> Check if business interest produces gross income over \$5,000		
	<input type="checkbox"/> Check if joint interest with spouse		
	<input type="checkbox"/> Check if business interest produces gross income over \$5,000		
	<input type="checkbox"/> Check if joint interest with spouse		
7. For-Profit Business Board Membership			
A. Reporting Individual			
For-Profit Business Name			
	<input type="checkbox"/> Check if board membership gross income over \$5,000 was received, report in Section 3, “Sources of Gross Income Over \$5,000.”		
	<input type="checkbox"/> Check if board membership gross income over \$5,000 was received, report in Section 3, “Sources of Gross Income Over \$5,000.”		

B. Spouse – if no spouse, indicate “N/A”	
For-Profit Business Name	
	<input type="checkbox"/> Check if board membership gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
	<input type="checkbox"/> Check if board membership gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
8. New Mexico Professional License	
A. Reporting Individual	
Type of license (e.g. law, architect, securities broker/dealer, investment advisor, professional engineer, etc.)	
B. Spouse – if no spouse, indicate “N/A”	
Type of license (e.g. law, architect, securities broker/dealer, investment advisor, professional engineer, etc.)	
9. Goods or Services to State Agency in excess of \$5,000	
A. Reporting Individual	
State Agency	
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
B. Spouse – if no spouse, indicate “N/A”	
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
10. State Agency before which Represented or Assisted Clients	
A. Reporting Individual	
State Agency (other than a court)	
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
B. Spouse – if no spouse, indicate “N/A”	
State Agency (other than a court)	
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”
	<input type="checkbox"/> Check if gross income over \$5,000 was received. Report in Section 3, “Sources of Gross Income Over \$5,000.”

I hereby swear or affirm under penalty of perjury that the foregoing information is true, accurate and complete to the best of my knowledge.

Signature: _____

Date: _____

Printed Name: _____

II. Lobbyist Regulation Act

A. Memorandum re: Lobbyist Regulation Act

B. Discussion Draft of Reform Legislation

Proposed Amendments to the Lobbyist Regulation Act¹

Introduction

Earlier this year, New Mexico Ethics Watch (NMEW) published a report titled, “Lobbyists and Their Outsized Influence in New Mexico: Tales of Film, Firearms and Fumes” (Dede Feldman, Rouzi Guo, Lauren Hutchinson, Tony Ortiz, and Kathleen Sabo) (January 2020) (<http://nmethicswatch.org/>). The report is a comprehensive analysis of recent lobbying activities in New Mexico.

The analysis relied heavily on data supplied by the Campaign Finance Information System (CFIS), housed on the website of the New Mexico Secretary of State (SOS).² As noted in previous efforts to report on lobbyist disclosure requirements, the information reported in the CFIS is lacking.³ We hope to work with the Secretary of State’s Office in the future to address gaps in the CFIS and **improve its usability**.

Candidly, lobbyist disclosure requirements in New Mexico are too lax. One way to strengthen those requirements is to amend the provisions of the Lobbyist Regulation Act. In this brief we respectfully offer recommendations for strengthening the provisions of that act. As noted in the recently-published NMEW report, “....if our laws went farther, not only would we gain more transparency and shed light on the influence exerted by lobbyists, we would have more trust in the Legislature as an institution.”⁴

Many of these recommendations have been discussed and debated during previous legislative sessions in New Mexico. Consequently, prior legislative proposals are embedded in this document, as they may provide a baseline for future policy discussions.

Finally, we reviewed the New Mexico Statutes Annotated (NMSA) to look for provisions that authorize rule-making by the Secretary of State. We found a single reference, Section 1-2-1 NMSA, which authorizes the Secretary of State to make rules necessary to carry out the purposes of the Election Code. Those rules can be found at NMAC Sections 1.10.1 through 1.10.35 and appear to exclusively address election matters.

On the other hand, the Lobbyist Regulation Act currently does not authorize rule-making pursuant to that act. Also, we did not find general authority in the statutes for rule-making by the Secretary of State. We feel it is time to discuss the merits of providing the Secretary of State with express authority to adopt rules concerning regulation of lobbyists.

¹ Sections 2-11-1 through 2-11-9 NMSA 1978

² <https://www.cfis.state.nm.us/>

³ See “Lobbying in the Land of Enchantment: Special interests and their Hired Guns” (New Mexico Common Cause) (October 2013) p.48; and Marjorie Childress, “Lobbying Influence Game Largely in the Dark” (New Mexico in Depth) (June 3, 2019)

⁴ See “Lobbyists and their Outsized Influence in New Mexico: Tales of Film, Firearms and Fumes” (New Mexico Ethics Watch) (January 2020) p. 3

Recommendations

When legislators or other public officials (statewide elected officials, public regulation commissioners, cabinet secretaries) leave their positions, require a two-year moratorium before that person may be compensated as a lobbyist.

The Secretary of State's Office lists at least 20 former representatives and 14 former senators registered as lobbyists, many of them former leaders.⁵

Former senators include Kent Cravens, Roman Maes, Richard Romero, Tom Rutherford, Clinton Harden, Walter Bradley, Diane Snyder, Mickey Barnett, Tim Jennings, Tito Chavez, Eric Griego, Lynda Lovejoy, Cynthia Nava, and John Ryan. Former representatives include Jim Smith, Rick Miera, Raymond Sanchez, Michael Olguin, Joe Thompson, Brian Moore, Dan Silva, Dick Minzner, Al Park, Andy Nunez, Debbie Rodella, Tomas Garcia, Bealquin "Bill" Gomez, Keith Gardner, Stephanie Maez, Justine Fox-Young, Tom Swisstack, John Underwood, Maurice Hobson, and John Thompson.⁶

Some former legislators become lobbyists during the session after they leave elected office. This quick turnaround is called the "revolving door." In many jurisdictions there is a required cooling-off period before a former legislator can lobby their former colleagues – but not in New Mexico.⁷

A former lawmaker's or public official's knowledge of process and their relationships with former colleagues gives them an unfair advantage at the State Capitol. This proposal would at least slow down the transition from public service to work as a lobbyist.

A number of bills have sought to slow down this "revolving door". See HB 73 (2017) (Rep. Jim Dines, Rep. Joanne Ferrary and Rep. Nathan Small) (<https://nmlegis.gov/Sessions/17%20Regular/bills/house/HB0073.pdf>), which passed the House of Representatives 58-2 and received a "Do Pass" from the Senate Rules Committee and the Senate Judiciary Committee.

Additionally, see the following, similar proposals: SB 512 (2015) (Sen. Bill O'Neill), SB 210 (2013) (Sen. Bill O'Neill), SB 103 (2012) (Sen. Dede Feldman), and SB 313 (2011) (Sen. Dede Feldman).

Require lobbyists to file information with the Secretary of State regarding which bills the lobbyist has worked on and whether they supported or opposed the bills. A recent bill would have addressed this basic transparency requirement and would have provided the public with additional information regarding supporters and opponents of specific legislation. (See HB 131 (2019), which passed the House 62-0 (Rep. Dayan Hochman-Vigil, Rep. Elizabeth Thomson and Senator Jeff Steinborn) (<https://nmlegis.gov/Sessions/19%20Regular/bills/house/HB0131.pdf>), but was killed in the Senate.

Require lobbyist's employers to disclose all compensation paid to a lobbyist for lobbying. It has become increasingly difficult to follow the money spent to influence the political process. This requirement would shine some light on how much money businesses are spending to get their priorities enacted into law. HB 155 (2015) (<https://nmlegis.gov/Sessions/15%20Regular/bills/house/HB0155.pdf>),

⁵ *Ibid*, p.8

⁶ *Ibid*, p.8

⁷ *Ibid*, p.8

sponsored by then-Representative Jeff Steinborn, would have required lobbyist's employers to disclose all compensation paid to a lobbyist. Although HB 155 eventually passed both chambers and was signed by the governor, the language regarding disclosure of compensation paid to a lobbyist was removed from the bill by the House Regulatory and Public Affairs Committee).

Require recusal by legislators when family members – especially spouses, sons, daughters, parents, and siblings – are lobbying bills on which legislators must vote.

A number of lobbyists are related to current legislators, by marriage and by blood. Lobbyist Vanessa Alarid is the wife of Rep. Moe Maestas; lobbyist Scott Scanland is the husband of Rep. Doreen Gallegos; lobbyist Linda Siegle is the partner of Sen. Liz Stefanics; lobbyist Leland Gould is the husband of Sen. Constance Gould; lobbyist Allison Cooper is the daughter of Sen. President Pro Tem Mary Kay Papen; and lobbyist Emily Strickler is the daughter of Rep. James Strickler.⁸

In some states, relatives are barred from lobbying their kin. At a minimum, a requirement for a simple recusal would address the perception of a conflict of interest. Currently, rules requiring recusal are in the rulebooks of both the Senate and House⁹, but it is a rare occurrence when a legislator asks to be recused from a vote.

Amend the Lobbyist Regulation Act to include definitions for “recipient” and “beneficiary.”

Require more accurate information from lobbyists in reports they file with the Secretary of State's Office. Defining these terms will make it easier to follow some of the money that flows into political coffers. It will also provide citizens, researchers and journalists with information they require to keep our system of governance in the sunshine.

Conclusion

Now, more than ever, we need to build trust in our political institutions, including the state legislature. Our lawmakers will be faced with extremely difficult budget and policy decisions and it is imperative that their deliberations be equitable and transparent. In that spirit, we respectfully offer these recommendations to amend the Lobbyist Regulation Act.

We hope to work with the Secretary of State and the State Ethics Commission to advocate for these recommendations during the 2021 legislative session.

⁸ *Ibid*, p. 8

⁹ See Senate Rules 7-5 and 7-6 and House Rules 7-5 and 7-6

_____ BILL

55TH LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

(Prepared by New Mexico Ethics Watch for the State Ethics Commission)

AN ACT

RELATING TO LOBBYIST REGULATION; PROHIBITING FORMER STATEWIDE ELECTED OFFICIALS, FORMER PUBLIC REGULATION COMMISSIONERS, FORMER LEGISLATORS AND FORMER CABINET SECRETARIES FROM ACCEPTING COMPENSATION AS LOBBYISTS FOR A PERIOD OF TWO YEARS AFTER THEIR PUBLIC SERVICE; REQUIRING POST-SESSION REPORTS ON LEGISLATION FROM A LOBBYIST OR LOBBYIST’S EMPLOYER; REQUIRING A LOBBYIST’S EMPLOYER TO FILE A LOBBYING EXPENSES REPORT ON AN ANNUAL BASIS; REQUIRING RECUSAL BY A LEGISLATOR WHEN A FAMILY MEMBER IS LOBBYING A BILL ON WHICH LEGISLATORS MUST VOTE; PROVIDING PENALTIES.

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

SECTION 1. A new section of the Lobbyist Regulation Act is enacted to read:

“[NEW MATERIAL] RESTRICTION ON LOBBYING BY CERTAIN FORMER PUBLIC OFFICIALS—PENALTY.—

A. A former statewide elected official, a former public regulation commissioner, a former state legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after service as a statewide elected official, a former public regulation commissioner, a former state legislator or a former cabinet secretary.

B. A lobbyist's employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former state legislator or a former cabinet secretary as a lobbyist for a period of two calendar years after the person served as a statewide elected official, a former public regulation commissioner, a former state legislator or a former cabinet secretary.

C. A person who violates a provision of this section is guilty of a Misdemeanor and upon a conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

SECTION 2. A new section of the Lobbyist Regulation Act is enacted to read:

"[NEW MATERIAL] POST-SESSION REPORTS ON LEGISLATION FROM A LOBBYIST OR LOBBYIST'S EMPLOYER.—A lobbyist or lobbyist's employer that is required to file an expenditure report, pursuant to the provisions of Section 2-11-6 NMSA 1978, shall file an additional report with the secretary of state within fourteen days following the conclusion of a legislative session. The report shall list the legislation on which the lobbyist or lobbyist's employer lobbied and shall indicate whether the lobbyist or lobbyist's employer supported, opposed or took another position on each piece of legislation."

SECTION 3. A new section of the Lobbyist Regulation Act is enacted to read:

“[NEW MATERIAL] LOBBYIST EMPLOYERS--ANNUAL LOBBYING EXPENSES REPORTS.—

A. No later than July 15 of each year, a lobbyist’s employer shall file a lobbying expenses report for the preceding fiscal year with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state.

B. Lobbying expenses reports filed by lobbyist employers shall be kept and maintained on the secretary of state’s lobbyist disclosure web site and shall be available in searchable and downloadable formats.

C. As used in this section, “lobbying expenses” means an aggregate total of:

(1) expenditures paid by a lobbyist that are reimbursed by the lobbyist’s employer;

(2) political contributions made by a lobbyist that are reimbursed by the lobbyist’s employer;

(3) expenses incurred by a lobbyist that are reimbursed by the lobbyist’s employer, including living expenses, expenses for maintaining an office, and other expenses incidental to lobbying;

(4) all compensation paid to a lobbyist for lobbying by the lobbyist’s employer; and

(5) any other lobbying expenditures incurred by the lobbyist’s employer that are not included in Paragraphs (1) through (4) of this subsection.”

SECTION 4. A new section of the Lobbyist Regulation Act is enacted to read:

“[NEW MATERIAL] REQUIRING RECUSAL BY A LEGISLATOR

WHEN A FAMILY MEMBER IS LOBBYING A BILL.—

A. A legislator shall request recusal when a legislator's family member is lobbying a bill on which legislators must vote.

B. As used in this section, "family member" means a spouse, daughter, son, parent or sibling."

SECTION 5. EFFECTIVE DATE.—The effective date of the provisions of this act is July 1, 2021.