



STATE ETHICS COMMISSION

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ANNUAL REPORT 2024



Prepared for:
The New Mexico Legislature
Governor Michelle Lujan Grisham

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OPENING MESSAGE

December 30, 2024

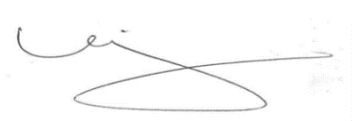
On behalf of the State Ethics Commission, I am pleased to offer an annual report of the Commission's activities. Under statute, the State Ethics Commission shall "submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor."

In the year 2024, the Commission made significant strides in fulfilling its broad constitutional and statutory obligations. The Commission:

- said farewell to Ron Solimon, Commissioner, thanking him for his service, and welcomed the Honorable Gary Clingman to the Commission;
- handled 93 administrative complaints newly filed in 2024, in addition to 23 administrative complaints that were rolled over from 2023;
- reviewed and handled 282 informal complaints submitted to the Commission in 2024;
- issued 6 formal advisory opinions and 23 informal letter opinions;
- enforced the Governmental Conduct Act, Campaign Reporting Act, and the Procurement Code in several instances;
- enforced the Financial Disclosure Act for important agency heads and boards and commissions in the state;
- provided continuing legal education and ethics training to audiences around New Mexico; and
- expanded to 10 FTE and divisionalized its internal operating structure, organized around compliance, enforcement, and administrative services.

On behalf of the Commissioners, I want to thank the New Mexico Legislature and the Governor for their continued support of the Commission. Public trust takes years of work by each branch of government to build and preserve and can be too easily eroded. Like those New Mexicans who worked over 40 years for the Commission's creation, we believe that the State Ethics Commission plays a central part in ensuring ethical and accountable government in New Mexico.

Respectfully,



Hon. William F. Lang (Ret.) Chair, New Mexico State Ethics Commission, on behalf of State Ethics Commissioners Jeffrey L. Baker, Stuart M. Bluestone, Hon. Celia Castillo (Ret.), Hon. Gary Clingman (Ret.), Hon. Dr. Terry McMillan, and Dr. Judy Villanueva.

COMMISSION MEMBERS

Hon. William F. Lang, Chair

Appointing authority: Governor Michelle Lujan Grisham

Term expires: June 30, 2026

Jeffrey L. Baker, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: July 26, 2028

Stuart M. Bluestone, Member

Appointing authority: Speaker of the House, Javier Martínez

Term expires: June 30, 2027

Hon. Dr. Terry McMillan, Member

Appointing authority: Minority Floor Leader of the Senate, Gregory A. Baca

Term expires: June 30, 2027

Hon. Celia Castillo, Member

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

Term expires: June 30, 2025

Hon. Gary Clingman, Member

Appointing authority: Legislatively appointed Commissioners

Term expires: July 26, 2028

Dr. Judy Villanueva, Member

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

Term expires: June 30, 2025

HISTORY OF THE STATE ETHICS COMMISSION

The Commission is the product of over 40 years of work by Governors, state legislators, advocacy organizations, and other New Mexicans fighting for accountable government.

In 2017, the Legislature passed a joint resolution to amend the New Mexico Constitution to create an independent ethics commission. The House of Representatives unanimously passed this joint resolution (66-0), and the Senate passed it on a vote of 30-9. The legislation gave the New Mexico electorate the final decision on whether to create an independent ethics commission. In November 2018, over 75% of New Mexican voters voting on the ballot question elected to amend the Constitution to add Article V, Section 17, creating an independent and bipartisan ethics commission. With this election, New Mexico became the 45th state to create an independent ethics commission.

The New Mexico Constitution provides for the Commission's seven-member composition and directs the process for the appointment of the Commissioners. N.M. Const. Art. V, § 17(A). It also empowers the Commission to adjudicate alleged violations of, and issue advisory opinions regarding, ethical standards and reporting requirements for "state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts" and for such other jurisdiction as provided by law. N.M. Const. Art. V, § 17(B). Finally, the state Constitution empowers the Commission with subpoena powers, as provided by law, and enables the Commission to "have such other powers and duties and administer or enforce such other acts as further provided by law." N.M. Const. Art. V, § 17(C).

In the 2019 legislative session, the Legislature unanimously enacted enabling legislation, Senate Bill 668 (Laws 2019), which created the State Ethics Commission Act, providing for additional structure for the Commission and delegating to the Commission a specific set of powers. Senate Bill 668 also amended the Governmental Conduct Act, the Procurement Code, the Campaign Reporting Act, the Lobbyist Regulation Act, the Voter Action Act, the Financial Disclosure Act, and the Gift Act, delegating additional adjudicatory and civil enforcement powers to the Commission. Governor Michelle Lujan Grisham signed Senate Bill 668 into law on March 28, 2019.

The organizational provisions of the State Ethics Commission Act took effect on July 1, 2019, and the statute's jurisdictional and enforcement provisions took effect on January 1, 2020. The Commission has been operating since.

ORGANIZATION

Commissioners

The State Ethics Commission is comprised of seven Commissioners. The State Ethics Commission Act sets forth a procedure for appointing Commissioners that ensures a bi-partisan independent commission.

The Commission has a unique appointment process. The Speaker of the House of Representatives, the Minority Floor Leader of the House, the President Pro Tempore of the Senate, and the Minority Floor Leader of the Senate each appoint one Commissioner. The four legislatively appointed Commissioners then appoint two additional Commissioners. Finally, the Governor appoints the Commission's Chair, who must be a retired judge. No more than three Commissioners may be members of the same political party. Commissioners are appointed for staggered terms of four years. No Commissioner may serve more than two consecutive four-year terms.

There are also statutory requirements regarding who may serve as a Commissioner. To qualify, a person must be a New Mexico voter; not have changed party registration in the five years preceding appointment; and not have been in the two years preceding appointment a public official, a public employee, a candidate, a lobbyist, a government contractor, or an office holder in a political party at the federal or state level.

Commission Staff

The administrative, advisory, investigative, and enforcement functions of the Commission are performed by the agency's staff. The State Ethics Commission Act creates two staff positions: the Executive Director and General Counsel. The Commission hires the Director, and the Director hires the General Counsel and all other staff. Each statutorily created office is subject to limited terms. Under the Act, the Director may serve for, at most, two six-year terms; the General Counsel may serve for, at most, two five-year terms. The Commission's current staff members are as follows:

Executive Director | Jeremy D. Farris

Jeremy D. Farris is the State Ethics Commission's founding Executive Director. He previously served as General Counsel to New Mexico's Department of Finance and Administration and practiced law at Bondurant, Mixson & Elmore in Atlanta, Georgia and Freedman Boyd Hollander & Goldberg in Albuquerque, New Mexico. Jeremy clerked for the Honorable Julia S. Gibbons on the United States Court of Appeals for the Sixth Circuit; the Honorable Judith K. Nakamura on the New Mexico Supreme Court; and the Honorable James O. Browning on the United States District Court for the District of New Mexico. He holds a law degree from Harvard Law School, a doctorate and master's degree from the University of Oxford, where he was a Rhodes Scholar, and a Bachelor of Science from the Georgia Institute of Technology.

General Counsel | Walker Boyd

Walker Boyd is the first State Ethics Commission General Counsel. He previously practiced law at Peifer, Hanson and Mullins, P.A., and clerked for the Honorable James A. Parker on the United States District Court for the District of New Mexico and the Honorable J. Miles Hanisee on the New Mexico Court of Appeals. He holds a law degree from the University of New Mexico, where he served as Editor in Chief of the New Mexico Law Review.

Chief Compliance Counsel | Caroline “KC” Manierre

KC Manierre serves as Chief Compliance Counsel to the State Ethics Commission. She previously practiced law at Rothstein Donatelli LLP, and prior to that served as an Assistant Attorney General at the New Mexico Department of Justice. She holds a law degree from the University of New Mexico, and a Bachelor of Arts in International Studies and in Spanish from the University of Denver.

Deputy Director and Public Information Officer | Amelia Bierle

Amelia Bierle is the State Ethics Commission’s Deputy Director and Public Information Officer. She previously held the role of Deputy Chief of Staff at Graphite Health. Amelia earned a Master of Public Policy and a Master of Business Administration from the University of New Mexico. She also earned a Bachelor of Science from the University of New Mexico, while playing collegiate soccer for the Lobos. Amelia’s academic background is complemented by a certificate in Artificial Intelligence Applications for Growth from Northwestern Kellogg Executive Education.

Deputy General Counsel | Jessica Randall

Jessica Randall serves as the State Ethics Commission’s Deputy General Counsel. She was previously an Assistant County Attorney for the County of Bernalillo, working on a wide variety of municipal law issues. Before that, she served as a prosecutor in the Eleventh, Thirteenth, and Second Judicial Districts, where she tried dozens of cases before a jury. She holds a law degree from the University of New Mexico School of Law and received her Bachelor of Arts from the University of Vermont, where she majored in English and Philosophy.

Deputy Compliance Counsel | Rebecca Branch

Rebecca Branch serves as the State Ethics Commission’s Deputy General Counsel. She previously served as Deputy Director of Litigation and Deputy Director of Consumer Protection at the Office of the New Mexico Attorney General. She was also with the Office of the Superintendent of Insurance as Legal Counsel. Rebecca began her legal career at the Branch Law Firm. She holds a law degree from the University of Denver, Sturm School of Law and a Bachelor of Arts in History from Alfred University.

Attorney | Connor G. Woods

Connor G. Woods serves as the State Ethics Commission’s Attorney. A sixteenth-generation New Mexican, he earned his law degree from the University of New Mexico School of Law. In law school, he served as the Professional Articles Editor for the New Mexico Law Review, interned for the Department of Finance and Administration, and externed for the Honorable Megan P. Duffy of the New Mexico Court of Appeals. Before law school, he worked for the Legislative Finance Committee as an assistant analyst and earned a Bachelor of Arts in Political Science from New Mexico Highlands University.

Case Manager | Amy Ballou

Amy Ballou is a case manager whose responsibilities include case management, legal research, and civil litigation. A native of Michigan, Amy has a Bachelor's Degree from the University of Michigan, a Master's Degree from the University of Southern California, and an ABA-approved paralegal certification from Central New Mexico Community College. Prior to joining the Commission, Amy worked in the Civil Division of the Second Judicial District Court in Albuquerque for over a decade. She worked as a paralegal for several law firms before joining the Second Judicial District Court.

Finance and Administration Director | Wendy George

Wendy George serves as the State Ethics Commission's Director of Finance and Administration. She previously served as Budget Manager to New Mexico's Department of Finance and Administration and has many years of governmental financial experience. She also has corporate financial and compliance experience working for Wells Fargo and Ameriprise Financial in Minneapolis, MN. She holds a Bachelor of Science in Business Management from Cardinal Stritch University.

Financial Coordinator | Sharon Garcia

Sharon Garcia serves as the State Ethics Commission's Financial Coordinator. She previously served as a Human Resources Generalist to New Mexico Department of Health. She has many years of financial experience and compliance working for Bank of America. She holds an Associate of Applied Science in Administration from Central New Mexico Community College.

Paralegal | Shariesse McCannon

Shariesse McCannon is the Commission's contract paralegal, supporting the litigation and investigatory work of the Commission's attorney staff. Before working with the Commission, Shariesse served as a paralegal with the Judicial Standards Commission and the Branch Law Firm.

Legal Summer Clerks | Kaleb McCain, Mason Leachman & Jordan Moats

During the summer of 2023, the Commission invited three law students to participate in the Commission's work. Kaleb McCain (a current 3L at the University of New Mexico School of Law), Mason Leachman and Jordan Moats (current 2Ls at the University of New Mexico School of Law), performed various legal research and drafting projects. They attended court hearings and Commission meetings. The Commission is committed to working with the University of New Mexico School of Law to introduce successive classes of law students to the Commission's legal work through summer clerkships.

FISCAL REPORT

The following chart reflects revenues, expenditures, and changes in fund balance for the fiscal year ending June 30, 2024.

**NEW MEXICO STATE ETHICS COMMISSION
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN
FUND BALANCE – GOVERNMENTAL FUND – GENERAL FUND
YEAR ENDED JUNE 30, 2024**

REVENUES		
Court Fees		\$ 6,100
Total Revenues		<u>6,100</u>
EXPENDITURES		
Current:		
Personal Services and Fringe Benefits		1,124,859
Contractual Services		166,557
Other Costs		141,540
Capital Outlay		10,071
Debt Service:		
Principal		790
Interest		86
Total Expenditures		<u>1,443,903</u>
EXCESS (DEFICIENCY) OF REVENUE OVER (UNDER) EXPENDITURES		(1,437,803)
OTHER FINANCING SOURCES (USES)		
State General Fund Appropriations		1,460,200
Lease Financing		10,071
Transfers In from Other State Agencies		50,000
Reversions to State General Fund - FY2024		<u>(82,468)</u>
Total Other Financing Sources (Uses)		<u>1,437,803</u>
NET CHANGE IN FUND BALANCE		-
Fund Balance - Beginning of Year		<u>-</u>
FUND BALANCE - END OF YEAR		<u><u>\$ -</u></u>

In accordance with the Government Auditing Standards, CliftonLarsonAllen LLP (CLA), has completed an audit of the State Ethics Commission’s financial statements ending June 30, 2024. Following approval by the Office of the State Auditor, CLA’s financial statement includes an **unmodified** auditor’s report confirming no material weakness(es), significant deficiency(ies), nor noncompliance material to the financial statements. In CLA’s opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and the major general fund as of June 30, 2024, the respective changes in financial position and budgetary comparison of the general fund for

the year then ended in accordance with accounting principles generally accepted in the United States. The full report on the State Ethics Commission's Financial Statements and Supplementary Information for fiscal year ended June 30, 2024 can be found [here](#).

OPERATIONS

The Commission has five main functions: (i) investigation and adjudication of administrative complaints filed with the Commission; (ii) issuance of advisory opinions and advisory letters upon request; (iii) civil enforcement of New Mexico's ethics and disclosure laws in state court; (iv) issuance of a model code of ethics for state agencies and the provision of ethics and governmental conduct trainings for legislators, state agencies, and local public bodies; and (v) recommendations for statutory amendments to improve New Mexico's ethics and disclosure laws. Below is a profile of the Commission's progress in the year 2024 across these functions and a report of the Commission's workload.

Administrative Complaints

Adjudication of Administrative Complaints

The Commission's adjudication of administrative complaints alleging ethics violations is divided across four roles. The Executive Director (or their designee) determines jurisdiction. The General Counsel (or their designee) determines whether the allegations of a complaint are supported by probable cause, in which case a hearing officer must confirm that finding. In administrative matters where both the General Counsel and a hearing officer determines a complaint is supported by probable cause, a separate hearing officer then conducts a hearing and issues findings of fact and conclusions of law. The Commission sits as an appellate body, reviewing hearing officer determinations if and when appealed. The Commission currently has a Memorandum of Understanding with the Administrative Hearings Office for hearing officer services. The Commission also has a professional services contract with the Honorable Alan C. Torgerson, retired federal Magistrate Judge for the United States District Court for the District of New Mexico, for hearing officer services.

The Commission's adjudication of administrative complaints is controlled by the provisions of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023), and the Commission's rules of procedure for administrative cases, promulgated at [1.8.3 NMAC](#). In 2023, the Commission amended its rules of procedure for administrative cases. These rule amendments became effective on July 1, 2023, and align the Commission's rules of procedure with legislative amendments to the State Ethics Commission Act during the 2023 legislative session. The Commission has also established and maintains its [Proceedings Portal](#), a web-based case management and docketing system where parties and their attorneys may submit and view filings on the docket. To review the Commission's rules of administrative procedure, click [here](#). To review the Commission's rulemaking record for 1.8.3 NMAC, click [here](#).

Also, in 2023, the Commission promulgated rules of procedure for the adjudication of administrative complaints alleging violations of the Revised Uniform Law on Notarial Acts (RULONA), which the State Records and Archives Center published at [1.8.5 NMAC](#) ("Complaints against Notaries"). The Commission promulgated these rules pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act,

NMSA 1978, and Laws 2023 Chapter 110 (being SB 246, Section 23(C)). The rules became effective on July 1, 2023, and govern the Commission’s receipt, investigation, and adjudication of complaints alleging violations of RULONA. To review the regulations governing complaints against notaries, please click [here](#).

The Commission’s administrative ethics caseload

Below is a profile of the Commission’s caseload for administrative complaints alleging ethics violations in 2024, presented by quarter.

<p>Q1 (January – March) Rolled Over From 2023-Q4: 23 New Filed in 2024-Q1: 3 Closed in 2024-Q1: 22</p>	<p><u>Complaints filed in Q1</u> Governmental Conduct Act: 2 Procurement Code: 1 Other: 1</p>
<p>Q2 (April – June) Rolled Over From 2024-Q1: 4 New Filed in 2024-Q2: 36 Closed in 2024-Q2: 9</p>	<p><u>Complaints filed in Q2</u> Campaign Reporting Act: 26 Governmental Conduct Act: 12 Procurement Code: 2 Financial Disclosure Act: 1 Other: 10</p>
<p>Q3 (July – September) Rolled Over from 2024-Q2: 30 New Filed in 2024-Q3: 22 Closed in 2024-Q3: 26</p>	<p><u>Complaints filed in Q3</u> Campaign Reporting Act: 9 Governmental Conduct Act: 3 Lobbyist Regulation Act: 5 State Ethics Commission Act: 1 Other:5</p>
<p>Q4 (October – December 27) Rolled Over from 2024-Q3: 24 New Filed in 2024-Q4: 17 Closed in 2024-Q4: 22</p>	<p><u>Complaints filed in Q4</u> Campaign Reporting Act: 1 Financial Disclosure Act: 1 Governmental Conduct Act: 2 Lobbyist Regulation Act: 1 Other: 10</p>
<p><u>2024 Cumulative Case Data</u> Total Rolled Over from 2023: 16 Total New Filed in 2024: 93 Total Closed in 2024: 79 Total Pending on December 27, 2024 (date of submission): 2</p>	<p><u>2024 Complaints</u> Campaign Reporting Act: 36 Financial Disclosure Act: 2 Governmental Conduct Act: 19 Lobbyist Regulation Act: 6 Procurement Code: 3 State Ethics Commission Act: 1 Other: 24</p>

The Commission’s RULONA caseload

Below is a profile of the Commission’s caseload for administrative complaints filed against notaries public in 2024, presented annually.

Complaints rolled over from 2023: 6

Complaints filed in 2024: 20

Cases closed in 2024: 12

Cases rolled over to 2025: 12 (including 2 settled cases that complete the probationary period in 2025)

Advisory Opinions

The State Ethics Commission may issue advisory opinions requested in writing by “a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer.” NMSA 1978, § 10-16G- 8(A)(1). Under the State Ethics Commission Act, requests for advisory opinions are confidential and not subject to disclosure under the Inspection of Public Records Act. Additionally, advisory opinions are binding on the Commission in any subsequent administrative proceeding concerning a person who acted in good faith and in reasonable reliance on an advisory opinion.

The Commission has adopted two administrative rules regarding advisory opinions. First, the Commission allows persons subject to the Governmental Conduct Act to submit a request for an informal advisory letter to the Commission’s attorney staff. Such requests are also confidential, but informal advisory letters are not binding on the Commission unless and until the Commission votes to adopt the informal advisory letter as an advisory opinion. Second, the Commission allows any Commissioner to request that any informal advisory opinion or any legal determination made in a confidential administrative proceeding be converted into an advisory opinion. In 2024, Commission staff provided 23 informal advisory letters to state and local governmental employees around New Mexico.

The New Mexico Compilation Commission publishes all of the Commission’s advisory opinions on NMSOneSource.com, the free, online public access to the master database of official state laws.

Below is a profile of the advisory opinions the Commission issued in 2024.

ANTI-DONATION CLAUSE

Advisory Opinion 2024-06 (Dec. 13, 2024)

Question: The Indian Affairs Department has been appropriated money this fiscal year to support Indigenous Centers throughout the State. Most Indigenous Centers are non-profit entities and provide resources related to housing, food and clothing distribution, and healthcare for individuals in financial hardship. The requester wants to know whether there is a concern under the Anti-Donation Clause with the Department entering into a professional services contract or a memorandum of understanding/agreement with the Indigenous Centers in order to provide funding to these non-profit organizations where the Department sets out terms regarding how the funding can be used, how it is accessed, and when the funds will expire.

Conclusion: The Indian Affairs Department would not violate Article IX, Section 14 of the New Mexico Constitution (“the Anti-Donation Clause”) by entering into an agreement with private, non-profit Indigenous Centers, so long as IAD receives some form of consideration under the

agreement or the agreement meets an exception to the Anti-Donation Clause, such as providing services for the support and maintenance of sick or indigent individuals. [Read full opinion here.](#)

GOVERNMENTAL CONDUCT ACT

Advisory Opinion 2024-05 (Oct. 5, 2024)

Question: With election day only weeks away, a legislator would like to launch a get-out-the-vote campaign, with the intent to motivate higher election turnout in the district and county that the legislator represents. The legislator explains that in 2022, only 14,037 out of 36,986 eligible voters exercised their right to vote and the legislator believes that residents can do better if they believe in our election system and if they believe their vote counts. The legislator recently hired a district legislative aide (“DLA”) and would like the DLA to be involved in this effort from a non-partisan standpoint. The request asks for guidance on whether a non-partisan get-out-the-vote campaign (including mailers, town halls, rallies, etc.) would be appropriate for a DLA.

Conclusion: A DLA may engage in non-partisan townhalls and provide constituent services at the local level and therefore may participate in a “get-out-the-vote” campaign, so long as the campaign does not constitute electioneering, and the DLA uses the powers and resources of office to advance the public interest and not to pursue private interests. [Read the full opinion.](#)

PROCUREMENT CODE

Advisory Opinion 2024-01 (Feb. 2, 2024)

Question: (1.) Would the AGO be in compliance with the Procurement Code if it (a) generates a list of approved law firms by issuing a request for proposals (“RFP”) for legal representation on any affirmative AGO litigation in which the services of outside counsel are needed without reference to a specific case or subject area and (b) later selects one of the approved law firms to represent the State in specific matters as they arise without using an additional, separate procurement process under the Code for each matter?

(2.) Is there a method for an emergency procurement of legal services when compliance with the normal procurement methods in the Procurement Code would cause the State to lose a claim due to the expiration of a statute of limitations or filing deadline?

Conclusion: (1.) Yes. (2.) Likely no. [Read the full opinion.](#)

Advisory Opinion 2024-04 (Nov. 3, 2023)

Question: (1) The first question presented is whether Advisory Opinion No. 2023-04 specifically analyzed the applicability of Section 13-1-158(A) 5 of the Procurement Code to only goods because that was the issue presented, or if a different analysis applies where the contemplated purchase for prepayment is for a service.

(2) The second question asks whether, given the language in Section 13-1-158(B), partial prepayment is acceptable where the terms of the contract provide for payment of fifty percent down and the balance due at completion.

(3) The third question asks about the term “received” in Section 13-1-158(A). The requester

explained the agency is looking to purchase goods to assist with one of the agency's initiatives. The vendor is willing to warehouse the items (the vendor's physical location is in another state) and then drop ship them based on the agency's directive. The drop shipment dates would occur in Fiscal Year 2025. The funding available for this purchase is Fiscal Year 2024 funding and the agency would like to procure and pay for the items before June 30th. The request poses the question, since the vendor agreed to store the goods for the agency and it is in the agreement with the vendor stating as much, would this satisfy the receipt of goods requirement to pay the invoice for purposes of the Procurement Code or must the agency wait to certify receipt of the items until the drop ship occurs (that is, when the agency would have physical possession), which would require Fiscal Year 2025 funds for the purchase?

(4) The final question concerns the purchasing of IT software/hardware license or service agreements (subscriptions) and poses the question of whether a multi-year license or service agreement would violate the advance payment prohibition set forth in Section 13-1-158(A). The request specifically references a quote for IT equipment that includes a service agreement or license to use, where the service agreement for software support is a 36-month term and is approximately \$34,000.00.

Conclusion: (1) The prohibition against prepayment of purchases applies to payments for services, construction, and items of tangible personal property unless Section 13-1-98 excludes the purchase from the requirements of the Procurement Code.

(2) Unless an exemption applies, partial prepayment is prohibited under Section 13-1-158(A). Section 13-1-158(B) references the timeline on how invoices, certification, and payment following notice that the requested services or construction are completed, or items of tangible personal property are delivered on site and received.

(3) Items of tangible personal property are received for purposes of Section 13-1-158(A) when the property is delivered to the agency.

(4) While a procuring agency is permitted to prepay a contract under ten thousand dollars for web-based and electronic subscriptions, other restrictions might prohibit payment for services across multiple fiscal years. For web-based and electronic subscriptions exceeding ten thousand dollars, the agency may not prepay for such purchases but could enter into a multi-term contract in accordance with the provisions of the Procurement Code and make payment arrangements that, while not prepaying the contract, could otherwise ameliorate the concerns of the contractor, including a purchase order or progress payments. [Read the full opinion.](#)

CAMPAIGN REPORTING ACT

Advisory Opinion 2024-02 (Apr. 5, 2024)

Question: May a legislator use campaign funds to pay for registration and travel to conferences and courses designed to make them a better legislator, including educational conferences and professional development courses?

Conclusion: Yes, the Campaign Reporting Act allows for the expenditure of campaign funds by a legislator that are reasonably related to performing the duties of the office held, which may include training and travel expenditures. [Read the full opinion.](#)

GIFT ACT

Advisory Opinion 2024-03 (May 24, 2024)

Question: A legislator is a key organizer in a nonpartisan conference coordinated by a 501(c)(3) non-profit organization. The legislator helps to organize this event for what the legislator believes is an important responsibility of being a legislator – bringing education to colleagues and the public on an important issue to the forefront in a nonpartisan manner. The legislator often emails contacts about the event, including speakers and sponsors, and wants to know whether the legislator is allowed to send those emails using the official legislative email address (nmlegis.gov).

Conclusion: Legislators are permitted to use an official legislative email address to email contacts about an event, including speakers and sponsors, in order to address general administration and logistics of the event. But the use of a legislative email address to contact sponsors for the purpose of soliciting donations to a charity is likely prohibited by the Gift Act. [Read full opinion here.](#)

Civil Enforcement & Litigated Matters

In addition to its quasi-judicial power to adjudicate administrative matters and issue advisory opinions, the Commission also has a discretionary, executive power to pursue civil enforcement actions in state court to remedy violations of New Mexico's ethics laws. The Commission receives referrals from other state agencies and allegations from other individuals or entities. The Commission reviews and assesses those matters to determine whether to proceed with a civil enforcement action. In 2024, in the exercise of its discretion, the Commission was involved in the following litigated or civil enforcement matters:

(1) Litigated matters

In the following matters, the Commission filed and litigated a civil enforcement action to remedy violations of New Mexico's ethics laws.

(a) *State Ethics Commission v. Jay Christopher Stagg*, D-820-CV-2023-00368.

On October 6, 2023, the State Ethics Commission filed a civil complaint in the Eighth Judicial District against Jay Christopher Stagg to enforce Section 10-16-4(B) of the Governmental Conduct Act. The Commission's lawsuit alleged that Mr. Stagg—who was at all relevant times both a member of the Village of Taos Ski Valley's Planning and Zoning Commission and the vice president of Taos Ski Valley, Inc ("TSVI")—refused to disqualify himself from participating in Planning and Zoning decisions related to TSVI's applications for a conditional use permit for the construction of a new hotel and a land transaction between the Village and TSVI for the construction of a gondola. As a member of the Planning and Zoning Commission, Mr. Stagg considered and voted on these items, despite also being the vice president of TSVI. The Governmental Conduct Act requires that public officers treat their government positions as a public trust. Many public officers in New Mexico are also officers of private businesses and, thus, have fiduciary duties to those businesses. When those businesses seek official government action from those public officers, the public officers have conflicting loyalties—to the public and to their employer. In such circumstances, the Governmental Conduct Act requires that the public officer be disqualified and recuse from the matter. As a member of the Village of Taos Planning and Zoning Commission, Mr. Stagg repeatedly refused to do so. Accordingly, the Commission filed a civil enforcement action to enforce the Governmental Conduct Act.

On July 17, 2024, the court entered an order approving a settlement agreement between the Commission and Mr. Stagg. Under the order, the court reserves continuing enforcement authority for the terms of the settlement agreement including Mr. Stagg's commitment to recuse from all quasi-judicial proceedings and commercial transactions involving his employer, Taos Ski Valley, Inc. (TSVI).

Read (1) [the Commission's press release related to this civil enforcement action](#); (2) [the Commission's complaint in *State Ethics Commission v. Stagg*](#); (3) [the settlement agreement in this matter](#); and (4) [the Commission's press release related to the settlement](#)

(b) *State Ethics Commission v. TNMP, Inc.* D-202-CV-2024-04341

On May 24, 2024, the State Ethics Commission filed a civil complaint in the Second Judicial District against TNMP, Inc. and its President Jeff Apodaca to enforce the disclosure provisions of the Campaign Reporting Act. TNMP, a domestic nonprofit cooperation, or Apodaca, spent thousands of dollars on creating and hosting a website. TNMP or Apodaca also purchased radio and social media advertisements to influence the outcome of elections for at least 15 legislative districts in the New Mexico House of Representatives and Senate. The Campaign Reporting Act requires those who have made aggregate independent expenditures in excess of \$1,000 dollars in a non-statewide election to disclose to whom those expenditures were made and the source of the contributions that funded the expenditures. TNMP made more than \$1,000 dollars in independent expenditures in support of specific “pro-moderate” and “pro-business” candidates but failed to register as a political committee or make any disclosures related to those independent expenditures. Accordingly, the Commission filed suit to enforce the Campaign Reporting Act’s disclosure requirements.

On September 23, 2024, The Commission, TNMP Inc., and Jeff Apodaca reached a settlement agreement. The agreement ensures that TNMP, Inc. will fulfill its legal obligations to disclose information relating to its donors and expenditures, providing New Mexicans with necessary information regarding who is attempting to influence their votes. The settlement also included a \$1,000 civil penalty for violation of the Campaign Reporting Act, and a \$3,000 payment in compromise of the attorney fee award to the Commission ordered by the Honorable William Johnson, U.S. District Judge for the District of New Mexico, related to the Defendant’s unreasonable removal to federal courts and subsequent remand to state court.

Read (1) [the Commission's press release regarding the civil enforcement action](#); (2) [the Commission's complaint in State Ethics Commission v. TNMP, Inc.](#) ; (3) [the settlement agreement in this matter](#) and (4) [the Commission's press release related to the settlement](#).

(c) State Ethics Commission ex rel. Village of Angel Fire v. Barry Lindsey, et.al. D-809-CV-2024-00091

On June 20, 2024, the State Ethics Commission filed a lawsuit in the Eighth Judicial District against Village of Angel Fire officials, including the mayor, and Carristo Creative Consulting, LLC, a Village contractor, for violations of the Procurement Code. Based upon several informal complaints filed with the Commission and upon subsequent investigation, the Commission has reason to believe that the Village awarded a \$1 million dollar contract to Carristo Creative, a company with personal and professional ties to the Village’s mayor Barry Lindsey, without issuing a request for proposals or seeking competitive bids. The contract included services beyond the Procurement Code’s exemption for “purchases of advertising,” such as brand creation, video and photography deliverables, website upgrades and social media management. Accordingly, the Commission believes that the contract award violated the Procurement Code and appropriately filed a civil action.

The Procurement Code mandates that public bodies use a competitive sealed process for public contracts exceeding \$60,000 to ensure transparency, maximize the value of public funds, and maintain the integrity of the procurement system. The Village’s failure

to comply with these requirements, coupled with the mayor's personal and business relationship with Carristo Creative and its principals, raises significant concerns about conflicts of interest and the proper use of public funds.

Litigation in this matter is ongoing.

Read (1) [the Commission's press release regarding the civil enforcement action](#); (2) [the Commission's complaint in State Ethics Commission ex rel. Village of Angel Fire v. Barry Lindsey et. al.](#)

(d) *State Ethics Commission v. Karen Bedonie* D-1113-CV-2024-00536

On October 17, 2024, the State Ethics Commission filed a lawsuit in the Eleventh Judicial District (Div. II) against Karen Bedonie to enforce an administrative order imposing penalties against Ms. Bedonie for violations of the Campaign Reporting Act, related to her candidacy for Governor in 2022.

On July 24, 2024, a hearing officer entered findings of fact and conclusions of law, determining that Ms. Bedonie violated the Campaign Reporting Act by: (i) failing to report coordinated expenditures made in cooperation and consultation with her campaign committee; (ii) by failing to report in-kind contributions made in support of her campaign for governor; (iii) and failing to have the appropriate disclaimer on billboard advertisements made in support of her campaign as required by the Campaign Reporting Act. The hearing officer ordered Ms. Bedonie to pay \$4,500 in penalties for the above violations of the CRA.

Litigation in this matter is ongoing.

Read [the Commission's complaint in State Ethics Commission v. Karen Bedonie](#)

(e) *Bolen v. New Mexico Racing Commission*, S-1-SC-40427

On October 16, 2024, the New Mexico Supreme Court entered an order granting the State Ethics Commission leave to submit an amicus brief in support of the respondent. The Petitioner appeals the decision of the Court of Appeals that the Respondent, New Mexico Racing Commission, is entitled to quasi-judicial immunity under the New Mexico Civil Rights Act, arising from claims related to administrative adjudications. The State Ethics Commission is joined by two other agencies in support of the affirmance of the Court of Appeals ruling; given the impact any ruling to the contrary may have on the Commission related to their quasi-judicial role in administrative proceedings, and what liability, if any, may result from those administrative actions moving forward.

Read (1) [Amicus brief](#) (2) [Motion for leave to file amicus curiae brief](#), and (3) [Supreme Court order granting motion to file amicus curiae brief](#).

(2) Pre-litigation settlement agreements

In the following matters, the Commission authorized its attorney staff to file a civil enforcement action to remedy violations of New Mexico's ethics laws and entered into a settlement agreement without the need to file claims in state district court.

(a) Ron Lowrance, Mayor of the Village of Capitan.

On February 29, 2024, in response to a demand letter, Ron Lowrance the former mayor of the Village of Capitan New Mexico, settled with the Commission to remedy alleged violations of the Governmental Conduct Act. The Commission alleged that Mr. Lowrance used his official Village letterhead to send the residents correspondence endorsing a particular candidate for office, and further used Village funds to pay for the postage. Section 10-16-3.1(C) of the Governmental Conduct Act prohibits a local government official from using property belonging to the local government entity for “other than authorized purposes”. Providing a benefit to a candidate for elected office is not an authorized purpose. Under the settlement, Mr. Lowrance agreed to pay a \$250 civil penalty. This amount is the maximum fine currently available under the Governmental Conduct Act for one violation of the act.

Read (1) [the Commission's press release related to this settlement](#); (2) [the settlement agreement](#)

(b) Ron Sena, Manager of the Village of Ruidoso

On April 9, 2024, in response to a demand letter, Ron Sena the manager of the Village of Ruidoso settled with the Commission to remedy alleged violations of the Governmental Conduct Act. Mr. Sena self-reported his ethical misconduct to the Commission concerning unsolicited text messages to fellow Village employees, urging them to support the Ruidoso mayor’s bid for state senate, and the unauthorized use of a Village-owned vehicle to distribute nomination petitions related to that campaign. Section 10-16-3.1 of the Governmental Conduct Act prohibits local government officials from certain political activity, including coercing others for political contributions, and misusing government property for other than authorized purposes. In the settlement, the Commission agreed not to pursue a civil enforcement action in exchange for Mr. Sena’s agreement to provide an apology to each affected Village employee. The apology clarified the inappropriate nature of his actions, explained the Governmental Conduct Act’s restrictions on usage of public resources, and reaffirmed employees’ right to engage in political participation outside of work hours. Given Mr. Sena’s voluntary self-reporting on his actions, the Commission waived pursuit of any applicable civil penalties.

Read [the Commission's press release related to this settlement](#)

(c) Dan Lewis, Albuquerque City Council President

On May 29, 2024, Dan Lewis Albuquerque City Council president settled with the Commission to remedy violations under the Governmental Conduct Act. The settlement agreement addressed allegations that Dan Lewis, in his official capacity as Albuquerque City Council president, acquired a financial interest in employment with the Albuquerque Pavement Association of New Mexico (“APANM”) while sponsoring and voting on legislation related to the Albuquerque-Bernalillo County Joint Air Quality Control Board (“AQCB”), which he had reason to believe would directly affect his employment at APANM. Specifically, Councilor Lewis took two official acts the Commission alleged he had reason to believe would directly affect his employment with APANM: (i) a resolution imposing a limited moratorium on the rulemaking authority of the AQCB; and (ii) an

ordinance repealing the AQCB and replacing that entity with a newly comprised board. Section 1-16-4(C) of the Governmental Conduct Act prohibits public officials from acquiring new financial interests if there is reason to believe the financial interest will be directly impacted by the public official's governmental acts. Further, Section 10-16-4(B) requires that public officials recuse themselves from official acts directly affecting their financial interests.

To settle this matter, Councilor Lewis agreed to recuse himself in all matters that come before the Albuquerque City Council relating to the AQCB (or any successor entity to the AQCB), the APANM, or any APANM member, so long as he serves on the City Council and is also employed by APANM.

Read (1) [the Commission's press release related to this settlement](#); (2) [the settlement agreement in this matter](#)

(d) County Livestock Loss Authority Members.

On October 4, 2024, the Commission authorized its attorney staff to commence a civil action under the Governmental Conduct Act to prevent those County Livestock Loss Authority ("CLLA") members who applied or could apply for CLLA payments from voting on the formulae and methods by which they themselves (or their ranches) would stand to benefit. In lieu of litigation, the Commission and Mr. Tom Paterson, Mr. Nelson Shirley, and Ms. Audrey McQueen reached respective agreements in which those CLLA members will abstain from voting to provide themselves payments for depredation, conflict avoidance and indirect damages caused by the presence of Mexican grey wolves.

Read: (1) [Agreement between the SEC and Mr. Paterson](#); (2) [Agreement between the SEC and Mr. Shirley](#); (3) [Agreement between SEC and Ms. McQueen](#).

(e) Compliance with the Financial Disclosure Act.

On April 16, 2024, the Office of the Secretary of State, following its attempt to achieve voluntary compliance, referred 178 individuals identified as being required to file a 2024 Financial Disclosure Statement under the Financial Disclosure Act who had not done so to the Commission's staff. The Commission conducted additional research into the referred individuals and their filing requirements and engaged with those individuals who had outstanding filing responsibilities. Following these actions, the Commission has achieved compliance for all the referred individuals who the Commission confirmed are currently in positions that were required to file a 2024 Financial Disclosure Statement.

Read [the Commission's press release regarding compliance with the Financial Disclosure Act](#).

Trainings

Under the Governmental Conduct Act, the State Ethics Commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act—that is, all legislators and all elected or appointed officials or employees of a state agency or a local government agency who receives compensation or per diem. Further, under the Governmental Conduct Act, the Commission has a biennial responsibility to develop and provide to all legislators a minimum of two hours of ethics continuing education. Similarly, under the State Ethics Commission Act, the Commission may offer annual ethics trainings to public officials, public employees, government contractors, lobbyists and other interested persons. The Commission has developed presentations that Commission staff can offer to government agencies around the state. During 2024, Commission staff have offered several trainings regarding the ethics laws, as detailed below. For more information on the Commission’s presentations and trainings, visit: <https://www.sec.nm.gov/education/>

- **January 7, 2024** – Commission on the Status of Women (Director Farris)
- **January 9, 2024** – Ethics in Elected Office to the Municipal Official Leadership Institute (Chief Compliance Counsel Manierre and Deputy General Counsel Randall)
- **January 11, 2024** – New Mexico State Ethics Commission Media Training to the Legislative Finance Committee (Director Farris)
- **May 15, 2024** – Ethics Presentation to the Regulation and Licensing Department (Deputy Compliance Counsel Branch)
- **May 16, 2024** – State award of contingent-fee legal contracts (Director Farris)
- **May 30, 2024** – Government Accountability and the State Ethics Commission presentation to the Association of Mature American Citizens (Deputy Compliance Counsel Branch)
- **June 19, 2024** – Ethics in County Government to the Detention Administrators Affiliate for the New Mexico Association of Counties Conference (Deputy Compliance Counsel Branch)
- **June 20, 2024** – Ethics in County Government to the Probate Judges Affiliate for the New Mexico Association of Counties Conference (Chief Compliance Counsel Manierre)
- **June 20, 2024** – Ethics in County Government to the County Assessors Affiliate for the New Mexico Association of Counties Conference (Deputy Compliance Counsel Branch)
- **July 17, 2024** – Ethics in Elected Office to the New Mexico Municipal League (Chief Compliance Counsel Manierre and Deputy Compliance Counsel Branch)
- **July 26, 2024** – Ethics Presentation to the New Mexico Municipal Attorneys’ Association (Chief Compliance Counsel and Deputy General Counsel Branch)
- **August 14, 2024** – Ethics Law for Legislative Finance Committee Staff (Director Farris and General Counsel Boyd)
- **September 11, 2024** – Ethics: Know the Law course for NM Edge (Deputy Compliance Counsel Branch)
- **September 27, 2024** – Ethics Presentation to the New Mexico Water Law Conference (Chief Compliance Counsel Manierre)
- **October 10, 2024** – Presentation on U.S. Supreme Court Administrative Law Opinions through a State-Law Lens to the Administrative Law Institute of the New Mexico State Bar Public Law Section (Director Farris)
- **November 21, 2024** – Ethics Law for Local Government to the Local Government Division of the Department of Finance Annual Budget Conference (Chief Compliance Counsel Manierre and Deputy Compliance Counsel Branch)
- **November 25, 2024** – Anti-Donation Clause Review for Staff Leadership at

Legislative Finance Committee (Director Farris)

- **December 4, 2024** – Biannual Legislators Ethics Training (Director Farris)
- **December 10, 2024** – Anti-Donation Clause Review for Members of the Legislative Finance Committee (Director Farris)
- **December 11, 2024** – Ethics Law for Municipal Attorneys, New Mexico Municipal League Winter CLE (Deputy General Counsel Randall and Woods)
- **December 12, 2024** – Ethics Presentation to the New Mexico Association of Counties, Newly Elected Commissioners (Director Farris)

LEGISLATIVE RECOMMENDATIONS

The Commission offers the following recommendations for the First Session of the Fifty-Seventh Legislature.

(1) Recommendations for Amendments to the Campaign Reporting Act

Over the past five years, the Commission has achieved an understanding of the gaps and loopholes in the Campaign Reporting Act that persons have relied on to avoid disclosure of the source of the funds used to pay for political advertisements. Based on these lessons, the Commission recommends a set of amendments to the Campaign Reporting Act related to disclosure of the sources of the funds for independent expenditures and to personal loans that candidates make to their own campaign committees.

First, the Commission recommends closing current statutory gaps related (i) to attack ads that do not expressly refer to an election or contain an appeal to vote; and (ii) to expenditures on the eve of an election.

Second, the Commission recommends making clear that the Campaign Reporting Act disallows persons making independent or coordinated expenditures from concealing the identity of contributors who contribute more than five thousand dollars (\$5,000) during an election cycle, where (i) the contributor requested in writing that that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee and (ii) the person making independent expenditures nevertheless used the contributor's contributions for independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

Third, the Commission recommends amendments to require persons—including out-of-state groups—who make independent expenditures to disclose the source of significant funds (i.e., funds exceeding \$5,000) used to make independent expenditures, whether or not the donations were made or received for the purpose of supporting a ballot question or candidate in a New Mexico election. If a person making independent expenditures uses funds to make independent expenditures related to elections subject to the Campaign Reporting Act, disclosure requirements should apply, no matter what was said or intended when the initial fundraising occurred.

Fourth, the Commission recommends a set of amendments that concern disclosure of personal loans that candidates make to their own political campaigns. The current practice in New Mexico is that candidate committees report the amount of the loan principal that candidates have loaned their campaigns, as well as any expenditures that candidate committees make to repay debts. These are significant disclosures, but they are not specific or demanding enough to deter the threat of corruption that can accompany loans that candidates to their campaign committees. The Campaign Reporting Act currently does not require disclosure of the terms of the loan, including any interest. Nor does the Act currently require that the campaign committee demonstrate evidence that a loan was actually made. Because the Campaign Reporting Act allows candidate committees to expend campaign

contributions raised to repay loans, including personal loans that a candidate makes to their campaign, New Mexico needs additional safeguards to prevent candidates from converting campaign contributions into a personal source of income.

Accordingly, the Commission recommends amendments to the Campaign Reporting Act that (i) impose certain disclosure of loans that candidates make to their own political campaigns, including proof that the loan was made and the loan's terms; and (ii) constrain the rate of interest that a candidate can charge on a personal loan that they make to their own campaign.

The Commission's recommendations for amendment to the Campaign Reporting Act align with [Senate Bill 387](#) introduced by Senator Wirth in the First Session of the Fifty-Fifth Legislature and with [Senate Bill 42](#), also introduced by Senator Wirth, in the First Session of the Fifty-Sixth Legislature.

Read [Letter from Jeremy Farris, Executive Director, State Ethics Commission, to Senator Wirth, Senator Duhigg and Representative McQueen regarding potential amendments to the Campaign Reporting Act](#)

(2) Recommendations for Amendments to the Lobbyist Regulation Act

The Lobbyist Regulation Act ("LRA"), NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2023), needs amendment. New Mexico has one of the least effective lobbyist regulation statutes in the country.¹ The LRA does not require meaningful disclosure of expenditures and activities connected with lobbying; it contains no provisions that serve as guardrails against conflicts of interest; and, perhaps worst of all, it *creates* dark-money problems. To address these issues, the Commission recommends the following amendments to the Lobbyist Regulation Act:

First, the Commission recommends that the LRA be amended to include a definition of a lobbyist's client and to require more information regarding expenditures that a lobbyist makes on behalf of their client, including the beneficiary of the expenditure, the purpose of the expenditure, and the client to whom the expenditure is attributable (including for lobbyist expenditures that are campaign contributions).

Second, to increase transparency of the purposes of lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

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 two additional reports with the secretary of state indicating (i) what bills the lobbyist or lobbyist's employer is taking a position on; and (ii) whether the lobbyist or lobbyist's employer is supporting or opposing those bills, including the specific items in the bills that the lobbyist or lobbyist's employer is supporting or opposing. These

¹ See OpenSecrets, State Lobbying Disclosure: A Scorecard (June 28, 2022) available at <https://www.opensecrets.org/news/reports/layers-of-lobbying/lobbying-scorecard> (showing New Mexico is in the bottom quintile across the 50 states with respect to disclosure requirements related to lobbying).

additional reports are due to the secretary of state both one week after the start of the legislative session and one week after the bill introduction deadline.

The Commission's recommendations for amendment to the Lobbyist Regulation Act align, to some extent, with [Senate Bill 311](#) and [Senate Bill 314](#), introduced by Senator Steinborn in the First Session of the Fifty-Fifth Legislature. Those bills did not receive a committee hearing.

Third, as in previous Annual Reports, to slow the revolving door between government service and lobbying, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A former statewide elected official, a former public regulation commissioner, a former legislator or a former cabinet secretary shall not accept compensation as a lobbyist for a period of two calendar years after the conclusion of service as a statewide elected official, public regulation commissioner, legislator or cabinet secretary.
- B. A lobbyist's employer shall not compensate a former statewide elected official, a former public regulation commissioner, a former 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, public regulation commissioner, legislator or cabinet secretary.
- C. A person who violates a provision of this section is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

Fourth, as in previous Annual Reports, to allow for transparency when the family member of a legislator is lobbying for a bill, the Commission would support amending the Lobbyist Regulation Act to create a new section, providing that:

- A. A legislator shall, before voting on a bill, disclose that the legislator's family member is lobbying on a bill on which the legislator must vote.
- B. As used in this section, "family member" means a spouse, daughter, son, parent or sibling.

Read [Memorandum from Jeremy Farris, Executive Director, and Amelia Bierle, Deputy Director, to State Ethics Commission regarding needed amendments to the Lobbyist Regulation Act](#)

(3) Recommendations for Amendments to the Financial Disclosure Act

The State Ethics Commission recommends the reintroduction of a bill similar to [Senate Bill 125](#), which Senator Tallman, Representative Garratt, and Representative Sariñana sponsored in the First Session of the Fifty-Sixth Legislature, known as the Disclosure Act. This year, the Commission endorses that bill with the following targeted revisions to improve clarity and reduce unnecessary burdens on reporting individuals:

1. Investment Fund Disclosures:
Retain the requirement to disclose the name of the fund and its manager, particularly when the fund pertains to specific industries (e.g., energy, defense)

that may pose conflicts of interest. Remove the obligation to disclose individual fund holdings exceeding \$50,000, provided the fund is publicly traded and regulated.

2. Professional Client Confidentiality:

To address concerns from legal professionals about client confidentiality, revise the requirement for income source disclosure by allowing reporting individuals to describe their practice areas or service categories in precise yet general terms. This revision balances transparency with the need to respect professional confidentiality obligations.

The Commission believes these revisions maintain the Act's integrity, further its goals of transparency and accountability, and reduce unnecessary burdens on reporting individuals while respecting their professional obligations. As the American Law Institute has reported:

Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.

American Law Institute, *Principles of Law: Government Ethics*, Tentative Draft No. 3, Ch. 6 (Disclosure), Introductory Note (April 9, 2021).

The current Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (1993, as amended 2021) seeks to balance the public interest in disclosure against public servants' privacy interests by giving public servants significant discretion in deciding whether to make a disclosure and what they must disclose. The Commission believes that this approach to disclosure is flawed in at least two respects:

First, the Financial Disclosure Act is vague and undemanding as to what must be disclosed. It requires public servants to disclose sources of gross income in excess of \$5,000 but does not require disclosure of the specific source of the income. Instead, a public servant need only disclose the "general category descriptions that disclose the nature of the income source . . . [in] broad categories." § 10-16A-3(D)(2) (2021). But requiring disclosure only of "broad category descriptions" does not suffice to alert the public of whether a public servant is subject to a financial conflict of interest. Take as an example a state legislator who receives income by selling pesticides to farms, and another state legislator who makes more than \$5,000 from the sale of organic produce. While legislation proposing a partial ban on the use of pesticides would have different effects on these financial interests, both legislators are required only to report income from "farming and ranching" on their financial disclosure statements. § 10-16A-3(D) (2021). As a result, the Financial Disclosure Act does not remind the disclosing senators of their

potential obligations under the state's ethics laws, and the public is not able to determine what (if any) conflicts of interest might affect the legislators' votes.

Second, the Financial Disclosure Act contains significant omissions in several categories of reporting requirements—*e.g.*, the identification of specific sources of income, the identification of ownership assets, business-entity relationships, liabilities, membership and other positions in non-profit organizations, and gifts. Because Financial Disclosure Act omits these requirements, it does not do enough to inform the public whether officials in state government are engaged in self-dealing, are subject to conflicts of interest, and are in compliance with the duties that the Governmental Conduct Act and other statutes impose. In short, it is not a very effective disclosure law.

Over the past five years, the Commission and its staff have received input from organizations in New Mexico that have bemoaned the Financial Disclosure Act's shortcomings. The Commission staff has also carefully reviewed the American Law Institute's *Principles of Law: Government Ethics*, Tentative Draft No. 3 (April 9, 2021), which includes principles relating to disclosure in government. As a result, the Commission recommends a new statute— the Disclosure Act—to replace the current Financial Disclosure Act as a more comprehensive and more effective approach to disclosure in government.

Read (1) [the “Disclosure Act,” House Bill 149 \(55th Legis., 2nd Sess.\)](#); (2) [Read the “Disclosure Act,” Senate Bill 125 \(56th Legis., 1st Sess.\)](#).

(4) Recommendations for the State Ethics Commission Act

To further establish the Commission's independence, which is provided by Article V, Section 17(A) of the New Mexico Constitution, the Commission recommends the creation of a nonreverting fund in the state treasury for use by the Commission. Specifically, the Commission recommends a new section in the State Ethics Commission Act, as follows:

(A) The "state ethics commission fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, and any revenue received from court-ordered judgments or sanctions and settlement payments related to commission-authorized civil actions. Money in the fund at the end of a fiscal year shall not revert to any other fund. The commission shall administer the fund, and money in the fund is appropriated to the commission.

(B) The legislature may appropriate from the state ethics commission fund to the general fund in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to

avoid an unconstitutional deficit, the legislature may appropriate from the state ethics commission fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve, the tax stabilization reserve and the tobacco settlement permanent fund that exhaust those fund balances.

There are more than 50 nonreverting funds in the state treasury that exist to support various government functions. Nonreverting funds generally serve as a financial buffer, allowing a public agency to continue operations in cases of emergencies or unexpected expenses. The Commission's constitutional independence requires that the agency be able to operate free from pressures that could foreseeably emerge as a consequence of the Commission's ordinary work to enforce New Mexico's ethics laws. The creation of a nonreverting fund would alleviate those foreseeable pressures.