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Governor Richardson's Task Force on Ethics Reform: Report of Recommendations

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Governor Richardson's Task Force on Ethics Reform
Report of Recommendations



Governor Garrey E. Carruthers
Dean Suellyn Scarnecchia,
Co-Chairs

October 4, 2006

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I. EXECUTIVE SUMMARY

Governor Bill Richardson created the Governor's Task Force on Ethics Reform to develop a comprehensive approach to reforming New Mexico's ethics and campaign finance laws. During the course of its work, the task force discussed issues pertinent to campaign finance, governmental conduct, legislative compensation and prevention and enforcement. After discussing the broad range of issues to be included in a recommended reform package, the task force members agreed to make recommendations to establish a state ethics commission; to limit the receipt of gifts by state officials; to establish campaign contribution limits; to strengthen campaign reporting laws; to provide legislative expense reimbursement accounts; to establish appointive offices for the state treasurer and state auditor; and to extend public financing of campaigns to races for statewide and judicial offices. This report provides a brief history of previous ethics and campaign finance reform efforts in New Mexico and a description of the work of the Governor's Task Force on Ethics Reform. It further describes the recommendations of the task force and reasons for those recommendations.

II. GOVERNOR'S TASK FORCE ON ETHICS REFORM

A. EXECUTIVE ORDER^{1*}

On May 3, 2006, Governor Bill Richardson established the Governor's Task Force on Ethics Reform by executive order to study the issues of governmental ethics and campaign finance reform. Governor Richardson required the task force to include in its review a comprehensive assessment of current state laws and rules applicable to governmental ethics and campaign finance reform. The Governor further directed the task force to develop a broad package of recommendations, including any legislative proposals, for presentation to the Governor prior to the 2007 regular legislative session.

B. MEMBERSHIP²

The members of the Governor's Task Force on Ethics Reform include:

- Governor Garrey Carruthers, Dean, New Mexico State University College of Business, Co-Chair;
- Suellyn Scarnecchia, Dean, University of New Mexico School of Law, Co-Chair;
- Stuart Bluestone, New Mexico Chief Deputy Attorney General;
- Barbara Brazil, President, New Mexico First;

*The documents referenced in the footnotes of this report and other source documentation may be obtained from the compilation entitled, "2006 Governor's Task Force on Ethics Reform Agendas, Minutes and Handouts." Copies of this compilation will be available from the New Mexico State Board of Finance, the Garrey E. Carruthers New Mexico State Library and the University of New Mexico Law Library.

¹ See Executive Order 2006-021, May 3, 2006.

² See *id.*

- Matt Brix, Executive Director, Common Cause;
- Doug Brown, New Mexico State Treasurer;
- Maralyn Budke, Public Member;
- John Carey, President and Chief Executive Officer, Association of Commerce and Industry;
- Dede Feldman, New Mexico State Senator;
- Mary Graña, Public Member;
- Gay Kernan, New Mexico State Senator;
- W. Ken Martinez, New Mexico State Representative;
- Kathy McCoy, New Mexico State Representative;
- Andrew Montgomery, Public Member;
- Jim Noel, Executive Director, New Mexico Judicial Standards Commission;
- Leonard R. Sanchez, CPA, Moss Adams, LLP;
- Ron Solimon, President and Chief Executive Officer, Indian Pueblo Cultural Center;
- Hilary Tompkins, Chief Counsel, Office of the Governor;
- Stewart Udall, Former United States Secretary of the Interior; and
- Brad Winter, Albuquerque City Councilor.

C. RECENT HISTORY OF ETHICS AND CAMPAIGN FINANCE REFORM IN NEW MEXICO

Ethics and campaign finance reform issues have been topics of great debate and attention in recent state history. Governors, legislators, public servants and other parties have made individual and collaborative attempts to improve ethical behavior in state government and to improve campaign spending practices.

In 1969, a constitutional convention was convened to revise the New Mexico State Constitution. The elected delegates of the constitutional convention adopted a proposed revision to the constitution.³ Proposed changes included the removal of the office of the state treasurer from the ballot and the provision of legislative salaries.⁴ The proposed revised constitution was submitted to the voters for ratification on December 9, 1969. However, the ratification failed by 3,702 votes.⁵

One of the most comprehensive attempts at ethics reform occurred in 1992, with the establishment of the Governmental Ethics Task Force by Governor Bruce King. The 1992 Governmental Ethics Task Force was directed to review existing laws and rules concerning governmental ethics in New Mexico and other states and to obtain input from a broad cross-section of persons knowledgeable about or interested in governmental

³ See *Preface*, Proposed New Mexico Constitution (As Adopted by the Constitutional Convention of 1969), Office of the New Mexico Secretary of State.

⁴ See Article III, Section 19 and Article IV, Proposed New Mexico Constitution (As Adopted by the Constitutional Convention of 1969), Office of the New Mexico Secretary of State.

⁵ See New Mexico Election Returns, Office of the New Mexico Secretary of State, June 1, 1970.

ethics issues.⁶ The 1992 Governmental Ethics Task Force made several recommendations to the legislature with respect to campaign reporting, lobbyist regulation, financial disclosure and governmental conduct at the state level of government.⁷

With respect to campaign reporting, the 1992 Governmental Ethics Task Force recommended that the initiation of candidacy be tied to the collection or expenditure of minimal levels of funds and that reporting requirements apply equally to political committees that expend money on behalf of candidates and political issues, even if those groups are not directed or controlled by a candidate. The task force also recommended certain limits on the use of legislative campaign funds. That recommendation would permit campaign contributions to fund costs involving the direct performance of legislative duties, but not personal and legislative session living expenses. The task force further recommended the imposition of certain reporting requirements for campaign contributions exceeding \$250 and the prohibition of anonymous contributions in excess of certain amounts.

The 1992 Governmental Ethics Task Force recommended that the name of the Conflict of Interest Act be changed to the currently entitled Governmental Conduct Act, in recognition that the act regulates the conduct of government officials. In addition, the task force proposed new legislation prohibiting legislators from representing persons before state agencies, unless without compensation or for a constituent. The task force also recommended a prohibition on the acceptance of all honoraria by legislators, public officers and public employees. The task force recommendation further included a required uniform code of conduct for executive officers and employees.

The 1992 Governmental Ethics Task Force also recommended the creation of a governmental ethics oversight committee and an interim legislative ethics committee to examine campaign financing alternatives to impose a check on the costs of campaigns at the statewide level and to explore the concept of public financing or partial public financing of political campaigns. In addition, the task force suggested that the governmental ethics oversight committee look for reforms necessary in the Anti-Nepotism Act. Finally, the task force recommended further study of means to reimburse legislators for legislative office expenses.

Several of the issues raised by the 1992 Governmental Ethics Task Force have been addressed by the legislature over the past fourteen years. Once known as the Conflict of Interest Act, the more comprehensive Governmental Conduct Act has been amended to prohibit the receipt of honoraria by various public officials. In addition, new campaign reporting requirements have been enacted, and legislators are no longer permitted to use campaign funds for living expenses. Legislative ethics committees to examine ethics violations in the legislature have also been established.

⁶ See "Governmental Ethics Task Force Final Report-Findings and Recommendations", January 20, 1993.

⁷ See *id.*

Despite such progress, several issues regarding public finance, governmental conduct, legislative compensation and ethics enforcement have not been resolved and new issues pertaining to ethics and campaign finance reform have arisen. On May 3, 2006, pursuant to Governor Bill Richardson's direction, the Governor's Task Force on Ethics Reform assumed the role of exploring these outstanding issues in its mission to develop a comprehensive approach to reform New Mexico's ethics and campaign finance laws.

D. METHODOLOGY

During the course of its work, the Governor's Task Force on Ethics Reform held eight meetings. The task force members agreed to hold each meeting in the spirit of the Open Meetings Act. Notice of time and location of the second task force meeting and of the availability of subsequent meeting information through the State Board of Finance website was published in the *Albuquerque Journal* and the *Santa Fe New Mexican*. Meeting notices, agendas and minutes were regularly posted on the State Board of Finance website and on the Governor's website. In addition, opportunity for public comment was provided at each meeting.

At its initial meeting, the task force received its directive from Governor Richardson. Governor Richardson reiterated that "everything is on the table" with respect to issues to be considered by the task force in the development of comprehensive ethics and campaign finance reform recommendations. The Governor also encouraged the task force to be bold.

During the second meeting, the task force members reviewed existing law and then discussed the different issues that might be explored during the course of the task force's work. The task force members decided to focus discussions on campaign finance, rules of governmental conduct, prevention and enforcement and legislative compensation. Thus, the task force divided into campaign finance, governmental conduct, legislative compensation and prevention and enforcement discussion groups. Each group explored opportunities for reform within those broad areas.

The governmental conduct discussion group invited David Freel, executive director of the Ohio Ethics Commission, to discuss the potential for the establishment of a similar ethics commission in New Mexico. The campaign finance discussion group invited Todd Lang, executive director of the Arizona Citizens Clean Elections Commission to discuss the implementation of the Arizona Clean Elections Law and to provide some insight on how a similar system might work in New Mexico. The prevention and enforcement group discussed best practices with respect to the establishment of ethics commissions, business ethics guides and uniform ethics codes. The legislative compensation group reviewed options of providing for legislative salaries and expense reimbursement accounts.

As the task force researched and discussed the broad range of issues affecting ethics and campaign finance reform, it narrowed the scope to a workable package of

recommendations. The task force agreed to explore the possibility of making specific recommendations with respect to the limitation of the receipt of gifts by state officials; the establishment of campaign contribution limits; the strengthening of campaign reporting requirements; the establishment of a state ethics commission; the implementation of publicly financed campaigns; the provision of legislative compensation; and the establishment of appointive offices and minimum qualifications for the state auditor and state treasurer. Subcommittees were formed to examine the specific recommendations that could be developed within each of those categories. The subcommittees presented recommendation options to the task force in August and September. The recommendations were finalized by the task force on October 3, 2006.

III. RECOMMENDATIONS OF THE TASK FORCE

The Governor's Task Force on Ethics Reform developed recommendations with respect to:

- establishment of a state ethics commission;
- limitation of the receipt of gifts by state officials;
- establishment of campaign contribution limits and increased campaign reporting requirements;
- provision of legislative compensation;
- establishment of appointive offices and minimum qualifications for the state treasurer and state auditor; and
- publicly financed elections.

Recommendations of the task force are included on the following pages. The recommendations listed are broad recommendations. Specific details of implementation will require more detailed legislation.

A. STATE ETHICS COMMISSION⁸

1) Recommendations

a) Establish an independent state ethics commission with powers of investigation, reprimand and recommendation of removal, suspension or demotion.

The task force recommends the establishment of an independent state ethics commission. Of critical importance to the effective functioning and administration of this proposed commission, is its political, administrative and legal independence. Independence is essential to insulate the commission from political or partisan influences.

The independent state ethics commission should have power to investigate allegations of unethical conduct of state officials, government contractors and lobbyists. That power should include subpoena power to ensure the availability to the commission of all necessary testimony and documents. The commission should also be authorized to issue its own regulations and rules of operation. Additionally, the commission should have the power to issue forms of discipline such as reprimand or censure to appointed and elected executive branch officials, executive branch employees, judicial employees, government contractors and lobbyists. Although the commission itself should not have power to remove, suspend or demote the subjects of its investigations, the commission could recommend such employment-related disciplines to the appropriate public employer, appointment authority or other employing individual or entity.

The state ethics commission could also investigate unethical conduct of legislators and legislative employees. However, to ensure proper preservation of separation of powers, the commission's power should be limited to remitting the results of an investigation to the legislature and making recommendations regarding forms of discipline at the legislature's discretion. The Judicial Standards Commission should continue to be the sole oversight authority with respect to ethics violations by judges.

Further, the commission should be able to maintain confidentiality during its investigations. It should refer any substantiated criminal allegations to an appropriate law enforcement agency.

Education and training should also comprise a large portion of the state ethics commission's duties. The commission could establish statewide standards of conduct for all state officers and employees and could be responsible for implementing mandatory training programs. The commission could additionally make recommendations on revisions to state ethics laws and issue advisory opinions in a confidential setting. It could further implement a *Plain Language Ethics Guide* and a *Business Ethics Guide* to

⁸ See "Governor's Ethics & Campaign Finance Reform Task Force Discussion Group Report: Prevention and Enforcement," June 29, 2006. See also "Subcommittee Report on the Establishment of a State Ethics Commission, August, 29, 2006. See also "Motion to the Task Force from the Subcommittee on Establishment of a State Ethics Commission," September 21, 2006.

encourage compliance with ethics laws and rules among state officials, state employees and third parties that conduct business with the state.

The task force recommends that a state ethics commission be comprised of eight members, no more than four of whom should be members of the same political party. The commission should only be able to act by a majority vote of at least five members. The members should serve staggered terms of four years for a full term and members would not be permitted to serve more than two consecutive four-year terms. Four commissioners are recommended to be appointed by the Governor, while it is recommended that the Democratic and Republican leaders of the House and Senate appoint the remaining commissioners. It is recommended that the Senate confirm the appointment of each commissioner. The task force further recommends prohibition of appointment of commissioners who are simultaneously serving as state government officials. The task force does not recommend the payment of a salary to each commissioner, but alternatively recommends reimbursement for travel and per diem.

The task force agreed that elections issues should be addressed by an independent elections commission, the establishment of which might require further study. The task force members suggest that additional funding should be provided to the Office of the Secretary of State to hire full-time employees to provide for additional ethics, administrative and compliance oversight in campaigns and elections.

b) Whistleblower Protection Act

The task force recommends that the establishment of an independent state ethics commission should be accompanied by enactment of a Whistleblower Protection Act or a Whistleblower Protection provision to encourage the submission of good faith reports on ethics and to protect those who submit such reports from retaliation. Those protected might include state officials, state employees, government contractors and lobbyists.

2) Justification

The establishment of an independent state ethics commission will promote increased accountability for ethical behavior among state officials and employees, lobbyists and those that conduct business with the state. The threat of investigation of unethical conduct and sanctions for such conduct could serve as a deterrent for unethical practices in state government. It could also ensure that appointing authorities are made aware of unethical practices of officials and employees and lead to removal of unethical individuals from public service positions. The provision of training sessions and educational materials such as a *Plain Language Ethics Guide* and a *Business Ethics Guide* can additionally educate state officials and those that conduct business with the state as to what constitutes ethical and unethical behavior. Individuals with such training are less likely to engage in behavior that raises ethical questions. Thus, the training provided by the state ethics commission could protect both public servants and the state agencies by which they are employed.

David Freel, executive director of the Ohio Ethics Commission, testified to the success of such independent commissions in other states. The task force ultimately agreed that a similar independent ethics commission could be just as successful in New Mexico, so long as it is armed with adequate authority, funding and staffing.

3) Implementation

A new statutory act is recommended to establish in 2007 an independent state ethics commission with subpoena power and the power to recommend sanctions for unethical behavior to the appropriate employing entities. Constitutional amendment is also recommended to solidify the commission's independence, investigation and enforcement roles.

4) Costs

Based upon comparisons of staff used for similar commissions in other states, the task force recommends that a budget of \$1 million be provided to the state ethics commission annually to support approximately ten full time employees and to sufficiently meet operating costs.

B. LIMITATION OF GIFTS⁹

1) Recommendations

a) Prohibit gifts with a fair market value greater than \$250, unless the gift is accepted on behalf of the state of New Mexico.

The task force recommends the prohibition of the donation to or acceptance by state officials of any gift that exceeds a fair market value of \$250.¹⁰ However, the prohibition would not apply to gifts received by state officials on behalf of and to be used for the benefit of the state of New Mexico or a political subdivision of the state.

b) Establish a \$1,000 cap on gifts from a lobbyist, lobbyist employer or government contractor to any one recipient who is a state official or state employee.

The task force recommends a prohibition on the aggregate provision of gifts to any one state official, state employee or candidate for state office that exceeds \$1,000 within the calendar year. This prohibition would apply to donors who are lobbyists, lobbyist employers or government contractors.

c) Establish reporting requirements for gifts that exceed \$100 in value and ban gifts exceeding that value during legislative sessions.

The task force recommends disclosure of the receipt of gifts having a fair market value greater than \$100. In order to reduce the potential influence of gifts during

⁹ See Governmental Conduct Presentation Materials, June 28, 2006. See also "Governor's Ethics and Campaign Finance Reform Task Force Subcommittee Report on Gifts," September 20, 2006.

¹⁰ See *id.* The gifts subcommittee suggested that "gift" be defined as "any donation or transfer to a state official, state employee, or immediate family member without commensurate consideration, of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sports events, but does not include any of the following:

- (1) a campaign contribution as defined in the Campaign Practices Act and for which regular reporting is required;
- (2) a gift from a relative which is customary on family or social occasions and is unrelated to the recipient's position as a legislator, state officer or state employee;
- (3) compensation for services rendered or capital invested which is (a) normal and reasonable in amount, (b) commensurate with the value of the services rendered or the magnitude of the risk undertaken on the investment, (c) in no way increased or enhanced by reason of the recipient's position as a legislator, state officer or state employee, and (d) not otherwise prohibited by law;
- (4) payment for a sale or lease of tangible or intangible property which is commensurate in amount with the value of the property and is in no way increased or enhanced by reason of the recipient's position as a legislator, state officer or employee;
- (5) a commercially reasonable loan made in the ordinary course of the lender's business on terms which are available to all similarly qualified borrowers; or
- (6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person or entity making the reimbursement."

legislative sessions, the task force additionally recommends banning a state official from accepting any gift with a fair market value greater than \$100 during a legislative session.

d) Ban gifts to charities designated by state officials in their official capacities.

The task force recommends banning the provision of a gift to a charity designated by a state official in his or her official capacity.

e) Provide criminal penalties for the donation or acceptance of gifts in violation of the new prohibitions.

Criminal penalties are recommended for the violation of each of the new requirements and prohibitions. The severity of the penalties should depend upon the severity of the violation. It is recommended that the penalty scheme in place for similar criminal violations be used to determine appropriate punishments. For instance, failure to report a gift of \$100 in market value or more could constitute a petty misdemeanor punishable by a fine of up to \$500 and up to six months imprisonment.¹¹ On the other hand, the acceptance of a \$3,000 gift by a state official could constitute a third degree felony punishable by a fine of up to \$5,000 and up to three years imprisonment.¹²

2) Justification

Although legislators, state officers and state employees are prohibited from receiving anything of value in exchange for performance of an official act, there is no general prohibition of gifts or requirement for disclosure of gifts in New Mexico. Clear designations as to when gifts are not acceptable and additional reporting requirements with respect to gifts provided by lobbyists and lobbyist employers would provide a necessary foundation for the effective regulation of lobbying and campaign finance. Such designations and requirements would also simplify compliance and ultimately increase public confidence in government. Moreover, clear limitations or even outright bans on gifts have been enacted in most states. The enactment of clear limitations on gifts in New Mexico and additional reporting requirements will ensure that this state is also adapting to the national trend toward limiting the potentially corrupting influence of gifts.

3) Implementation

Statutory changes are recommended to implement each of the prohibitions, limitations and reporting requirements indicated above.

4) Costs

There is no determined fiscal impact associated with any of the gift bans, limitations or reporting requirements. Although some costs might be incurred with

¹¹ See Section 31-19-1 NMSA 1978.

¹² See Section 31-18-15 NMSA 1978.

respect to administration and enforcement of the new laws, the fines imposed for violation of those laws would also generate revenues.

C. CAMPAIGN CONTRIBUTION LIMITS AND REPORTING¹³

1) Recommendations

a) Limit contributions to candidates for statewide office to the federal contribution limit for individuals, currently \$2,100.

The task force recommends limiting contributions to candidates for statewide office to the federal contribution limit for individuals, currently \$2,100, per candidate per election. By keying to the federal contribution limit, statewide campaign contribution limits would be adjusted for inflation every two years based on the consumer price index.

The contribution limit of \$2,100 per candidate per election should apply to all contributors, including individuals, corporations, unions, political parties, political committees and other entities. In tandem with the contribution limit, the task force recommends enhanced enforcement of the existing prohibition of campaign contributions by one person in the name of another.

b) Limit contributions to candidates for district-wide office to one-half of the federal contribution limit for individuals, currently \$1,050.

The task force recommends limiting contributions to candidates for district-wide office, including Public Regulation Commission candidates, to one-half of the federal contribution limit for individuals, currently \$1,050, per candidate per election. The task force agreed that since campaign expenses for district-wide office elections are generally lower than those for statewide office elections, the allowable campaign contributions for district-wide offices should also remain lower than allowable contributions for statewide offices. By keying to the federal contribution limit, district-wide campaign contribution limits would be adjusted for inflation every two years based on the consumer price index.

The contribution limit of \$1,050 per candidate per election should apply to all contributors, including individuals, corporations, unions, political parties, political committees and other entities.

c) Prohibit cash contributions of more than \$100.

The task force recommends the prohibition of cash contributions to candidates that exceed \$100 within a certain time frame. Requirements to report cash contributions under \$100 should continue to be effective.

¹³ See “Governor’s Ethics & Campaign Finance Reform Task Force Discussion Group Report: Campaign Finance,” June 28, 2006. See also “Governor’s Ethics & Campaign Finance Reform Task Force Subcommittee Report on Campaign Finance,” September 21, 2006.

d) Strengthen campaign reporting requirements and enforcement.

It is recommended that campaign reporting statements be expanded to include information regarding the occupation, business, and employer for donors who contribute more than \$100 to a candidate. The task force also recommends that third-party groups that make “independent expenditures” in support of or in opposition to a clearly identified candidate or ballot measure should be required to report such expenditures. Cumulative totals of contributions received from individual donors and expenditures made to individual vendors per election cycle should also be included in the reporting statements. The task force further suggests the requirement of more frequent reporting in non-election years.

The task force recommends that subpoena power be granted to the Office of the Secretary of State or any created independent state ethics commission to increase the investigatory power of those entities. It also recommends that the Office of the Secretary of State or any created independent state ethics commission be required to perform a desk review of more than ten percent of reporting individuals or a field audit of a defined percentage of reporting individuals.

The task force suggests increasing maximum civil penalties for violation of reporting requirements to \$10,000. Finally, the task force recommends that contributors be identified by a unique campaign finance account number, possibly the last four digits of an individual’s social security number.

2) Justification

New Mexico is one of a minority of thirteen states that do not limit most campaign contributions. The United States Supreme Court has recognized that campaign contribution limits may serve a state’s compelling interest in preventing corruption and the appearance of corruption in the political process. The Supreme Court has also concluded that reasonable contribution limits do not violate the United States Constitution. Contribution limits could further limit the influence of large donations, which might breed undue influence and erode public confidence. Thus, the task force agreed that reasonable contribution limits should be placed on contributions to candidates. The task force found that federal limits would constitute reasonable limits and ensure constitutional compliance.

In a 2005 report of the “Campaign Disclosure Project,” New Mexico received a grade of “F” for its campaign disclosure laws¹⁴. Stricter campaign reporting requirements such as those recommended by the task force could result in increased disclosure and improved oversight. Such reporting requirements, like campaign contribution limits, can ultimately prevent corruption and the appearance of corruption in

¹⁴ See Campaign Disclosure Org., “Grading State Disclosure 2005: Evaluating States’ Efforts to Bring Sunlight to Political Money,” at <http://campaigndisclosure.org/gradingstate/nm.html>.

the state's political races. Stricter campaign reporting requirements may also improve public perception of the effectiveness of campaign disclosure in the state and possibly raise New Mexico's grade for its campaign disclosure laws.

3) Implementation

Statutory changes are recommended to enact the new campaign contribution limits. Provisions for contribution limits could be enacted as new sections of the Campaign Reporting Act.

4) Costs

Although existing law requires reporting of campaign contributions, increased costs of an undetermined amount would likely be associated with the administration and enforcement of campaign contribution limits and possibly enhanced reporting requirements. Increased demands placed on the Office of the Secretary of State will also require additional funds.

D. LEGISLATIVE COMPENSATION¹⁵

1) Recommendations

a) Provide for legislative expense reimbursement accounts in an amount not to exceed \$10,000 annually.

The task force recommends the provision of legislative expense reimbursement accounts to legislators in an amount not to exceed \$10,000 annually per legislator. Funds from the legislative expense reimbursement accounts should be used by legislators to pay for the expenses directly related to their legislative duties. Such expenses might include staff, telephone, travel and other constituent service-related expenses. Legislators should only be paid for expenses incurred. Therefore, some legislators would likely receive less annually than the maximum \$10,000 legislative reimbursement amount.

b) Prohibit the use of campaign funds for legislative purposes.

The task force recommends repealing Section 1-19-29.1 NMSA 1978, which permits legislators to use campaign funds for legislative purposes, during the 2007 session. The task force additionally recommends the enactment of a statutory prohibition on the use of campaign funds for legislative purposes. Finally, the task force recommends that effectiveness of the repeal and prohibition remain contingent upon the Secretary of State's certification that a constitutional amendment to create legislative expense reimbursement accounts has been adopted.

2) Justification

Other than per diem, legislators are not paid for expenses incurred for performing their legislative duties. However, pursuant to Section 1-19-29.1 NMSA 1978, legislators may use campaign funds for expenditures reasonably related to performing their duties. Those expenditures include mail, telephone and travel expenditures to serve constituents, but exclude personal and legislative session living expenditures.

Because legislators do not receive compensation for the costs incurred in the performance of their duties, they are faced with a dilemma. They must either personally absorb the costs of serving constituents, or use campaign funds to pay those costs. If campaign funds are used for the costs of serving constituents, the potential for corrupting influence might exist. Legislators might become dependent on funds given to them by third parties that promote special interests. On the other hand, task force members agreed that legislators should not be expected to personally absorb the costs of serving constituents. This expectation might also discourage diverse populations from running for legislative office because only more affluent candidates capable of absorbing the costs of legislative office could afford to serve. To reduce the potential influence of third-parties in the legislative process and to provide legislators with some means of

¹⁵ See "Report of the Subcommittee on Legislative Compensation," August 28, 2006.

reimbursement for the expenses that they personally pay, the task force agreed to seek repeal of the section of law that permits the use of campaign funds for legislative expenses and to request provision of a legislative expense reimbursement account in the amount of \$10,000 annually to each legislator. The task force's recommendation to prohibit the use of campaign funds for legislative purposes is contingent upon the provision of legislative expense reimbursement accounts. Both recommendations are contingent upon the provision for increased campaign contribution limits contained in this recommendation report.

As an alternative to the provision of legislative expense reimbursement accounts, the task force explored the possibility of the provision of salaries to legislators. Many task force members expressed that legislative salaries could encourage more candidates who could not financially afford to leave their jobs during legislative sessions, to run for legislative office and ultimately increase diversity in the legislature. After much debate on the issue, the task force ultimately agreed that the provision of legislative expense reimbursement accounts would constitute a more politically feasible approach.

3) Implementation

To prohibit of the use of campaign funds, the task force recommends the enactment of a new statutory prohibition and the repeal of Section 1-19-29.1 NMSA 1978. The task force also recommends a constitutional amendment to provide for legislative expense reimbursement accounts.

4) Costs

The provision of legislative expense reimbursement accounts is not recommended to exceed \$10,000 per legislator. However, since some legislators would not incur \$10,000 annually in legislative expenses, the fiscal impact would likely be lower. Some administrative costs involved with tracking the expense reimbursement accounts might offset the reduced fiscal impact.

E. STATE TREASURER AND STATE AUDITOR APPOINTMENTS AND QUALIFICATIONS¹⁶

1) Recommendations

a) Make the office of the state treasurer an appointive office.

The task force recommends making the office of the state treasurer an appointed, rather than an elected, office. The task force further recommends that the Governor appoint the state treasurer, with Senate confirmation, beginning in 2011. The task force also suggests that the state treasurer only be removed from office for cause.

b) Make the office of the state auditor an appointive office.

The task force recommends making the office of the state auditor an appointed, rather than an elected, office beginning in 2011. The task force further recommends that an independent commission appoint the state auditor. Since the state auditor could be called upon to audit the Governor's office, some task force members stated that an independent commission should appoint the state auditor to maintain a proper degree of autonomy. An independent commission could be composed of representatives from public accountancy, the legislative branch and the Governor's office. The task force additionally recommends that the state auditor only be removed from office for cause.

c) Require the State Treasurer to have certain minimum qualifications.

The task force recommends that the state treasurer have certain minimum qualifications. For instance, the state treasurer could be required to have at least five years of high-level investment experience, possessing a Series 24 designation¹⁷, or comparable experience in supervising investment operations.

d) Require the State Auditor to have certain minimum qualifications.

The task force recommends that the state auditor have certain minimum qualifications. For instance, the state auditor could be required to be a certified public accountant, which would ensure sufficient knowledge of the auditing function and respect within the industry.

2) Justification

If the state treasurer and state auditor engage in unethical practices, they can only be removed from office by impeachment, which is a drastic, time-consuming and

¹⁶ See "Appointing the State Treasurer and Auditor," September 20, 2006.

¹⁷ A Series 24 designation indicates the distinction of "office of supervisory jurisdiction." The designation indicates responsibility for approval of security transactions of employees and general supervision of employees. A person with a Series 24 designation is permitted to practice before the National Association of Security Dealers and the Securities and Exchange Commission.

burdensome process. If the offices of state treasurer and state auditor become appointive, however, the appointing authority would have the power to remove those officials expeditiously, and sooner prevent the officials from engaging in additional unethical practices. The threat of removal by the appointive authorities might also serve as a deterrent to unethical behavior. In addition, the appointing authority could be held accountable for its appointment decisions. Finally, appointment can allow for the establishment of minimum qualifications for the offices of the state treasurer and state auditor. Minimum qualifications can ensure that these officials are professionals who understand the functions of the offices that they are running and who are capable of competent, ethical and professional service to the people of New Mexico.

3) Implementation

Constitutional amendment is recommended to reconstitute the offices of the state treasurer and state auditor as appointed, rather than elected positions. Enabling legislation is additionally recommended to establish the state treasurer and state auditor as appointed officials and to set the minimum qualifications required for those offices.

4) Costs

Other than the costs associated with bringing constitutional ballot questions to the voters, there are no specific costs required to change the offices of the state treasurer and state auditor to appointed positions.

F. PUBLICLY FINANCED CAMPAIGNS¹⁸

1) Recommendation

Provide for public financing of all statewide and contested judicial court elections.

If limits on campaign spending are enacted in accordance with the campaign limit recommendations included in this report, the task force recommends a full, voluntary public financing system for all statewide and contested judicial court elections. The public financing system could require candidates to raise a limited amount of seed money early in the campaign process to pay for the limited, initial costs of starting a campaign. The candidates could then be required to gather a predetermined amount of very small qualifying contributions from registered voters. After gathering the required number of qualifying contributions, the candidate could submit qualifying contributions, with proper documentation for each individual contribution to the system's oversight authority. The oversight authority then would examine the qualifying contributions and accompanying documentation. A candidate that meets the qualifying requirements could then be certified by the oversight authority. Once certified, the candidate could sign an affidavit with the oversight authority, agreeing to limit campaign spending to only that which is received from the public fund. If a candidate who is not participating in the system spends more than the voluntary limit for candidates participating in the public financing system, matching funds up to a set limit could be available to the publicly financed candidate.

2) Justification

Public financing of campaigns has been credited with reducing the adverse effects of money on the political system, increasing the number and diversity of candidates for state office, reducing the need to divert attention to fundraising activities and encouraging candidates to directly contact all classes of voters. States that have successfully implemented public financing systems include Arizona, Connecticut, Maine, New Jersey and North Carolina. Public financing systems have also taken effect in New Mexico. In 2003, the legislature passed, and the Governor signed, the Voter Action Act, creating public financing for Public Regulation Commission races. Additionally, in 2005, Albuquerque voters approved a ballot referendum to develop a system of public financing for future mayoral and city council races.

New Mexico has already taken steps to move toward public financing. If this state adopts public financing for statewide and contested judicial elections, it would join other leading states in bold campaign finance reform.

The task force members have acknowledged that any future public financing system would be strengthened by also strengthening campaign contribution limits. If

¹⁸ See "Governor's Ethics & Campaign Finance Reform Task Force Subcommittee Report on Campaign Finance," June 28, 2006. See also "Governor's Ethics & Campaign Finance Reform Task Force Subcommittee Report on Public Financing of Campaigns," September 20, 2006.

campaign contribution limits are not strengthened, candidates who opt for public financing might find themselves at a disadvantage in raising funds with respect to those who choose not to use public financing and thus have fewer fundraising limitations.

The task force members agreed that if public financing proves to be successful with respect to statewide and contested judicial elections, public financing for legislative races could later be considered.

Task force members also discussed whether the current hybrid system of appointing and electing judges should be revised. Without reaching a consensus, there was strong sentiment expressed to recommend to the Governor to ask others for recommendations on whether the current system of selecting all judges statewide should be revised, including possibly moving to a strictly appointed merit protection system.

3) Implementation

The task force recommends the development of a new statute to implement the new public financing system. The legislature could look to the state of Connecticut, which passed a new public financing statute in 2005. The legislature could also refer to the Voter Action Act, the legislation which creates the Public Regulation Commission public financing system, as well as previous public financing bills for further reference regarding implementation. The task force recommends passing legislation for full public financing of all statewide and contested judicial court elections during the 2007 session, with full implementation complete in time for the 2010 gubernatorial election. As a step toward full implementation, a public financing fund should be established immediately to accumulate funds.

4) Costs

The task force considered the amounts of money that might be required to run a viable race, while also keeping campaign costs at a reasonable level. The task force did not endorse any particular stipend amounts that would be necessary to fund campaigns in a publicly financed system. Determination of appropriate stipend amounts would require careful study.

IV. CONCLUSION

The Governor's Task Force on Ethics Reform worked diligently to build upon previous efforts to improve New Mexico ethics and campaign finance laws. The task force studied a broad range of issues in an effort to fulfill the directive that Governor Bill Richardson set for the task force. The task force developed recommendations to strengthen the state's ability to encourage and enforce ethical practices, to limit potentially corrupting influences, to boldly reform campaign finance laws and to ensure that state officials and employees conduct themselves with integrity and honesty as they uphold the high responsibilities of public service. The task force believes that its recommendations will provide a strong foundation for comprehensive ethics and campaign finance reform in New Mexico.

The Governor's Task Force on Ethics Reform thus respectfully submits its recommendations to Governor Bill Richardson for consideration as part of a package of reform initiatives for the upcoming 2007 regular legislative session.

Governor Garrey E. Carruthers, Co-Chair

Dean Suellyn Scarnecchia, Co-Chair