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SENATE BILL 400

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; PROHIBITING CONTRIBUTIONS TO STATE AGENTS AND CANDIDATES FOR STATE AGENT OFFICES FROM INVESTMENT AGENTS DOING OR SEEKING BUSINESS WITH THE STATE; PROHIBITING THE SOLICITATION OF CONTRIBUTIONS FROM INVESTMENT AGENTS; PROHIBITING STATE AGENTS FROM SOLICITING INVESTMENT AGENTS TO PROVIDE EMPLOYMENT OR CONTRACTS FOR OTHERS; PROVIDING FOR PENALTIES.

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

Section 1. Section 10-16-2 NMSA 1978 (being Laws 1967, Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying

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1 on a business;

2 B. "confidential information" means information
3 that by law or practice is not available to the public;

4 C. "contribution" means any donation or transfer to
5 a person, without commensurate consideration, of money,
6 property, service, loan, promise or any other thing of value,
7 including food, lodging, transportation and tickets for
8 entertainment or sporting events, but does not include:

9 (1) a gift from a family member given under
10 circumstances that make it clear that the gift is motivated by
11 a family relationship rather than the recipient's position as a
12 state agent;

13 (2) compensation for services rendered or
14 capital invested that is:

15 (a) normal and reasonable in amount;

16 (b) commensurate with the value of the
17 service rendered or the magnitude of the risk taken on the
18 investment;

19 (c) in no way increased or enhanced by
20 reason of the recipient's position as a state agent; and

21 (d) not otherwise prohibited by law;

22 (3) payment for a sale or lease of tangible or
23 intangible property that is commensurate with the value of the
24 services rendered and is in no way increased or enhanced by
25 reason of the recipient's position as a state agent;

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1 (4) a commercially reasonable loan made in the
2 ordinary course of the lender's business on terms that are
3 available to all similarly qualified borrowers; or

4 (5) the cost of food and refreshments totaling
5 no more than twenty-five dollars (\$25.00) per day for food and
6 refreshments at a public reception or other public social
7 function that are available to all guests equally;

8 ~~[G.]~~ D. "employment" means rendering of services
9 for compensation in the form of salary as an employee;

10 ~~[D.]~~ E. "financial interest" means an interest held
11 by an individual ~~[his]~~ or the individual's spouse or dependent
12 minor children that is:

13 (1) an ownership interest in business; or

14 (2) any employment or prospective employment
15 for which negotiations have already begun;

16 F. "investment agent" means a person that receives,
17 or the person's officers or agents that receive, compensation
18 for providing financial services involving public money or that
19 invest or provide advice on the investment of public money;

20 ~~[E.]~~ G. "official act" means an official decision,
21 recommendation, approval, disapproval or other action that
22 involves the use of discretionary authority;

23 ~~[F.]~~ H. "person" means an individual or entity;

24 ~~[G.]~~ I. "public officer or employee" means any
25 person who has been elected to, appointed to or hired ~~[for]~~ by

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1 any state office and who receives compensation in the form of
2 salary or is eligible for per diem or mileage pursuant to the
3 Per Diem and Mileage Act, but excludes legislators and judges;

4 ~~[H.]~~ J. "standards" means the conduct required by
5 the Governmental Conduct Act; ~~[and]~~

6 K. "state agent" means a person who is acting in an
7 official capacity and:

8 (1) is the governor, lieutenant governor,
9 state treasurer, state auditor, secretary of state, attorney
10 general, commissioner of public lands or a state legislator;

11 (2) has authority over the investment of
12 public funds or issuance of bonds, or has the authority to
13 appoint public officers who have that authority, and who has
14 been elected to, appointed to or hired by any state office and
15 who receives compensation in the form of a salary or is
16 eligible for per diem and mileage pursuant to the Per Diem and
17 Mileage Act; or

18 (3) is an agent of an office created by state
19 law that invests public funds or issues bonds, the revenue of
20 which is used for public projects in the state; and

21 ~~[I.]~~ L. "substantial interest" means an ownership
22 interest that is greater than twenty percent."

23 Section 2. A new section of the Governmental Conduct Act
24 is enacted to read:

25 "[NEW MATERIAL] SOLICITATION AND ACCEPTANCE OF

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1 CONTRIBUTIONS PROHIBITED.--It is unlawful for a state agent or
2 a candidate who seeks election to the office of a state agent
3 or anyone who solicits funds on the candidate's behalf to
4 knowingly solicit or accept, directly or indirectly, a
5 contribution from an investment agent doing business with a
6 state agent."

7 Section 3. A new section of the Governmental Conduct Act
8 is enacted to read:

9 "[NEW MATERIAL] INVESTMENT AGENT CONTRIBUTIONS
10 PROHIBITED--PENALTY.--

11 A. It is unlawful for an investment agent doing
12 business with a state agent to make, directly or indirectly, a
13 contribution to:

14 (1) a candidate for the elective office of a
15 state agent or the candidate's campaign; or

16 (2) a state agent who is involved in the
17 investment of public funds or issuance of bonds, the revenue of
18 which is used for public projects in the state.

19 B. If an investment agent who is not doing business
20 with the state has contributed to, has solicited any person or
21 political action committee to make a contribution to or has
22 coordinated any contribution to a successful candidate for an
23 office of a state agent that has authority over the investment
24 of public funds or issuance of bonds, or that has the authority
25 to appoint public officers who have that authority, the

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1 investment agent shall not conduct business with the state or
2 its political subdivisions that involves the investment of
3 public funds or issuance of bonds for any state agent for two
4 years following the election of that candidate."

5 Section 4. A new section of the Governmental Conduct Act
6 is enacted to read:

7 "[NEW MATERIAL] STATE AGENTS--PROHIBITED ACTS.--It is
8 unlawful for a state agent to solicit any investment agent
9 doing business with the state or seeking to do business with
10 the state to:

- 11 A. appoint a person to a position of employment; or
- 12 B. hire a person on contract in any capacity."

13 Section 5. A new section of the Governmental Conduct Act
14 is enacted to read:

15 "[NEW MATERIAL] PENALTIES--ENFORCEMENT.--

16 A. A person who knowingly violates a provision of
17 Section 2; Subsection A of Section 3; or Section 4 of this 2007
18 act is guilty of a fourth degree felony and shall be punished
19 by a fine of not more than ten thousand dollars (\$10,000) or by
20 imprisonment for a definite term not to exceed eighteen months
21 or both. Nothing in this section shall preclude criminal or
22 civil prosecution for violations of other provisions of law set
23 forth in the constitution of New Mexico or by statute.

24 B. The state or any political subdivision of the
25 state shall not contract for any financial services with an

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1 investment agent who is found guilty of violating a provision
2 of Section 2; Subsection A of Section 3; or Section 4 of this
3 2007 act for a period of five years from the date of
4 conviction.

5 C. A person who is convicted of violating a
6 provision of Section 2; Subsection A of Section 3; or Section 4
7 of this 2007 act is disqualified from employment by the state
8 or any of its political subdivisions.

9 D. Notwithstanding any provisions of Sections
10 10-16-13.1 and 10-16-14 NMSA 1978 to the contrary, the attorney
11 general may investigate and prosecute any violation of the
12 provisions of this 2007 act at the attorney general's
13 discretion."