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HOUSE BILL 850

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ETHICS; AMENDING AND ENACTING SECTIONS OF THE  
GOVERNMENTAL CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND  
EMPLOYEES OF ALL POLITICAL SUBDIVISIONS OF THE STATE;  
PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES.

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. "agency" means any branch, agency,  
instrumentality, institution or other entity of the state or of  
a political subdivision;

~~[A.]~~ B. "business" means a corporation,  
partnership, sole proprietorship, firm, organization or

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1 individual carrying on a business;

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

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

7 ~~[D.]~~ E. "family" means an individual's spouse,  
8 parents, children or siblings, by consanguinity or affinity;

9 ~~[E.]~~ F. "financial interest" means an interest held  
10 by an individual or the individual's family that is:

11 (1) an ownership interest in business; or

12 (2) any employment or prospective employment  
13 for which negotiations have already begun;

14 ~~[F.]~~ G. "official act" means an official decision,  
15 recommendation, approval, disapproval or other action that  
16 involves the use of discretionary authority;

17 ~~[G.]~~ H. "public officer or employee" means any  
18 person who has been elected to, appointed to or hired for any  
19 ~~[state office]~~ agency and who receives compensation in the form  
20 of salary or is eligible for per diem or mileage but excludes  
21 legislators;

22 ~~[H.]~~ I. "standards" means the conduct required by  
23 the Governmental Conduct Act;

24 ~~[I. "state agency" means any branch, agency,  
25 instrumentality or institution of the state;] and~~

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1 J. "substantial interest" means an ownership  
2 interest that is greater than twenty percent."

3 Section 2. Section 10-16-3 NMSA 1978 (being Laws 1993,  
4 Chapter 46, Section 28, as amended) is amended to read:

5 "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN  
6 OFFICIAL ACTS PROHIBITED--PENALTY.--

7 A. A legislator, public officer or employee shall  
8 treat the legislator's, public officer's or employee's  
9 government position as a public trust. The legislator, public  
10 officer or employee shall use the powers and resources of  
11 public office only to advance the public interest and not to  
12 obtain personal benefits or pursue private interests  
13 [~~incompatible with the public interest~~].

14 B. Legislators, public officers and employees shall  
15 conduct themselves in a manner that justifies the confidence  
16 placed in them by the people, at all times maintaining the  
17 integrity and discharging ethically the high responsibilities  
18 of public service.

19 C. Full disclosure of real or potential conflicts  
20 of interest shall be a guiding principle for determining  
21 appropriate conduct. At all times, reasonable efforts shall be  
22 made to avoid undue influence and abuse of office in public  
23 service.

24 D. A legislator having a financial interest that  
25 will be directly affected by the legislator's official act

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1 shall, within a reasonable time after such interest becomes  
2 apparent but not later than at the time of taking official  
3 action, disclose the precise nature and value of such interest  
4 to the legislator's respective chief clerk. The disclosure  
5 shall constitute a public record pursuant to the Inspection of  
6 Public Records Act.

7           ~~[D.]~~ E. No legislator, public officer or employee  
8 may request or receive, and no person may offer a legislator,  
9 public officer or employee, any money, thing of value or  
10 promise thereof that is conditioned upon or given in exchange  
11 for promised performance of an official act. Any person who  
12 knowingly and willfully violates the provisions of this  
13 subsection is guilty of a fourth degree felony and shall be  
14 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
15 1978."

16           Section 3. Section 10-16-3.1 NMSA 1978 (being Laws 2007,  
17 Chapter 362, Section 9) is amended to read:

18           "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~  
19 ~~officers and employees are]~~ A public officer or employee is  
20 prohibited from:

21           A. directly or indirectly coercing or attempting to  
22 coerce ~~[a state]~~ another public officer or employee to pay,  
23 lend or contribute anything of value to a party, committee,  
24 organization, agency or person for a political purpose;

25           B. threatening to deny a promotion or pay increase

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1 to an employee who does or does not vote for certain  
2 candidates, requiring an employee to contribute a percentage of  
3 the employee's pay to a political fund, influencing a  
4 subordinate employee to purchase a ticket to a political  
5 fundraising dinner or similar event, advising an employee to  
6 take part in political activity or similar activities; or

7 C. violating the officer's or employee's duty [~~to~~  
8 not to use property [~~state~~] belonging to an agency, or allow  
9 its use, for other than authorized purposes."

10 Section 4. Section 10-16-4 NMSA 1978 (being Laws 1967,  
11 Chapter 306, Section 4, as amended) is amended to read:

12 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST  
13 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A  
14 PENALTY.--

15 A. It is unlawful for a public officer or employee  
16 to take an official act for the primary purpose of directly  
17 enhancing the public officer's or employee's financial interest  
18 or financial position. Any person who knowingly and willfully  
19 violates the provisions of this subsection is guilty of a  
20 fourth degree felony and shall be sentenced pursuant to the  
21 provisions of Section 31-18-15 NMSA 1978.

22 B. A public officer or employee shall be  
23 disqualified from engaging in any official act directly  
24 affecting the public officer's or employee's financial  
25 interest, except a public officer or employee shall not be

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1 disqualified from taking an official act if the financial  
2 interest involves a benefit that is not more than the benefit  
3 to the general public.

4 C. No public officer during the term for which  
5 elected and no public employee during the period of employment  
6 shall acquire a financial interest when the public officer or  
7 employee believes or should have reason to believe that the new  
8 financial interest will be directly affected by the officer's  
9 or employee's official act."

10 Section 5. Section 10-16-4.2 NMSA 1978 (being Laws 2007,  
11 Chapter 362, Section 10) is amended to read:

12 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public  
13 officer or employee shall disclose in writing to the  
14 [~~supervisor of the officer or employee, or in the event there~~  
15 ~~is no supervisor, to the secretary of state]~~ officer's or  
16 employee's respective agency all employment engaged in by the  
17 officer or employee other than the employment with or service  
18 to the [state] agency."

19 Section 6. Section 10-16-6 NMSA 1978 (being Laws 1967,  
20 Chapter 306, Section 6, as amended) is amended to read:

21 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,  
22 public officer or employee shall use or disclose confidential  
23 information acquired by virtue of the legislator's, public  
24 officer's or employee's [~~state~~] employment or office for the  
25 legislator's, public officer's, employee's or another's private

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1 gain."

2 Section 7. Section 10-16-7 NMSA 1978 (being Laws 1967,  
3 Chapter 306, Section 7, as amended) is amended to read:

4 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
5 EMPLOYEES.--~~[A state]~~ An agency shall not enter into a contract  
6 for services, construction or items of tangible personal  
7 property with a public officer or employee of the ~~[state]~~  
8 agency, with the family of the public officer or employee or  
9 with a business in which the public officer or employee or the  
10 family of the public officer or employee has a substantial  
11 interest unless the public officer or employee has disclosed  
12 through public notice the public officer's or employee's  
13 substantial interest and unless the contract is awarded  
14 pursuant to ~~[the Procurement Code]~~ competitive bidding, except  
15 that the potential contractor shall not be eligible for a sole  
16 source or small purchase contract; provided that this section  
17 does not apply to a contract of official employment ~~[with the~~  
18 ~~state or to contracts made pursuant to the provisions of the~~  
19 ~~University Research Park Act]~~. A person negotiating or  
20 executing a contract on behalf of ~~[a state]~~ an agency shall  
21 exercise due diligence to ensure compliance with the provisions  
22 of this section."

23 Section 8. Section 10-16-8 NMSA 1978 (being Laws 1967,  
24 Chapter 306, Section 8, as amended) is amended to read:

25 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR  
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1 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT  
2 SERVICE.--

3 A. [~~A state~~] An agency shall not enter into a  
4 contract with, or take any action favorably affecting, any  
5 person or business that is:

6 (1) represented personally in the matter by a  
7 person who has been a public officer or employee of [~~the state~~]  
8 an agency within the preceding year if the value of the  
9 contract or action is in excess of one thousand dollars  
10 (\$1,000) and the contract is a direct result of an official act  
11 by the public officer or employee; or

12 (2) assisted in the transaction by a former  
13 public officer or employee of [~~the state~~] an agency whose  
14 official act, while in state employment, directly resulted in  
15 the agency's making that contract or taking that action.

16 B. A former public officer or employee shall not  
17 represent a person in [~~his~~] the person's dealings with the  
18 government on a matter in which the former public officer or  
19 employee participated personally and substantially while a  
20 public officer or employee.

21 C. For a period of one year after leaving  
22 government service or employment, a former public officer or  
23 employee shall not represent for pay a person before the  
24 [~~government~~] agency at which the former public officer or  
25 employee served or worked.

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1                   D. Nothing in this section shall be construed to  
2 apply to a precinct board member or a juror as a result of  
3 service in one of those capacities."

4                   Section 9. Section 10-16-9 NMSA 1978 (being Laws 1967,  
5 Chapter 306, Section 9, as amended) is amended to read:

6                   "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION  
7 BEFORE [~~STATE~~] AGENCIES.--

8                   A. [~~A state~~] An agency shall not enter into a  
9 contract for services, construction or items of tangible  
10 personal property with a legislator, the legislator's family or  
11 with a business in which the legislator or the legislator's  
12 family has a substantial interest unless the legislator has  
13 disclosed the legislator's substantial interest and unless the  
14 contract is awarded in accordance with the provisions of the  
15 Procurement Code, except the potential contractor shall not be  
16 eligible for a sole source or small purchase contract. A  
17 person negotiating or executing a contract on behalf of [~~a~~  
18 ~~state~~] an agency shall exercise due diligence to ensure  
19 compliance with the provisions of this subsection.

20                   B. A legislator shall not appear for, represent or  
21 assist another person in a matter before [~~a state~~] an agency,  
22 unless without compensation or for the benefit of a  
23 constituent, except for legislators who are attorneys or other  
24 professional persons engaged in the conduct of their  
25 professions and, in those instances, the legislator shall

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1 refrain from references to the legislator's legislative  
2 capacity except as to matters of scheduling, from  
3 communications on legislative stationery and from threats or  
4 implications relating to legislative actions."

5 Section 10. Section 10-16-13 NMSA 1978 (being Laws 1967,  
6 Chapter 306, Section 13, as amended) is amended to read:

7 "10-16-13. PROHIBITED BIDDING.--No [state] agency [~~or~~  
8 ~~political subdivision of the state~~] shall accept a bid or  
9 proposal from a person who directly participated in the  
10 preparation of specifications, qualifications or evaluation  
11 criteria on which the specific competitive bid or proposal was  
12 based. A person accepting a bid or proposal on behalf of [~~a~~  
13 ~~state~~] an agency [~~or political subdivision of this state~~] shall  
14 exercise due diligence to ensure compliance with this section."

15 Section 11. Section 10-16-14 NMSA 1978 (being Laws 1967,  
16 Chapter 306, Section 14, as amended) is amended to read:

17 "10-16-14. ENFORCEMENT PROCEDURES.--

18 A. The secretary of state may refer suspected  
19 violations of the Governmental Conduct Act to the attorney  
20 general, district attorney or appropriate [state] agency [~~or~~  
21 ~~legislative body~~] for enforcement. If a suspected violation  
22 involves the office of the secretary of state, the attorney  
23 general may enforce that act. If a suspected violation  
24 involves the office of the attorney general, a district  
25 attorney may enforce that act.

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1           B. Violation of the provisions of the Governmental  
2 Conduct Act by any legislator is grounds for discipline by the  
3 appropriate legislative body.

4           C. If the attorney general determines that there is  
5 sufficient cause to file a complaint against a public officer  
6 removable only by impeachment, ~~[he]~~ the attorney general shall  
7 refer the matter to the house of representatives of the  
8 legislature. If within thirty days after the referral the  
9 house of representatives has neither formally declared that the  
10 charges contained in the complaint are not substantial nor  
11 instituted hearings on the complaint, the attorney general  
12 shall make public the nature of the charges, but ~~[he]~~ the  
13 attorney general shall make clear that the merits of the  
14 charges have never been determined. Days during which the  
15 legislature is not in session shall not be included in  
16 determining the thirty-day period.

17           D. Violation of the provisions of the Governmental  
18 Conduct Act by any public officer or employee, other than those  
19 covered by Subsection C of this section, is grounds for  
20 discipline, including dismissal, demotion or suspension.  
21 Complaints against executive branch employees may be filed with  
22 the agency head and reviewed pursuant to the procedures  
23 provided in the Personnel Act. Complaints against legislative  
24 branch employees may be filed with and reviewed pursuant to  
25 procedures adopted by the New Mexico legislative council.

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1 Complaints against judicial branch employees may be filed and  
2 reviewed pursuant to the procedures provided in the judicial  
3 personnel rules.

4 E. Subject to the provisions of this section, the  
5 provisions of the Governmental Conduct Act may be enforced by  
6 the attorney general. Except as regards legislators or  
7 statewide elected officials, a district attorney in the county  
8 where a person who allegedly violated the provisions resides or  
9 where [a] an alleged violation occurred may also enforce that  
10 act. Enforcement actions may include seeking civil injunctive  
11 or other appropriate orders."

12 Section 12. Section 10-16-13.2 NMSA 1978 (being Laws  
13 2007, Chapter 362, Section 8) is amended to read:

14 "10-16-13.2. CERTAIN BUSINESS SALES TO [STATE] AGENCIES  
15 AND THEIR EMPLOYEES PROHIBITED.--

16 ~~[A. A public officer or employee shall not sell or~~  
17 ~~be a party to a transaction to sell goods, services,~~  
18 ~~construction or items of tangible personal property directly or~~  
19 ~~indirectly, through the public officer's or employee's family~~  
20 ~~or a business in which the public officer or employee has a~~  
21 ~~substantial interest, to the state agency with which the public~~  
22 ~~officer or employee is employed. It is not a violation of this~~  
23 ~~subsection if the public officer or employee employed by the~~  
24 ~~state agency in good faith is not aware of:~~

25 ~~(1) the substantial interest held by the~~

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1 ~~public officer or employee or the public officer's or~~  
2 ~~employee's family in the business that is selling or engaged in~~  
3 ~~a transaction to sell goods, services, construction or items of~~  
4 ~~tangible personal property to the state agency by which the~~  
5 ~~public officer or employee is employed; or~~

6 ~~(2) the sale of or the transaction to sell~~  
7 ~~goods, services, construction or items of tangible personal~~  
8 ~~property by the public officer's or employee's family or by a~~  
9 ~~business in which the public officer or employee or the public~~  
10 ~~officer's or employee's family has a substantial interest to~~  
11 ~~the state agency by which the public officer or employee is~~  
12 ~~employed.~~

13 ~~B.]~~ A. A public officer or employee shall not sell,  
14 offer to sell, coerce the sale of or be a party to a  
15 transaction to sell goods, services, construction or items of  
16 tangible personal property, directly or indirectly through the  
17 public officer's or employee's family or a business in which  
18 the public officer or employee has a substantial interest, to  
19 an employee supervised by the public officer or employee. A  
20 public officer or employee shall not receive a commission or  
21 shall not profit from the sale or a transaction to sell goods,  
22 services, construction or items of tangible personal property  
23 to an employee supervised by the public officer or employee.  
24 The provisions of this subsection shall not apply if the  
25 supervised employee initiates the sale. It is not a violation

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1 of this subsection if a public officer or employee, in good  
2 faith, is not aware that the employee to whom the goods,  
3 services, construction or items of tangible personal property  
4 are being sold is under the supervision of the public officer  
5 or employee.

6 ~~[G.]~~ B. A public officer or employee shall not  
7 sell, offer to sell, coerce the sale of or be a party to a  
8 transaction to sell goods, services, construction or items of  
9 tangible personal property, directly or indirectly through the  
10 public officer's or employee's family or a business in which  
11 the public officer or employee has a substantial interest, to a  
12 person over whom the public officer or employee has regulatory  
13 authority.

14 ~~[D.]~~ C. A public officer or employee shall not  
15 receive a commission or shall not profit from the sale or a  
16 transaction to sell goods, services, construction or items of  
17 tangible personal property to a person over whom the public  
18 officer or employee has regulatory authority.

19 ~~[E.]~~ D. A public officer or employee shall not  
20 accept from a person over whom the public officer or employee  
21 has regulatory authority an offer of employment or an offer of  
22 a contract in which the public officer or employee provides  
23 goods, services, construction, items of tangible personal  
24 property or other things of value to the person over whom the  
25 public officer or employee has regulatory authority."

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1           Section 13. Section 10-16-13.3 NMSA 1978 (being Laws  
2           2007, Chapter 362, Section 11) is amended to read:

3           "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE  
4           CONTRACTORS.--

5           A. A business that contracts with [~~a state~~] an  
6           agency to provide financial services involving the investment  
7           of public money or issuance of bonds for public projects shall  
8           not knowingly contribute anything of value to a public officer  
9           or employee of that [~~state~~] agency who has authority over the  
10          investment of public money or issuance of bonds, the revenue of  
11          which is used for public projects in the state.

12          B. A public officer or employee of [~~a state~~] an  
13          agency that has authority over the investment of public money  
14          or issuance of bonds, the revenue of which is used for public  
15          projects in the state, shall not knowingly accept a  
16          contribution of anything of value from a business that  
17          contracts with that [~~state~~] agency to provide financial  
18          services involving the investment of public money or issuance  
19          of bonds for public projects.

20          C. For the purposes of this section:

21                  (1) "anything of value" means any money,  
22                  property, service, loan or promise, but does not include food  
23                  and refreshments with a value of less than one hundred dollars  
24                  (\$100) consumed in a day; and

25                  (2) "contribution" means a donation or

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1 transfer to a recipient for the personal use of the recipient,  
2 without commensurate consideration."

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

5 "[NEW MATERIAL] LOCAL GOVERNMENT AGENCY AUTHORITY.--  
6 Nothing in the Governmental Conduct Act shall be construed to  
7 preclude a local government agency from adopting laws,  
8 ordinances, rules or standards that are more stringent than  
9 those required by the Government Conduct Act."

10 Section 15. REPEAL.--Sections 4-44-22 through 4-44-26  
11 NMSA 1978 (being Laws 1969, Chapter 244, Sections 1 through 5)  
12 are repealed.

13 Section 16. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2009.