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SENATE BILL 44

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Tim Eichenberg

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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 property; or

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

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

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

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

25 ~~[I.] "state agency" means any branch, agency,~~

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1 ~~instrumentality or institution of the state,]~~ and

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

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

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

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

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

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

25 D. No legislator, public officer or employee may

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1 request or receive, and no person may offer a legislator,
2 public officer or employee, any money, thing of value or
3 promise thereof that is conditioned upon or given in exchange
4 for promised performance of an official act. Any person who
5 knowingly and willfully violates the provisions of this
6 subsection is guilty of a fourth degree felony and shall be
7 sentenced pursuant to the provisions of Section 31-18-15 NMSA
8 1978."

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

11 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~
12 ~~officers and employees are]~~ A public officer or employee is
13 prohibited from:

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

18 B. threatening to deny a promotion or pay increase
19 to an employee who does or does not vote for certain
20 candidates, requiring an employee to contribute a percentage of
21 the employee's pay to a political fund, influencing a
22 subordinate employee to purchase a ticket to a political fund-
23 raising dinner or similar event, advising an employee to take
24 part in political activity or similar activities; or

25 C. violating the officer's or employee's duty ~~[to]~~

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1 not to use property [~~state~~] belonging to an agency, or allow
2 its use, for other than authorized purposes."

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

5 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST
6 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A
7 PENALTY.--

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

15 B. A public officer or employee shall be
16 disqualified from engaging in any official act directly
17 affecting the public officer's or employee's financial
18 interest, except a public officer or employee shall not be
19 disqualified from taking an official act if the financial
20 interest involves a financial benefit that is not more than the
21 benefit to the general public.

22 C. No public officer during the term for which
23 elected and no public employee during the period of employment
24 shall acquire a financial interest when the public officer or
25 employee believes or should have reason to believe that the new

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1 financial interest will be directly affected by the officer's
2 or employee's official act."

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

5 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public
6 officer or employee shall disclose in writing to the
7 [~~supervisor of the officer or employee, or in the event there~~
8 ~~is no supervisor, to the secretary of state]~~ officer's or
9 employee's respective agency all employment engaged in by the
10 officer or employee other than the employment with or service
11 to the [state] agency."

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

14 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,
15 public officer or employee shall use or disclose confidential
16 information acquired by virtue of the legislator's, public
17 officer's or employee's [state] employment or office for the
18 legislator's, public officer's, employee's or another's private
19 gain."

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

22 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
23 EMPLOYEES.--[A state] An agency shall not enter into a contract
24 for services, construction or items of tangible personal
25 property with a public officer or employee of [~~the state~~] an

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1 agency, with the family of the public officer or employee or
2 with a business in which the public officer or employee or the
3 family of the public officer or employee has a substantial
4 interest unless the public officer or employee has disclosed
5 through public notice the public officer's or employee's
6 substantial interest and unless the contract is awarded
7 pursuant to [~~the Procurement Code~~] competitive bidding, except
8 that the potential contractor shall not be eligible for a sole
9 source or small purchase contract; provided that this section
10 does not apply to a contract of official employment [~~with the~~
11 ~~state or to contracts made pursuant to the provisions of the~~
12 ~~University Research Park and Economic Development Act or the~~
13 ~~New Mexico Research Applications Act~~]. A person negotiating or
14 executing a contract on behalf of [~~a state~~] an agency shall
15 exercise due diligence to ensure compliance with the provisions
16 of this section."

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

19 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
20 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT
21 SERVICE.--

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

25 (1) represented personally in the matter by a

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1 person who has been a public officer or employee of [~~the state~~]
2 an agency within the preceding year if the value of the
3 contract or action is in excess of one thousand dollars
4 (\$1,000) and the contract is a direct result of an official act
5 by the public officer or employee; or

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

10 B. A former public officer or employee shall not
11 represent a person in [~~his~~] the person's dealings with the
12 government on a matter in which the former public officer or
13 employee participated personally and substantially while a
14 public officer or employee.

15 C. For a period of one year after leaving
16 government service or employment, a former public officer or
17 employee shall not represent for pay a person before the
18 [~~government~~] agency at which the former public officer or
19 employee served or worked.

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

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

25 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION

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1 BEFORE [STATE] AGENCIES.--

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

14 B. A legislator shall not appear for, represent or
15 assist another person in a matter before [~~a state~~] an agency,
16 unless without compensation or for the benefit of a
17 constituent, except for legislators who are attorneys or other
18 professional persons engaged in the conduct of their
19 professions and, in those instances, the legislator shall
20 refrain from references to the legislator's legislative
21 capacity except as to matters of scheduling, from
22 communications on legislative stationery and from threats or
23 implications relating to legislative actions."

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

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1 "10-16-13. PROHIBITED BIDDING.--No [state] agency [~~or~~
2 ~~political subdivision of the state]~~ shall accept a bid or
3 proposal from a person who directly participated in the
4 preparation of specifications, qualifications or evaluation
5 criteria on which the specific competitive bid or proposal was
6 based. A person accepting a bid or proposal on behalf of [~~a~~
7 ~~state]~~ an agency [~~or political subdivision of this state]~~ shall
8 exercise due diligence to ensure compliance with this section."

9 Section 11. Section 10-16-13.2 NMSA 1978 (being Laws
10 2007, Chapter 362, Section 8) is amended to read:

11 "10-16-13.2. CERTAIN BUSINESS SALES TO [STATE] AGENCIES
12 AND THEIR EMPLOYEES PROHIBITED.--

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

22 ~~(1) the substantial interest held by the~~
23 ~~public officer or employee or the public officer's or~~
24 ~~employee's family in the business that is selling or engaged in~~
25 ~~a transaction to sell goods, services, construction or items of~~

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1 ~~tangible personal property to the state agency by which the~~
2 ~~public officer or employee is employed; or~~

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

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

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1 are being sold is under the supervision of the public officer
2 or employee.

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

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

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

23 Section 12. Section 10-16-13.3 NMSA 1978 (being Laws
24 2007, Chapter 362, Section 11) is amended to read:

25 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE
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1 CONTRACTORS.--

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

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

17 C. For the purposes of this section:

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

22 (2) "contribution" means a donation or
23 transfer to a recipient for the personal use of the recipient,
24 without commensurate consideration."

25 Section 13. Section 10-16-14 NMSA 1978 (being Laws 1967,
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1 Chapter 306, Section 14, as amended) is amended to read:

2 "10-16-14. ENFORCEMENT PROCEDURES.--

3 A. The secretary of state may refer suspected
4 violations of the Governmental Conduct Act to the attorney
5 general, district attorney or appropriate [~~state~~] agency [~~or~~
6 ~~legislative body~~] for enforcement. If a suspected violation
7 involves the office of the secretary of state, the attorney
8 general may enforce that act. If a suspected violation
9 involves the office of the attorney general, a district
10 attorney may enforce that act.

11 B. Violation of the provisions of the Governmental
12 Conduct Act by any legislator is grounds for discipline by the
13 appropriate legislative body.

14 C. If the attorney general determines that there is
15 sufficient cause to file a complaint against a public officer
16 removable only by impeachment, [~~he~~] the attorney general shall
17 refer the matter to the house of representatives of the
18 legislature. If within thirty days after the referral the
19 house of representatives has neither formally declared that the
20 charges contained in the complaint are not substantial nor
21 instituted hearings on the complaint, the attorney general
22 shall make public the nature of the charges, but [~~he~~] the
23 attorney general shall make clear that the merits of the
24 charges have never been determined. Days during which the
25 legislature is not in session shall not be included in

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1 determining the thirty-day period.

2 D. Violation of the provisions of the Governmental
3 Conduct Act by any public officer or employee, other than those
4 covered by Subsection C of this section, is grounds for
5 discipline, including dismissal, demotion or suspension.
6 Complaints against executive branch employees may be filed with
7 the agency head and reviewed pursuant to the procedures
8 provided in the Personnel Act. Complaints against legislative
9 branch employees may be filed with and reviewed pursuant to
10 procedures adopted by the New Mexico legislative council.
11 Complaints against judicial branch employees may be filed and
12 reviewed pursuant to the procedures provided in the judicial
13 personnel rules.

14 E. Subject to the provisions of this section, the
15 provisions of the Governmental Conduct Act may be enforced by
16 the attorney general. Except as regards legislators or
17 statewide elected officials, a district attorney in the county
18 where a person who allegedly violated the provisions resides or
19 where [a] an alleged violation occurred may also enforce that
20 act. Enforcement actions may include seeking civil injunctive
21 or other appropriate orders."

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

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

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

7 Section 16. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2010.

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