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HOUSE BILL 300

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; PROHIBITING AN
EMPLOYEE FROM APPEARING BEFORE THE PUBLIC REGULATION COMMISSION
FOR TWO YEARS AFTER EMPLOYMENT.

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

SECTION 1. Section 8-8-19 NMSA 1978 (being Laws 1998,
Chapter 108, Section 19) is amended to read:

"8-8-19. PROHIBITED ACTS--CANDIDATES--COMMISSIONERS AND
EMPLOYEES.--

A. As used in this section, in addition to the
definitions provided in Section [~~2 of the Public Regulation
Commission Act~~] 8-8-2 NMSA 1978:

(1) "affiliated interest" means a person who
directly controls or is controlled by or is under common
control with a regulated entity, including an agent,

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1 representative, attorney, employee, officer, owner, director or
2 partner of an affiliated interest. For the purposes of this
3 definition, "control" includes the possession of the power to
4 direct or cause the direction of the management and policies of
5 a person, whether directly or indirectly, through the
6 ownership, control or holding with the power to vote of ten
7 percent or more of the person's voting securities;

8 (2) "intervenor" means a person who is
9 intervening as a party in an adjudicatory matter or commenting
10 in a rulemaking pending before the commission or has intervened
11 in an adjudicatory or rulemaking matter before the commission
12 within the preceding twenty-four months, including an agent,
13 representative, attorney, employee, officer, owner, director,
14 partner or member of an intervenor;

15 (3) "pecuniary interest" includes owning or
16 controlling securities; serving as an officer, director,
17 partner, owner, employee, attorney or consultant; or otherwise
18 benefiting from a business relationship. "Pecuniary interest"
19 does not include an investment in a mutual fund or similar
20 third-party-controlled investment, pension or disability
21 benefits or an interest in capital credits of a rural electric
22 cooperative or telephone cooperative because of current or past
23 patronage; and

24 (4) "regulated entity" means a person whose
25 charges for services to the public are regulated by the

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1 commission and includes any direct or emerging competitors of a
2 regulated entity and includes an agent, representative,
3 attorney, employee, officer, owner, director or partner of the
4 regulated entity.

5 B. In addition to the requirements of the Financial
6 Disclosure Act and the Governmental Conduct Act, candidates for
7 the commission, commissioners and employees of the commission
8 shall comply with the requirements of this section and Sections
9 ~~[17 and 18 of the Public Regulation Commission Act]~~ 8-8-17 and
10 8-8-18 NMSA 1978, as applicable.

11 C. A candidate for election to the ~~[public~~
12 ~~regulation]~~ commission shall not solicit or accept:

13 (1) anything of value, either directly or
14 indirectly, from a person whose charges for services to the
15 public are regulated by the commission. For the purposes of
16 this paragraph, "anything of value" includes money, in-kind
17 contributions and volunteer services to the candidate or ~~[his]~~
18 the candidate's campaign organization, but does not include
19 pension or disability benefits; or

20 (2) more than five hundred dollars (\$500) per
21 election from any other person.

22 D. A commissioner or employee of the commission
23 shall not:

24 (1) accept anything of value from a regulated
25 entity, affiliated interest or intervenor. For the purposes of

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1 this paragraph, a commissioner may accept allowable campaign
2 contributions when campaigning for reelection. For the
3 purposes of this paragraph, "anything of value" does not
4 include:

5 (a) the cost of refreshments totaling no
6 more than five dollars (\$5.00) a day or refreshments at a
7 public reception or other public social function that are
8 available to all guests equally;

9 (b) inexpensive promotional items that
10 are available to all customers of the regulated entity,
11 affiliated interest or intervenor; or

12 (c) pension or disability benefits
13 received from a regulated entity, affiliated interest or
14 intervenor;

15 (2) have a pecuniary interest in a regulated
16 entity, affiliated interest or intervenor, and if a pecuniary
17 interest in an intervenor develops, the commissioner or
18 employee shall divest [~~himself of~~] that interest or recuse
19 himself from the proceeding with the intervenor interest; or

20 (3) solicit any regulated entity, affiliated
21 interest or intervenor to appoint a person to a position or
22 employment in any capacity.

23 E. After leaving the commission, [~~+~~] a former
24 commissioner or employee shall not:

25 (1) be employed or retained [~~in a position~~

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1 ~~that requires appearances before the commission]~~ by a regulated
2 entity, affiliated interest or intervenor within two years of
3 [~~his~~] separation from the commission; or

4 ~~[(2) a former employee shall not appear before~~
5 ~~the commission representing a party to an adjudication or a~~
6 ~~participant in a rulemaking within one year of ceasing to be an~~
7 ~~employee; and~~

8 ~~(3) a former commissioner or employee shall~~
9 ~~not]~~

10 (2) represent a party before the commission or
11 a court in a matter that was pending before the commission
12 while the commissioner or employee was associated with the
13 commission and in which [~~he~~] the former commissioner or
14 employee was personally and substantially involved in the
15 matter.

16 F. The attorney general or a district attorney may
17 institute a civil action in the district court for Santa Fe
18 county or, in [~~his~~] the attorney general's or a district
19 attorney's discretion, the district court for the county in
20 which a defendant resides if a violation of this section has
21 occurred or to prevent a violation of this section. A civil
22 penalty may be assessed in the amount of two hundred fifty
23 dollars (\$250) for each violation, not to exceed five thousand
24 dollars (\$5,000)."