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HOUSE BILL 13

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; SPECIFYING THE CRIMINAL ACTS THAT QUALIFY AS PUBLIC CORRUPTION OFFENSES; MANDATING POSTING OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES; PROVIDING FOR ENHANCEMENT OF A SENTENCE FOR CONVICTION OF A CRIME DEALING WITH PUBLIC CORRUPTION; BARRING PERSONS CONVICTED OF PUBLIC CORRUPTION OFFENSES FROM LOBBYING OR ENTERING INTO CONTRACTS WITH THE STATE; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 30-16-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 16-7, as amended) is amended to read:

"30-16-8. EMBEZZLEMENT.--

A. Embezzlement consists of a person embezzling or converting to the person's own use anything of value, with

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1 which the person has been entrusted, with fraudulent intent to
2 deprive the owner thereof.

3 B. Whoever commits embezzlement when the value of
4 the thing embezzled or converted is two hundred fifty dollars
5 (\$250) or less is guilty of a petty misdemeanor.

6 C. Whoever commits embezzlement when the value of
7 the thing embezzled or converted is over two hundred fifty
8 dollars (\$250) but not more than five hundred dollars (\$500) is
9 guilty of a misdemeanor.

10 D. Whoever commits embezzlement when the value of
11 the thing embezzled or converted is over five hundred dollars
12 (\$500) but not more than two thousand five hundred dollars
13 (\$2,500) is guilty of a fourth degree felony.

14 E. Whoever commits embezzlement when the value of
15 the thing embezzled or converted is over two thousand five
16 hundred dollars (\$2,500) but not more than twenty thousand
17 dollars (\$20,000) is guilty of a third degree felony.

18 F. Whoever commits embezzlement when the value of
19 the thing embezzled or converted exceeds twenty thousand
20 dollars (\$20,000) is guilty of a second degree felony.

21 G. A person elected or appointed to a position with
22 or employed by a public entity who commits embezzlement against
23 the public entity when the value of the thing embezzled or
24 converted is over five hundred dollars (\$500) shall have the
25 basic sentence of imprisonment as provided for in this section

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1 increased by one year.

2 H. A person convicted under the provisions of this
3 section shall not, individually or in association with others,
4 submit a bid to or enter into a contract for services,
5 construction or items of tangible personal property with a
6 public entity or act as a lobbyist, as defined in Section
7 2-11-2 NMSA 1978. Any person who knowingly and willfully
8 violates the provisions of this subsection is guilty of a third
9 degree felony.

10 I. As used in this section, "public entity" means
11 the state or one of its agencies, departments, institutions or
12 political subdivisions."

13 SECTION 2. Section 30-23-2 NMSA 1978 (being Laws 1963,
14 Chapter 303, Section 23-2) is amended to read:

15 "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES
16 NOT RENDERED.--

17 A. Paying or receiving public money for services
18 not rendered consists of knowingly making or receiving payment
19 or causing payment to be made from public funds where such
20 payment purports to be for wages, salary or remuneration for
21 personal services ~~[which]~~ that have not in fact been rendered.

22 B. Nothing in this section shall be construed to
23 prevent the payment of public funds where such payments are
24 intended to cover lawful remuneration to public officers or
25 public employees for vacation periods or absences from

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1 employment because of sickness or for other lawfully authorized
2 purposes.

3 C. Whoever commits paying or receiving public money
4 for services not rendered is guilty of a fourth degree felony;
5 provided that, if a person elected to or appointed to a
6 position with or employed by a public entity is convicted of
7 paying or receiving public money for services not rendered, the
8 basic sentence of imprisonment shall be increased by one year.

9 D. A person convicted under the provisions of this
10 section shall not, individually or in association with others,
11 submit a bid to or enter into a contract for services,
12 construction or items of tangible personal property with a
13 public entity or act as a lobbyist, as defined in Section
14 2-11-2 NMSA 1978. Any person who knowingly and willfully
15 violates the provisions of this subsection is guilty of a third
16 degree felony.

17 E. As used in this section, "public entity" means
18 the state or one of its agencies, departments, institutions or
19 political subdivisions."

20 **SECTION 3.** Section 30-23-3 NMSA 1978 (being Laws 1963,
21 Chapter 303, Section 23-3, as amended) is amended to read:

22 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

23 A. Making or permitting false public voucher
24 consists of knowingly, intentionally or [~~wilfully~~] willfully
25 making, causing to be made or permitting to be made a false

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1 material statement or forged signature upon any public voucher,
2 or invoice supporting a public voucher, with intent that the
3 voucher or invoice shall be relied upon for the expenditure of
4 public money.

5 B. Whoever commits making or permitting false
6 public voucher is guilty of a fourth degree felony; provided
7 that, if a person elected to or appointed to a position with or
8 employed by a public entity is convicted of making or
9 permitting false public voucher, the basic sentence of
10 imprisonment shall be increased by one year.

11 C. A person convicted under the provisions of this
12 section shall not, individually or in association with others,
13 submit a bid to or enter into a contract for services,
14 construction or items of tangible personal property with a
15 public entity or act as a lobbyist, as defined in Section
16 2-11-2 NMSA 1978. Any person who knowingly and willfully
17 violates the provisions of this subsection is guilty of a third
18 degree felony.

19 D. As used in this section, "public entity" means
20 the state or one of its agencies, departments, institutions or
21 political subdivisions."

22 SECTION 4. Section 30-23-6 NMSA 1978 (being Laws 1963,
23 Chapter 303, Section 23-6) is amended to read:

24 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

25 A. Unlawful interest in a public contract consists

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1 of:

2 [A.—any] (1) a public officer or public
3 employee receiving anything of value, directly or indirectly,
4 from either a seller or a seller's agents or a purchaser or a
5 purchaser's agents in connection with the sale or purchase of
6 securities, goods, leases, lands or anything of value by the
7 state or any of its political subdivisions, unless:

8 [~~(1)~~] (a) prior written consent of the
9 head of the department of the state or political subdivision
10 involved in the transaction is obtained and filed as a matter
11 of public record in the office of secretary of state; and

12 [~~(2)~~] (b) subsequent to the transaction,
13 a statement is filed as a matter of public record in the office
14 of secretary of state by the purchaser or seller giving
15 anything of value to a public officer or public employee and
16 this statement contains the date the services were rendered,
17 the amount of remuneration for the rendered services and the
18 nature of the rendered services; and

19 [B.—any] (2) a seller or [~~his~~] the seller's
20 agents or a purchaser or [~~his~~] the purchaser's agents offering
21 to pay or paying anything of value, directly or indirectly, to
22 a public officer or public employee in connection with the sale
23 or purchase of securities or goods by the state or any of its
24 political subdivisions unless the requirements of [~~Paragraphs~~
25 ~~(1) and (2)~~] Subparagraphs (a) and (b) of Paragraph (1) of

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1 ~~[Subsection A of]~~ this ~~[section]~~ subsection are complied with.

2 ~~[Any]~~

3 B. A person violating the provisions of Paragraph
4 (2) of Subsection [B] A of this section, where ~~[such]~~ the
5 violations ~~[forms]~~ form the basis for prosecution and
6 conviction of a public officer or public employee, shall be
7 disqualified from transacting ~~[any]~~ business with the state or
8 its political subdivisions for a period of five years from the
9 date of ~~[such]~~ the violation.

10 C. Nothing in this section shall prohibit a public
11 officer or public employee from receiving ~~[his]~~ regular
12 remuneration for services rendered to the state or its
13 political subdivisions in connection with the aforementioned
14 transactions.

15 D. Whoever commits unlawful interest in public
16 contracts where the value received by ~~[him]~~ the person is fifty
17 dollars (\$50.00) or less is guilty of a misdemeanor.

18 E. Whoever commits unlawful interest in public
19 contracts where the value received by ~~[him]~~ the person is more
20 than fifty dollars (\$50.00) is guilty of a fourth degree
21 felony; provided that the basic sentence of imprisonment shall
22 be increased by one year. A public officer or public employee
23 convicted of a felony ~~[hereunder]~~ under the provisions of this
24 section is forever disqualified from employment by the state or
25 any of its political subdivisions.

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1 F. A person convicted under the provisions of
2 Paragraph (1) or (2) of Subsection A of this section, where the
3 value received by the person is more than fifty dollars
4 (\$50.00), shall not, individually or in association with
5 others, submit a bid to or enter into a contract for services,
6 construction or items of tangible personal property with a
7 public entity or act as a lobbyist, as defined in Section
8 2-11-2 NMSA 1978. Any person who knowingly and willfully
9 violates the provisions of this subsection is guilty of a third
10 degree felony.

11 G. As used in this section, "public entity" means
12 the state or one of its agencies, departments, institutions or
13 political subdivisions."

14 SECTION 5. Section 30-24-1 NMSA 1978 (being Laws 1963,
15 Chapter 303, Section 24-1) is amended to read:

16 "30-24-1. BRIBERY OF A PUBLIC OFFICER OR PUBLIC
17 EMPLOYEE.--

18 A. Bribery of a public officer or public employee
19 consists of any person giving or offering to give, directly or
20 indirectly, anything of value to any public officer or public
21 employee, with intent to induce or influence [~~such~~] that public
22 officer or public employee to:

23 [~~A.~~] (1) give or render any official opinion,
24 judgment or decree;

25 [~~B.~~] (2) be more favorable to one party than

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1 to the other in any cause, action, suit, election, appointment,
2 matter or thing pending or to be brought before [~~such~~] that
3 person;

4 [~~G.~~] (3) procure [~~him~~] the person to vote or
5 withhold [~~his~~] the person's vote on [~~any~~] a question, matter or
6 proceeding [~~which~~] that is then or may thereafter be pending,
7 and [~~which~~] that may by law come or be brought before [~~him~~] the
8 person in [~~his~~] the person's public capacity;

9 [~~D.~~] (4) execute any of the powers [~~in him~~]
10 vested in the person; or

11 [~~E.~~] (5) perform [~~any~~] a public duty otherwise
12 than as required by law, or to delay in or omit to perform
13 [~~any~~] a public duty required of [~~him~~] the person by law.

14 B. Whoever commits bribery of a public officer or
15 public employee is guilty of a third degree felony; provided
16 that, if a person elected to or appointed to a position with or
17 employed by a public entity is convicted of bribery of a public
18 officer or public employee, the basic sentence of imprisonment
19 shall be increased by one year.

20 C. A person convicted under the provisions of
21 Subsection A of this section shall not, individually or in
22 association with others, submit a bid to or enter into a
23 contract for services, construction or items of tangible
24 personal property with a public entity or act as a lobbyist, as
25 defined in Section 2-11-2 NMSA 1978. Any person who knowingly

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1 and willfully violates the provisions of this subsection is
2 guilty of a third degree felony.

3 D. As used in this section, "public entity" means
4 the state or one of its agencies, departments, institutions or
5 political subdivisions."

6 SECTION 6. Section 30-24-2 NMSA 1978 (being Laws 1963,
7 Chapter 303, Section 24-2) is amended to read:

8 "30-24-2. DEMANDING OR RECEIVING A BRIBE BY PUBLIC
9 OFFICER OR PUBLIC EMPLOYEE.--

10 A. Demanding or receiving a bribe by public officer
11 or public employee consists of any public officer or public
12 employee soliciting or accepting, directly or indirectly,
13 anything of value, with intent to have [~~his~~] the officer's or
14 employee's decision or action on any question, matter, cause,
15 proceeding or appointment influenced [~~thereby~~] by the bribe,
16 and which decision or action, by law, is pending or might be
17 brought before [~~him~~] the officer or employee in [~~his~~] the
18 officer's or employee's official capacity.

19 B. Whoever commits demanding or receiving a bribe
20 by a public officer or public employee is guilty of a third
21 degree felony [~~and~~]; provided that the basic sentence of
22 imprisonment prescribed for the offense shall be increased by
23 one year. Upon conviction, [~~thereof such~~] a public officer or
24 public employee shall forfeit the office then held by [~~him~~] the
25 officer or employee.

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1 C. A person convicted under the provisions of this
2 section shall not, individually or in association with others,
3 submit a bid to or enter into a contract for services,
4 construction or items of tangible personal property with a
5 public entity or act as a lobbyist, as defined in Section
6 2-11-2 NMSA 1978. Any person who knowingly and willfully
7 violates the provisions of this subsection is guilty of a third
8 degree felony.

9 D. As used in this section, "public entity" means
10 the state or one of its agencies, departments, institutions or
11 political subdivisions."

12 SECTION 7. Section 30-41-1 NMSA 1978 (being Laws 1979,
13 Chapter 384, Section 1) is amended to read:

14 "30-41-1. SOLICITING OR RECEIVING ILLEGAL KICKBACK.--

15 A. Whoever knowingly solicits or receives, [~~any~~]
16 directly or indirectly, a remuneration in the form of any
17 kickback, bribe or rebate [~~directly or indirectly, overtly or~~
18 ~~e overtly~~] in cash or in kind from a person:

19 [~~A-~~] (1) in return for referring an individual
20 to that person for the furnishing or arranging for the
21 furnishing of any item or service for which payment may be made
22 in whole or in part with public money; or

23 [~~B-~~] (2) in return for purchasing, leasing,
24 ordering or arranging for or recommending purchasing, leasing
25 or ordering any goods, facilities, services or items for which

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1 payment may be made in whole or in part with public money,
2 [~~shall be~~] is guilty of a fourth degree felony; provided that,
3 if a person elected or appointed to a position with or employed
4 by a public entity is convicted of soliciting or receiving
5 illegal kickback, the basic sentence of imprisonment shall be
6 increased by one year.

7 B. A person convicted under the provisions of this
8 section shall not, individually or in association with others,
9 submit a bid to or enter into a contract for services,
10 construction or items of tangible personal property with a
11 public entity or act as a lobbyist, as defined in Section
12 2-11-2 NMSA 1978. Any person who knowingly and willfully
13 violates the provisions of this subsection is guilty of a third
14 degree felony.

15 C. As used in this section:

16 (1) "kickback" means a percentage of income
17 given to a person in a position of influence as payment for
18 having made the income possible; and

19 (2) "public entity" means the state or one of
20 its agencies, departments, institutions or political
21 subdivisions."

22 SECTION 8. Section 30-41-2 NMSA 1978 (being Laws 1979,
23 Chapter 384, Section 2) is amended to read:

24 "30-41-2. OFFERING OR PAYING ILLEGAL KICKBACK.--

25 A. Whoever knowingly offers or pays, [~~any~~] directly

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1 or indirectly, a remuneration in the form of any kickback,
2 bribe or rebate [~~directly or indirectly, overtly or covertly~~]
3 in cash or in kind to any person to induce such person:

4 [A-] (1) to refer an individual to a person
5 for the furnishing or arranging for the furnishing of [~~any~~] an
6 item or service for which payment may be made in whole or in
7 part with public money; or

8 [B-] (2) to purchase, lease, order or arrange
9 for or recommend purchasing, leasing or ordering any goods,
10 facilities, services or items for which payment may be made in
11 whole or in part with public money, shall be guilty of a fourth
12 degree felony; provided that, if a person elected to or
13 appointed to a position with or employed by a public entity is
14 convicted of offering or paying illegal kickback, the basic
15 sentence of imprisonment shall be increased by one year.

16 B. A person convicted under the provisions of this
17 section shall not, individually or in association with others,
18 submit a bid to or enter into a contract for services,
19 construction or items of tangible personal property with a
20 public entity or act as a lobbyist, as defined in Section
21 2-11-2 NMSA 1978. Any person who knowingly and willfully
22 violates the provisions of this subsection is guilty of a third
23 degree felony.

24 C. As used in this section:

25 (1) "kickback" means a percentage of income

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1 given to a person in a position of influence as payment for
2 having made the income possible; and

3 (2) "public entity" means the state or one of
4 its agencies, departments, institutions or political
5 subdivisions."

6 SECTION 9. [NEW MATERIAL] PUBLICATION AND DISSEMINATION
7 OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES AND OTHER
8 CORRUPT PRACTICES.--

9 A. Every state agency, department, political
10 subdivision and institution shall post in a conspicuous place a
11 listing of all crimes constituting public corruption offenses
12 and other corrupt practices and the penalties associated with
13 such crimes.

14 B. As used in this section, "public corruption
15 offense" means:

16 (1) violating the ethical principles of public
17 service, as provided in Subsection D of Section
18 10-16-3 NMSA 1978;

19 (2) taking an official act for personal
20 financial interest, as provided in Section 10-16-4 NMSA 1978;

21 (3) embezzlement, as provided in Section
22 30-16-8 NMSA 1978; provided that the embezzlement is committed
23 by a person elected to or appointed to a position with or
24 employed by the state or one of its agencies, departments,
25 institutions or political subdivisions and the embezzlement is

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1 committed against the state or its agency, department,
2 institution or political subdivision;

3 (4) paying or receiving public money for
4 services not rendered, as provided in Section 30-23-2 NMSA
5 1978;

6 (5) making or permitting false public voucher,
7 as provided in Section 30-23-3 NMSA 1978;

8 (6) committing unlawful interest in a public
9 contract, where the value received is more than fifty dollars
10 (\$50.00), as provided in Section 30-23-6 NMSA 1978;

11 (7) committing bribery of a public officer or
12 public employee, as provided in Section 30-24-1 NMSA 1978;

13 (8) demanding or receiving a bribe by public
14 officer or employee, as provided in Section 30-24-2 NMSA 1978;

15 (9) tampering with public records, as provided
16 in Section 30-26-1 NMSA 1978;

17 (10) soliciting or receiving illegal kickback,
18 as provided in Section 30-41-1 NMSA 1978; and

19 (11) offering or paying illegal kickback, as
20 provided in Section 30-41-2 NMSA 1978.

21 **SECTION 10. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2013.