

SENATE RULES COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 44 & 211

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

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;  
REPEALING SECTIONS OF THE NMSA 1978.

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,

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1 partnership, sole proprietorship, firm, organization or  
2 individual carrying on a business;

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

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

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

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

12 (1) an ownership interest in business or  
13 property; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 C. No public officer during the term for which  
 24 elected and no public employee during the period of employment  
 25 shall acquire a financial interest when the public officer or

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1 employee believes or should have reason to believe that the new  
2 financial interest will be directly affected by the officer's  
3 or employee's official act."

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

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

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

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

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

23 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
24 EMPLOYEES.--[~~A state~~]

25 A. An agency shall not enter into a contract for

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

19 B. Unless a public officer or employee has  
20 disclosed the public officer's or employee's substantial  
21 interest and unless a contract is awarded in a competitive bid  
22 process, an agency shall not enter into a contract for  
23 services, construction or items of tangible personal property  
24 with a public officer or employee of that agency, with the  
25 family of the public officer or employee or with a business in

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1 which the public officer or employee or the family of the  
2 public officer or employee has a substantial interest."

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

5 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR  
6 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT  
7 SERVICE.--

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

11 (1) represented personally in the matter by a  
12 person who has been a public officer or employee of ~~[the state]~~  
13 an agency within the preceding year if the value of the  
14 contract or action is in excess of one thousand dollars  
15 (\$1,000) and the contract is a direct result of an official act  
16 by the public officer or employee; or

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

21 ~~[B. A former public officer or employee shall not~~  
22 ~~represent a person in his dealings with the government on a~~  
23 ~~matter in which the former public officer or employee~~  
24 ~~participated personally and substantially while a public~~  
25 ~~officer or employee.]~~

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1                   B. An agency shall not enter into a contract with,  
2 or take any action favorably affecting, any person or business  
3 that is:

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

10                   (2) assisted in the transaction by a former  
11 public officer or employee of that political subdivision of the  
12 state whose official act, while in employment with that  
13 political subdivision of the state, directly resulted in the  
14 agency's making that contract or taking that action.

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 10-16-13.1 NMSA 1978 (being Laws  
10 1993, Chapter 46, Section 35) is amended to read:

11           "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

12           A. The [~~secretary of state~~] attorney general shall  
13 advise and seek to educate all persons required to perform  
14 duties under the Governmental Conduct Act of those duties.  
15 This includes advising all those persons at least annually of  
16 that act's ethical principles.

17           B. The [~~secretary of state~~] attorney general shall  
18 seek first to ensure voluntary compliance with the provisions  
19 of the Governmental Conduct Act. A person who violates that  
20 act unintentionally or for good cause shall be given ten days'  
21 notice to correct the matter. Referrals for civil enforcement  
22 of that act by an agency shall be pursued only after efforts to  
23 secure voluntary compliance with that act have failed."

24           Section 12. Section 10-16-13.2 NMSA 1978 (being Laws  
25 2007, Chapter 362, Section 8) is amended to read:

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1           "10-16-13.2. CERTAIN BUSINESS SALES TO [STATE] AGENCIES  
2 AND THEIR EMPLOYEES PROHIBITED.--

3           ~~[A. A public officer or employee shall not sell or~~  
4 ~~be a party to a transaction to sell goods, services,~~  
5 ~~construction or items of tangible personal property directly or~~  
6 ~~indirectly, through the public officer's or employee's family~~  
7 ~~or a business in which the public officer or employee has a~~  
8 ~~substantial interest, to the state agency with which the public~~  
9 ~~officer or employee is employed. It is not a violation of this~~  
10 ~~subsection if the public officer or employee employed by the~~  
11 ~~state agency in good faith is not aware of:~~

12                     ~~(1) the substantial interest held by the~~  
13 ~~public officer or employee or the public officer's or~~  
14 ~~employee's family in the business that is selling or engaged in~~  
15 ~~a transaction to sell goods, services, construction or items of~~  
16 ~~tangible personal property to the state agency by which the~~  
17 ~~public officer or employee is employed; or~~

18                     ~~(2) the sale of or the transaction to sell~~  
19 ~~goods, services, construction or items of tangible personal~~  
20 ~~property by the public officer's or employee's family or by a~~  
21 ~~business in which the public officer or employee or the public~~  
22 ~~officer's or employee's family has a substantial interest to~~  
23 ~~the state agency by which the public officer or employee is~~  
24 ~~employed.~~

25           B.] A. A public officer or employee shall not sell,

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1 offer to sell, coerce the sale of or be a party to a  
2 transaction to sell goods, services, construction or items of  
3 tangible personal property, directly or indirectly through the  
4 public officer's or employee's family or a business in which  
5 the public officer or employee has a substantial interest, to  
6 an employee supervised by the public officer or employee. A  
7 public officer or employee shall not receive a commission or  
8 shall not profit from the sale or a transaction to sell goods,  
9 services, construction or items of tangible personal property  
10 to an employee supervised by the public officer or employee.  
11 The provisions of this subsection shall not apply if the  
12 supervised employee initiates the sale. It is not a violation  
13 of this subsection if a public officer or employee, in good  
14 faith, is not aware that the employee to whom the goods,  
15 services, construction or items of tangible personal property  
16 are being sold is under the supervision of the public officer  
17 or employee.

18 ~~[G.]~~ B. A public officer or employee shall not  
19 sell, offer to sell, coerce the sale of or be a party to a  
20 transaction to sell goods, services, construction or items of  
21 tangible personal property, directly or indirectly through the  
22 public officer's or employee's family or a business in which  
23 the public officer or employee has a substantial interest, to a  
24 person over whom the public officer or employee has regulatory  
25 authority.

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1           ~~[D-]~~ C. A public officer or employee shall not  
2 receive a commission or shall not profit from the sale or a  
3 transaction to sell goods, services, construction or items of  
4 tangible personal property to a person over whom the public  
5 officer or employee has regulatory authority.

6           ~~[E-]~~ D. A public officer or employee shall not  
7 accept from a person over whom the public officer or employee  
8 has regulatory authority an offer of employment or an offer of  
9 a contract in which the public officer or employee provides  
10 goods, services, construction, items of tangible personal  
11 property or other things of value to the person over whom the  
12 public officer or employee has regulatory authority."

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

15           "[NEW MATERIAL] AGENCY AUTHORITY.--Nothing in the  
16 Governmental Conduct Act shall be construed to preclude an  
17 agency from adopting and publishing ordinances, rules or  
18 standards that are more stringent than those required by the  
19 Governmental Conduct Act."

20           Section 14. Section 10-16-13.3 NMSA 1978 (being Laws  
21 2007, Chapter 362, Section 11) is amended to read:

22           "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE  
23 CONTRACTORS.--

24           A. A business that contracts with ~~[a state]~~ an  
25 agency to provide financial services involving the investment

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1 of public money or issuance of bonds for public projects shall  
 2 not knowingly contribute anything of value to a public officer  
 3 or employee of that [~~state~~] agency who has authority over the  
 4 investment of public money or issuance of bonds, the revenue of  
 5 which is used for public projects in the state.

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

14 C. For the purposes of this section:

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

19 (2) "contribution" means a donation or  
 20 transfer to a recipient for the personal use of the recipient,  
 21 without commensurate consideration."

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

24 "10-16-14. ENFORCEMENT PROCEDURES.--

25 A. The secretary of state may refer suspected

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

8 B. Violation of the provisions of the Governmental  
9 Conduct Act by any legislator is grounds for discipline by the  
10 appropriate legislative body.

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

24 D. Violation of the provisions of the Governmental  
25 Conduct Act by any public officer or employee, other than those

1 covered by Subsection C of this section, is grounds for  
 2 discipline, including dismissal, demotion or suspension.  
 3 Complaints against executive branch employees may be filed with  
 4 the agency head and reviewed pursuant to the procedures  
 5 provided in the Personnel Act. Complaints against legislative  
 6 branch employees may be filed with and reviewed pursuant to  
 7 procedures adopted by the New Mexico legislative council.  
 8 Complaints against judicial branch employees may be filed and  
 9 reviewed pursuant to the procedures provided in the judicial  
 10 personnel rules.

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

19 Section 16. REPEAL.--Sections 3-10-4 through 3-10-6 and  
 20 4-44-22 through 4-44-26 NMSA 1978 (being Laws 1977, Chapter 78,  
 21 Section 1, Laws 1965, Chapter 300, Sections 14-9-5 and 14-9-6  
 22 and Laws 1969, Chapter 244, Sections 1 through 5) are repealed.

23 Section 17. EFFECTIVE DATE.--The effective date of the  
 24 provisions of this act is July 1, 2010.