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SENATE BILL 211

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

INTRODUCED BY

Linda M. Lopez

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. "business" means a corporation, partnership,
sole proprietorship, firm, organization or individual carrying
on a business;

B. "confidential information" means information
that by law or practice is not available to the public;

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1 C. "employment" means rendering of services for
2 compensation in the form of salary as an employee;

3 D. "family" means an individual's spouse, parents,
4 children or siblings, by consanguinity or affinity;

5 E. "financial interest" means an interest held by
6 an individual or the individual's family that is:

7 (1) an ownership interest in business; or

8 (2) any employment or prospective employment
9 for which negotiations have already begun;

10 F. "local government agency" means any political
11 subdivision of the state that has an elected governing
12 authority and any state institution of higher education;

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

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

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

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

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

3 Section 2. Section 10-16-3.1 NMSA 1978 (being Laws 2007,
4 Chapter 362, Section 9) is amended to read:

5 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~
6 ~~officers and employees are]~~ A public officer or employee is
7 prohibited from:

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

12 B. threatening to deny a promotion or pay increase
13 to an employee who does or does not vote for certain
14 candidates, requiring an employee to contribute a percentage of
15 the employee's pay to a political fund, influencing a
16 subordinate employee to purchase a ticket to a political
17 fundraising dinner or similar event, advising an employee to
18 take part in political activity or similar activities; or

19 C. violating the officer's or employee's duty [~~to~~]
20 not to use property [~~state~~] belonging to a state agency or
21 local government agency, or allow its use, for other than
22 authorized purposes."

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

25 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public
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1 officer or employee shall disclose in writing to the supervisor
2 of the officer or employee, or in the event there is no
3 supervisor, to the secretary of state, all employment engaged
4 in by the officer or employee other than the employment with
5 ~~[the]~~ a state agency or local government agency."

6 Section 4. Section 10-16-6 NMSA 1978 (being Laws 1967,
7 Chapter 306, Section 6, as amended) is amended to read:

8 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,
9 public officer or employee shall use or disclose confidential
10 information acquired by virtue of the legislator's, public
11 officer's or employee's ~~[state employment or office]~~ position
12 with a state agency or local government agency for the
13 legislator's, public officer's, employee's or another's private
14 gain."

15 Section 5. Section 10-16-7 NMSA 1978 (being Laws 1967,
16 Chapter 306, Section 7, as amended) is amended to read:

17 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
18 EMPLOYEES.--

19 A. A state agency shall not enter into a contract
20 for services, construction or items of tangible personal
21 property with a public officer or employee of the state, with
22 the family of the public officer or employee or with a business
23 in which the public officer or employee or the family of the
24 public officer or employee has a substantial interest unless
25 the public officer or employee has disclosed the public

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1 officer's or employee's substantial interest and unless the
2 contract is awarded pursuant to the Procurement Code, except
3 that the potential contractor shall not be eligible for a sole
4 source or small purchase contract; provided that this section
5 does not apply to a contract of official employment with the
6 state or to contracts made pursuant to the provisions of the
7 University Research Park and Economic Development Act. A
8 person negotiating or executing a contract on behalf of a state
9 agency shall exercise due diligence to ensure compliance with
10 the provisions of this section.

11 B. Unless a public officer or employee has
12 disclosed the public officer's or employee's substantial
13 interest and unless a contract is awarded in a competitive bid
14 process pursuant to the Procurement Code, a local government
15 agency shall not enter into a contract for services,
16 construction or items of tangible personal property with a
17 public officer or employee of that local government agency,
18 with the family of the public officer or employee or with a
19 business in which the public officer or employee or the family
20 of the public officer or employee has a substantial interest.

21 C. Subsection B of this section does not apply to a
22 contract of official employment with the political subdivision
23 or to contracts made pursuant to the provisions of the
24 University Research and Economic Development Park Act. A
25 person negotiating or executing a contract on behalf of a local

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1 government agency shall exercise due diligence to ensure
2 compliance with the provisions of this section."

3 Section 6. 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 agency shall not enter into a contract
9 with, or take any action favorably affecting, any person or
10 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 within the preceding year if the value of the contract or
14 action is in excess of one thousand dollars (\$1,000) and the
15 contract is a direct result of an official act by the public
16 officer or employee; or

17 (2) assisted in the transaction by a former
18 public officer or employee of the state whose official act,
19 while in state employment, directly resulted in the agency's
20 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. A local government agency shall not enter into a
2 contract with, or take any action favorably affecting, any
3 person or business that is:

4 (1) represented personally in the matter by a
5 person who has been a public officer or employee of that local
6 government agency within the preceding year if the value of the
7 contract or action is in excess of one thousand dollars
8 (\$1,000) and the contract is a direct result of an official act
9 by the public 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 state
18 agency or local government agency at which the former public
19 officer or employee served or worked."

20 Section 7. Section 10-16-13 NMSA 1978 (being Laws 1967,
21 Chapter 306, Section 13, as amended) is amended to read:

22 "10-16-13. PROHIBITED BIDDING.--No state agency or
23 [~~political subdivision of the state~~] local government agency
24 shall accept a bid or proposal from a person who directly
25 participated in the preparation of specifications,

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1 qualifications or evaluation criteria on which the specific
2 competitive bid or proposal was based. A person accepting a
3 bid or proposal on behalf of a state agency or ~~[political~~
4 ~~subdivision of this state]~~ local government agency shall
5 exercise due diligence to ensure compliance with this section."

6 Section 8. Section 10-16-13.1 NMSA 1978 (being Laws 1993,
7 Chapter 46, Section 35) is amended to read:

8 "10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

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

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

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

24 "10-16-13.2. CERTAIN BUSINESS SALES TO STATE AGENCIES,
25 LOCAL GOVERNMENT AGENCIES AND THEIR EMPLOYEES PROHIBITED.--

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

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

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

6 E. A public officer or employee shall not accept
7 from a person over whom the public officer or employee has
8 regulatory authority an offer of employment or an offer of a
9 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 10. Section 10-16-13.3 NMSA 1978 (being Laws
14 2007, Chapter 362, Section 11) is amended to read:

15 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE
16 CONTRACTORS.--

17 A. A business that contracts with a state agency or
18 local government agency to provide financial services involving
19 the investment of public money or issuance of bonds for public
20 projects shall not knowingly contribute anything of value to a
21 public officer or employee of that state agency or local
22 government agency who has authority over the investment of
23 public money or issuance of bonds, the revenue of which is used
24 for public projects in the state.

25 B. A public officer or employee of a state agency

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1 or local government agency that has authority over the
2 investment of public money or issuance of bonds, the revenue of
3 which is used for public projects in the state, shall not
4 knowingly accept a contribution of anything of value from a
5 business that contracts with that state agency or local
6 government agency to provide financial services involving the
7 investment of public money or issuance of bonds for public
8 projects.

9 C. For the purposes of this section:

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

14 (2) "contribution" means a donation or
15 transfer to a recipient for the personal use of the recipient,
16 without commensurate consideration."

17 Section 11. A new section of the Governmental Conduct Act
18 is enacted to read:

19 "[NEW MATERIAL] STATE OR LOCAL GOVERNMENT AGENCY
20 AUTHORITY.--Nothing in the Governmental Conduct Act shall be
21 construed to preclude a state or local government agency from
22 adopting and publishing ordinances, rules or standards that are
23 more stringent than those required by the Governmental Conduct
24 Act."

25 Section 12. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2010.

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