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HOUSE BILL 376

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO ETHICS; LIMITING LOBBYING BY FORMER PUBLIC OFFICERS; REQUIRING ETHICS CONTINUING EDUCATION AND TRAINING FOR PUBLIC OFFICERS; MANDATING NOTARIZATION OF FINANCIAL DISCLOSURE STATEMENTS FILED BY CANDIDATES AND PUBLIC OFFICERS; CLARIFYING GIFT LIMITATIONS FOR STATE OFFICERS, EMPLOYEES AND CANDIDATES FOR STATE OFFICE; AMENDING 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. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying

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1 on a business;

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

4 C. "employee" means any person who is hired for any  
5 state office and who receives compensation in the form of  
6 salary or is eligible for per diem or mileage;

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

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

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

13 (1) an ownership interest in business; 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~~] or appointed to [~~or hired for~~]  
21 any state office and who receives compensation in the form of  
22 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;

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

3           ~~[G.]~~ K. "substantial interest" means an ownership  
4 interest that is greater than twenty percent."

5           SECTION 2. Section 10-16-8 NMSA 1978 (being Laws 1967,  
6 Chapter 306, Section 8, as amended) is amended to read:

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

10           A. A state agency shall not enter into a contract  
11 with, or take any action favorably affecting, any person or  
12 business that is:

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

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

23           B. A former public officer or employee shall not  
24 represent a person in ~~[his]~~ the person's dealings with the  
25 government on a matter in which the former public officer or

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1 employee participated personally and substantially while a  
2 public officer or employee.

3 C. For a period of one year after leaving  
4 government service or employment, a former public officer or  
5 employee shall not represent for pay a person before the  
6 government agency at which the former public officer or  
7 employee served or worked.

8 D. For a period of two years after leaving  
9 government service or employment, a former public officer or  
10 legislator shall not act as a lobbyist, as defined in the  
11 Lobbyist Regulation Act."

12 SECTION 3. Section 10-16-11 NMSA 1978 (being Laws 1967,  
13 Chapter 306, Section 11, as amended) is amended to read:

14 "10-16-11. CODES OF CONDUCT.--

15 A. By January 1, 1994, each elected statewide  
16 executive branch public officer shall adopt a general code of  
17 conduct for employees subject to ~~[his]~~ the officer's control.  
18 The New Mexico legislative council shall adopt a general code  
19 of conduct for all legislative branch employees. The general  
20 codes of conduct shall be based on the principles set forth in  
21 the Governmental Conduct Act.

22 B. Within thirty days after the general codes of  
23 conduct are adopted, they shall be given to and reviewed with  
24 all executive and legislative branch officers and employees.  
25 All new public officers and employees of the executive and

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1 legislative branches shall review the employees' general code  
2 of conduct prior to or at the time of being hired.

3 C. The head of every executive and legislative  
4 agency and institution of the state may draft a separate code  
5 of conduct for all public officers and employees in that agency  
6 or institution. The separate agency code of conduct shall  
7 prescribe standards, in addition to those set forth in the  
8 Governmental Conduct Act and the general codes of conduct for  
9 all executive and legislative branch public officers and  
10 employees, that are peculiar and appropriate to the function  
11 and purpose for which the agency or institution was created or  
12 exists. The separate codes, upon approval of the responsible  
13 executive branch public officer for executive branch public  
14 officers and employees or the New Mexico legislative council  
15 for legislative branch employees, govern the conduct of the  
16 public officers and employees of that agency or institution  
17 and, except for those public officers and employees removable  
18 only by impeachment, shall, if violated, constitute cause for  
19 dismissal, demotion or suspension. The head of each executive  
20 and legislative branch agency shall adopt ongoing education  
21 programs to advise public officers and employees about the  
22 codes of conduct. All codes shall be filed with the secretary  
23 of state and are open to public inspection.

24 D. Codes of conduct shall be reviewed at least once  
25 every four years. An amended code shall be filed as provided

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1 in Subsection C of this section.

2 E. All legislators and public officers shall attend  
3 a minimum of two hours of ethics continuing education and  
4 training biennially."

5 SECTION 4. Section 10-16-13.3 NMSA 1978 (being Laws 2007,  
6 Chapter 362, Section 11) is amended to read:

7 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE  
8 CONTRACTORS.--

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

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

24 C. For the purposes of this section:

25 (1) "anything of value" means any money,

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1 property, service, loan or promise, but does not include food  
2 and refreshments with a value of less than one hundred dollars  
3 (\$100) consumed in a day and not more than two hundred fifty  
4 dollars (\$250) consumed annually; and

5 (2) "contribution" means a donation or  
6 transfer to a recipient for the personal use of the recipient,  
7 without commensurate consideration."

8 SECTION 5. Section 10-16A-1 NMSA 1978 (being Laws 1993,  
9 Chapter 46, Section 39) is amended to read:

10 "10-16A-1. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--  
11 [~~Sections 39 through 45 of this act~~] Chapter 10, Article 16A  
12 NMSA 1978 may be cited as the "Financial Disclosure Act"."

13 SECTION 6. Section 10-16A-3 NMSA 1978 (being Laws 1993,  
14 Chapter 46, Section 41, as amended) is amended to read:

15 "10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES  
16 AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON  
17 BALLOT OR APPOINTMENT.--

18 A. At the time of filing a declaration of candidacy  
19 or nominating petition, a candidate for legislative or  
20 statewide office shall file with the proper filing officer, as  
21 defined in Section 1-8-25 NMSA 1978, a financial disclosure  
22 statement on a prescribed form. In addition, each year  
23 thereafter during the month of January, a legislator and a  
24 person holding a statewide office shall file with the proper  
25 filing officer a financial disclosure statement. If the proper

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1 filing officer is not the secretary of state, the proper filing  
2 officer shall forward a copy of the financial disclosure  
3 statement to the secretary of state within seventy-two hours.

4 B. A state agency head or official whose  
5 appointment to a board or commission is subject to confirmation  
6 by the senate shall file with the secretary of state a  
7 financial disclosure statement within thirty days of  
8 appointment and during the month of January every year  
9 thereafter that ~~[he]~~ the state agency head or official holds  
10 public office.

11 C. The financial disclosure statement shall include  
12 for any person identified in Subsection A or B of this section  
13 and the person's spouse the following information for the prior  
14 calendar year:

15 (1) the full name, mailing address and  
16 residence address of each person covered in the disclosure  
17 statement, except the address of the spouse need not be  
18 disclosed; the name and address of the person's and spouse's  
19 employer and the title or position held; and a brief  
20 description of the nature of the business or occupation;

21 (2) all sources of gross income of more than  
22 five thousand dollars (\$5,000) to each person covered in the  
23 disclosure statement, identified by general category  
24 descriptions that disclose the nature of the income source, in  
25 the following broad categories: law practice or consulting

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1 operation or similar business, finance and banking, farming and  
2 ranching, medicine and health care, insurance (as a business  
3 and not as payment on an insurance claim), oil and gas,  
4 transportation, utilities, general stock market holdings,  
5 bonds, government, education, manufacturing, real estate,  
6 consumer goods sales with a general description of the consumer  
7 goods and the category "other", with direction that the income  
8 source be similarly described. In describing a law practice,  
9 consulting operation or similar business of the person or  
10 spouse, the major areas of specialization or income sources  
11 shall be described, and if the spouse or a person in the  
12 reporting person's or spouse's law firm, consulting operation  
13 or similar business is or was during the reporting calendar  
14 year or the prior calendar year a registered lobbyist under the  
15 Lobbyist Regulation Act, the names and addresses of all clients  
16 represented for lobbying purposes during those two years shall  
17 be disclosed;

18 (3) a general description of the type of real  
19 estate owned in New Mexico, other than a personal residence,  
20 and the county where it is located;

21 (4) all other New Mexico business interests  
22 not otherwise listed of ten thousand dollars (\$10,000) or more  
23 in a New Mexico business or entity, including any position held  
24 and a general statement of purpose of the business or entity;

25 (5) all memberships held by the reporting

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1 individual and [~~his~~] the reporting individual's spouse on  
2 boards of for-profit businesses in New Mexico;

3 (6) all New Mexico professional licenses held;

4 (7) each state agency that was sold goods or  
5 services in excess of five thousand dollars (\$5,000) during the  
6 prior calendar year by a person covered in the disclosure  
7 statement;

8 (8) each state agency, other than a court,  
9 before which a person covered in the disclosure statement  
10 represented or assisted clients in the course of [~~his~~] the  
11 person's employment during the prior calendar year; and

12 (9) a general category that allows the person  
13 filing the disclosure statement to provide whatever other  
14 financial interest or additional information the person  
15 believes should be noted to describe potential areas of  
16 interest that should be disclosed.

17 D. A complete financial disclosure statement shall  
18 be filed every year. The secretary of state shall mail each  
19 elected official required to file a financial disclosure  
20 statement a copy of any statement the person filed the previous  
21 year.

22 E. The financial disclosure statements filed  
23 pursuant to this section are public records open to public  
24 inspection during regular office hours and shall be retained by  
25 the state for five years from the date of filing.

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1                   F. The financial disclosure statements filed  
2 pursuant to this section shall be in writing, signed and sworn  
3 by the person filing the statement and notarized.

4                   ~~[F.]~~ G. A person who files a financial disclosure  
5 statement may file an amended statement at any time to reflect  
6 significant changed circumstances that occurred since the last  
7 statement was filed.

8                   ~~[G.—Any]~~ H. A candidate for a legislative or  
9 statewide office who fails or refuses to file a financial  
10 disclosure statement required by this section before the final  
11 date for the withdrawal of candidates provided for in the  
12 Election Code shall not have ~~[his]~~ the candidate's name printed  
13 on the election ballot.

14                   ~~[H.]~~ I. For a state agency head or an official  
15 whose appointment to a board or commission is subject to  
16 confirmation by the senate, the filing of the financial  
17 disclosure statement required by this section is a condition of  
18 entering upon and continuing in state employment or holding an  
19 appointed position."

20                   SECTION 7. Section 10-16B-1 NMSA 1978 (being Laws 2007,  
21 Chapter 226, Section 1) is amended to read:

22                   "10-16B-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article  
23 16B NMSA 1978 may be cited as the "Gift Act".

24                   SECTION 8. Section 10-16B-3 NMSA 1978 (being Laws 2007,  
25 Chapter 226, Section 3) is amended to read:

1 "10-16B-3. LIMITATION ON GIFTS.--

2 A. A state officer or employee or a candidate for  
3 state office, or ~~[that person's]~~ the family of the state  
4 officer or employee or the candidate for state office, shall  
5 not knowingly accept from a restricted donor, and a restricted  
6 donor shall not knowingly donate to a state officer or employee  
7 or a candidate for state office, or ~~[that person's]~~ the family  
8 of the state officer or employee or the candidate for state  
9 office, a gift of ~~[a]~~ an aggregate market value greater than  
10 two hundred fifty dollars (\$250) in a calendar year.

11 B. A lobbyist registered with the secretary of  
12 state, the lobbyist's employer or a government contractor shall  
13 not donate gifts of an aggregate market value greater than one  
14 thousand dollars (\$1,000) in a calendar year to any one state  
15 officer or employee ~~[or]~~, to any one candidate for state office  
16 or to the family of the state officer or employee or the  
17 candidate for state office.

18 C. A state officer or employee shall not solicit  
19 gifts for a charity from a business or corporation regulated  
20 by the state agency for which the state officer or employee  
21 works and shall not otherwise solicit donations for a charity  
22 in such a manner that it appears that the purpose of the donor  
23 in making the gift is to influence the state officer or  
24 employee in the performance of an official duty."

25 SECTION 9. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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