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SENATE BILL 432

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

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO ETHICS; EXTENDING PROVISIONS OF THE GOVERNMENTAL
CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND EMPLOYEES OF
POLITICAL SUBDIVISIONS OF THE STATE; EXPANDING THE DEFINITION
OF "CONTRACT"; ALLOWING PUBLIC OFFICERS AND EMPLOYEES TO
CONTRACT WITH THE AGENCY THAT EMPLOYS THEM; PROHIBITING CERTAIN
ACTS BY PUBLIC OFFICERS AND EMPLOYEES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Governmental Conduct Act
is enacted to read:

"[NEW MATERIAL] PROHIBITED EMPLOYMENT.--It is unlawful for
a state agency employee or local government agency employee who
is participating directly or indirectly in the contracting
process to become or to be, while such an employee, the

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1 employee of any person or business contracting with the
2 governmental body by whom the employee is employed."

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

5 "10-16-2. DEFINITIONS.--As used in the Governmental
6 Conduct Act:

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

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

12 C. "contract" means an agreement or transaction
13 having a value of more than one thousand dollars (\$1,000) with
14 a state or local government agency for:

15 (1) the rendition of services, including
16 professional services;

17 (2) the furnishing of any material, supplies
18 or equipment;

19 (3) the construction, alteration or repair of
20 any public building or public work;

21 (4) the acquisition, sale or lease of any land
22 or building;

23 (5) a licensing arrangement;

24 (6) a loan or loan guarantee; or

25 (7) the purchase of financial securities or

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1 instruments;

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

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

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

8 (1) an ownership interest in business or
9 property; or

10 (2) any employment or prospective employment
11 for which negotiations have already begun;

12 G. "local government agency" means a political
13 subdivision of the state or an agency of a political
14 subdivision of the state;

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

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

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

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

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

5 SECTION 3. 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 or public officer or employee shall
10 treat the legislator's or public officer's or employee's
11 government position as a public trust. The legislator or
12 public officer or employee shall use the powers and resources
13 of 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 and public officers and employees
17 shall conduct themselves in a manner that justifies the
18 confidence placed in them by the people, at all times
19 maintaining the integrity and discharging ethically the high
20 responsibilities 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 or public officer or employee may
2 request or receive, and no person may offer a legislator or
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 4. 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
24 fundraising dinner or similar event, advising an employee to
25 take 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 a state agency or
3 local government agency, or allow its use, for other than
4 authorized purposes."

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

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

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

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

25 C. No public officer during the term for which

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1 elected and no public employee during the period of employment
2 shall acquire a financial interest when the public officer or
3 employee believes or should have reason to believe that the new
4 financial interest will be directly affected by the officer's
5 or employee's official act."

6 SECTION 6. Section 10-16-4.2 NMSA 1978 (being Laws 2007,
7 Chapter 362, Section 10) is amended to read:

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

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

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

24 SECTION 8. Section 10-16-7 NMSA 1978 (being Laws 1967,
25 Chapter 306, Section 7, as amended) is amended to read:

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1 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
2 EMPLOYEES.--

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

22 B. Unless a public officer or employee has
23 disclosed the public officer's or employee's substantial
24 interest through public notice and unless a contract is awarded
25 pursuant to a competitive process, a local government agency

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1 shall not enter into a contract with a public officer or
2 employee of that local government agency, with the family of
3 the public officer or employee or with a business in which the
4 public officer or employee or the family of the public officer
5 or employee has a substantial interest.

6 C. Subsection B of this section does not apply to a
7 contract of official employment with a political subdivision.
8 A person negotiating or executing a contract on behalf of a
9 local government agency shall exercise due diligence to ensure
10 compliance with the provisions of this section."

11 SECTION 9. Section 10-16-8 NMSA 1978 (being Laws 1967,
12 Chapter 306, Section 8, as amended) is amended to read:

13 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
14 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT
15 SERVICE.--

16 A. A state agency shall not enter into a contract
17 with, or take any action favorably affecting, any person or
18 business that is:

19 (1) represented personally in the matter by a
20 person who has been a public officer or employee of the state
21 within the preceding year if the value of the contract or
22 action is in excess of one thousand dollars (\$1,000) and the
23 contract is a direct result of an official act by the public
24 officer or employee; or

25 (2) assisted in the transaction by a former

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1 public officer or employee of the state whose official act,
2 while in state employment, directly resulted in the agency's
3 making that contract or taking that action.

4 B. A former public officer or employee shall not
5 represent a person in [~~his~~] the person's dealings with the
6 government on a matter in which the former public officer or
7 employee participated personally and substantially while a
8 public officer or employee.

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

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

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

23 [~~G.~~] D. For a period of one year after leaving
24 government service or employment, a former public officer or
25 employee shall not represent for pay a person before the state

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1 agency or local government agency at which the former public
2 officer or employee served or worked."

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

5 "10-16-13. PROHIBITED BIDDING.--No state agency or
6 [~~political subdivision of the state~~] local government agency
7 shall accept a bid or proposal from a person who directly
8 participated in the preparation of specifications,
9 qualifications or evaluation criteria on which the specific
10 competitive bid or proposal was based. A person accepting a
11 bid or proposal on behalf of a state agency or [~~political~~
12 ~~subdivision of this state~~] local government agency shall
13 exercise due diligence to ensure compliance with this section."

14 SECTION 11. Section 10-16-13.2 NMSA 1978 (being Laws
15 2007, Chapter 362, Section 8) is amended to read:

16 "10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF
17 STATE AGENCIES AND LOCAL GOVERNMENT AGENCIES [~~AND THEIR~~
18 ~~EMPLOYEES~~] PROHIBITED.--

19 [~~A. A public officer or employee shall not sell or~~
20 ~~be a party to a transaction to sell goods, services,~~
21 ~~construction or items of tangible personal property directly or~~
22 ~~indirectly, through the public officer's or employee's family~~
23 ~~or a business in which the public officer or employee has a~~
24 ~~substantial interest, to the state agency with which the public~~
25 ~~officer or employee is employed. It is not a violation of this~~

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1 ~~subsection if the public officer or employee employed by the~~
2 ~~state agency in good faith is not aware of:~~

3 ~~(1) the substantial interest held by the~~
4 ~~public officer or employee or the public officer's or~~
5 ~~employee's family in the business that is selling or engaged in~~
6 ~~a transaction to sell goods, services, construction or items of~~
7 ~~tangible personal property to the state agency by which the~~
8 ~~public officer or employee is employed; or~~

9 ~~(2) the sale of or the transaction to sell~~
10 ~~goods, services, construction or items of tangible personal~~
11 ~~property by the public officer's or employee's family or by a~~
12 ~~business in which the public officer or employee or the public~~
13 ~~officer's or employee's family has a substantial interest to~~
14 ~~the state agency by which the public officer or employee is~~
15 ~~employed.~~

16 B.] A. A public officer or employee shall not sell,
17 offer to sell, coerce the sale of or be a party to a
18 transaction to sell goods, services, construction or items of
19 tangible personal property directly or indirectly through the
20 public officer's or employee's family or a business in which
21 the public officer or employee has a substantial interest, to
22 an employee supervised by the public officer or employee. A
23 public officer or employee shall not receive a commission or
24 shall not profit from the sale or a transaction to sell goods,
25 services, construction or items of tangible personal property

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1 to an employee supervised by the public officer or employee.
2 The provisions of this subsection shall not apply if the
3 supervised employee initiates the sale. It is not a violation
4 of this subsection if a public officer or employee, in good
5 faith, is not aware that the employee to whom the goods,
6 services, construction or items of tangible personal property
7 are being sold is under the supervision of the public officer
8 or employee.

9 ~~[G-]~~ B. A public officer or employee shall not
10 sell, offer to sell, coerce the sale of or be a party to a
11 transaction to sell goods, services, construction or items of
12 tangible personal property, directly or indirectly through the
13 public officer's or employee's family or a business in which
14 the public officer or employee has a substantial interest, to a
15 person over whom the public officer or employee has regulatory
16 authority.

17 ~~[D-]~~ C. A public officer or employee shall not
18 receive a commission [~~or shall not~~] or profit from the sale or
19 a transaction to sell goods, services, construction or items of
20 tangible personal property to a person over whom the public
21 officer or employee has regulatory authority.

22 ~~[E-]~~ D. A public officer or employee shall not
23 accept from a person over whom the public officer or employee
24 has regulatory authority an offer of employment or an offer of
25 a contract in which the public officer or employee provides

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1 goods, services, construction, items of tangible personal
2 property or other things of value to the person over whom the
3 public officer or employee has regulatory authority."

4 SECTION 12. Section 10-16-13.3 NMSA 1978 (being Laws
5 2007, Chapter 362, Section 11) is amended to read:

6 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE
7 CONTRACTORS.--

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

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

25 C. For the purposes of this section:

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1 (1) "anything of value" means any money,
2 property, service, loan or promise, but does not include food
3 and refreshments with a value of less than one hundred dollars
4 (\$100) consumed in a day; 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 13. A new section of the Governmental Conduct Act
9 is enacted to read:

10 "[NEW MATERIAL] STATE AGENCY OR LOCAL GOVERNMENT AGENCY
11 AUTHORITY.--Nothing in the Governmental Conduct Act shall be
12 construed to preclude a state agency or local government agency
13 from adopting and publishing ordinances, rules or standards
14 that are more stringent than those required by the Governmental
15 Conduct Act."

16 SECTION 14. REPEAL.--Sections 3-10-4, 3-10-5 and 4-44-22
17 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter 78, Section
18 1, Laws 1965, Chapter 300, Section 14-9-5 and Laws 1969,
19 Chapter 244, Sections 1 through 6) are repealed.

20 SECTION 15. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2011.