

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 8

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

DISCUSSION DRAFT

AN ACT

RELATING TO GOVERNMENT CONDUCT; CLARIFYING AND CODIFYING
PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT; AMENDING PENALTIES;
REPEALING A SECTION OF THE GOVERNMENTAL CONDUCT ACT.

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;

C. "contract" means an agreement or transaction

underscored material = new
[bracketed material] = delete

1 having a value of more than one thousand dollars (\$1,000) with
2 a state or local government agency for:

3 (1) the rendition of services, including
4 professional services;

5 (2) the furnishing of any material, supplies
6 or equipment;

7 (3) the construction, alteration or repair of
8 any public building or public work;

9 (4) the acquisition, sale or lease of any land
10 or building;

11 (5) a licensing arrangement;

12 (6) a loan or loan guarantee; or

13 (7) the purchase of financial securities or
14 instruments;

15 D. "employment" means rendering of services for
16 compensation in the form of salary as an employee;

17 E. "family" means an individual's spouse, parents,
18 children or siblings, by consanguinity or affinity;

19 F. "financial interest" means an interest held by
20 an individual or the individual's family that is:

21 (1) an ownership interest in business or
22 property; or

23 (2) any employment or prospective employment
24 for which negotiations have already begun;

25 G. "local government agency" means a political

1 subdivision of the state or an agency of a political
2 subdivision of the state;

3 H. "official act" means an official decision,
4 recommendation, approval, disapproval or other action that
5 involves the use of discretionary authority;

6 I. "political activity" means activity to benefit
7 or oppose the campaign of a candidate for elected office,
8 political party or organization directly engaged in the support
9 of or opposition to a candidate for elected office;

10 [~~F.~~] J. "public officer or employee" means any
11 elected or appointed official or employee of a state agency or
12 local government agency who receives compensation in the form
13 of salary or is eligible for per diem or mileage but excludes
14 legislators;

15 [~~J.~~] K. "standards" means the conduct required by
16 the Governmental Conduct Act;

17 [~~K.~~] L. "state agency" means any branch, agency,
18 instrumentality or institution of the state; and

19 [~~L.~~] M. "substantial interest" means an ownership
20 interest that is greater than twenty percent."

21 SECTION 2. Section 10-16-3.1 NMSA 1978 (being Laws 2007,
22 Chapter 362, Section 9, as amended) is amended to read:

23 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--A public
24 officer or employee of a state agency within the executive
25 branch of state government or a local government agency is

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1 prohibited from:

2 A. directly or indirectly coercing or attempting to
3 coerce another public officer or employee to pay, lend or
4 contribute anything of value to a party, committee,
5 organization [~~agency~~] or other person for a political purpose;

6 B. threatening to deny a promotion or pay increase
7 to [~~an~~] a public employee who does or does not vote for certain
8 candidates, requiring [~~an~~] a public employee to contribute a
9 percentage of the public employee's pay to a political fund,
10 influencing a subordinate public employee to purchase a ticket
11 to a political fundraising dinner or similar event, advising
12 [~~an~~] a public employee to take part in political activity or
13 similar activities; or

14 [~~C. violating the officer's or employee's duty not~~
15 ~~to use property belonging to a state agency or local government~~
16 ~~agency, or allow its use, for other than authorized purposes]~~

17 C. engaging in political activity:

18 (1) while the public officer or employee is on
19 duty;

20 (2) in any room or building reserved for the
21 exclusive use of a state agency or local government agency;

22 (3) while wearing a uniform identifying the
23 office or position of the public officer or employee; or

24 (4) while using a vehicle owned or leased by a
25 state agency or local government agency; provided, however,

1 that this subsection does not apply to the governor, the
2 attorney general or any other elected state or local government
3 official for whom law enforcement officers provide security."

4 SECTION 3. A new section of the Governmental Conduct Act,
5 Section 10-16-3.2 NMSA 1978, is enacted to read:

6 "10-16-3.2. [NEW MATERIAL] ABUSE OF OFFICE--PROHIBITING
7 QUID PRO QUO CORRUPTION--PENALTY.--

8 A. Except for actions allowed pursuant to
9 Subsections B and C of Section 10-16-9 NMSA 1978, a legislator
10 or public officer or employee, with the purpose of benefiting
11 the person's own monetary interest or other financial interest,
12 or of benefiting the monetary interest or other financial
13 interest of another person with whom the legislator or public
14 officer or employee has a personal or business relationship,
15 shall not:

16 (1) use the power or resources of the
17 legislator's or public officer's or employee's office; or

18 (2) omit to perform a duty imposed by virtue
19 of the public office.

20 B. A legislator or public officer during the term
21 for which elected or appointed and a public employee during the
22 period of employment shall not acquire a financial interest
23 when the legislator or public officer or employee believes or
24 should have reason to believe that the new financial interest
25 will be directly affected by the legislator's or public

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1 officer's or employee's official act.

2 C. A legislator or public officer or employee shall
3 not use:

4 (1) property belonging to a state agency or
5 local government agency or allow its use for an unauthorized
6 purpose; or

7 (2) the power of the public office to
8 knowingly violate a law of the state.

9 D. A legislator or public officer or employee shall
10 not request or receive, and a person shall not offer, any money
11 or thing of value or promise of money or thing of value that is
12 conditioned on or given in exchange for promised performance of
13 an official act. A person who knowingly and willfully violates
14 the provisions of this subsection is guilty of a fourth degree
15 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
16 1978."

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

19 "10-16-4. [~~OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST~~
20 ~~PROHIBITED~~] DISQUALIFICATION FROM OFFICIAL ACT [~~PROVIDING A~~
21 ~~PENALTY~~].--

22 [~~A. It is unlawful for a public officer or employee~~
23 ~~to take an official act for the primary purpose of directly~~
24 ~~enhancing the public officer's or employee's financial interest~~
25 ~~or financial position. Any person who knowingly and willfully~~

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1 ~~violates the provisions of this subsection is guilty of a~~
 2 ~~fourth degree felony and shall be sentenced pursuant to the~~
 3 ~~provisions of Section 31-18-15 NMSA 1978.~~

4 B.] A public officer or employee shall be
 5 disqualified from engaging in any official act directly
 6 affecting the public officer's or employee's financial
 7 interest, except a public officer or employee shall not be
 8 disqualified from engaging in an official act if the financial
 9 benefit of the financial interest to the public officer or
 10 employee is proportionately less than the benefit to the
 11 general public.

12 ~~[C. No public officer during the term for which~~
 13 ~~elected and no public employee during the period of employment~~
 14 ~~shall acquire a financial interest when the public officer or~~
 15 ~~employee believes or should have reason to believe that the new~~
 16 ~~financial interest will be directly affected by the officer's~~
 17 ~~or employee's official act.]"~~

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

20 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
 21 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE--
 22 EMPLOYER OF FORMER PUBLIC OFFICER OR EMPLOYEE ADDITIONALLY AND
 23 SEPARATELY LIABLE FOR CIVIL PENALTY.--

24 A. A state agency shall not enter into a contract
 25 with or take any action favorably affecting ~~any~~ a person or

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1 business that is:

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

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

12 B. A former public officer or employee shall not
13 represent a person in the person's dealings with [~~the~~
14 ~~government~~] a state agency or local government agency on a
15 matter in which the former public officer or employee
16 participated personally and substantially while a public
17 officer or employee.

18 C. A local government agency shall not enter into a
19 contract with or take any action favorably affecting any person
20 or business that is:

21 (1) represented personally in the matter by a
22 person who has been a public officer or employee of that local
23 government agency within the preceding year if the value of the
24 contract or action is in excess of one thousand dollars
25 (\$1,000) and the contract is a direct result of an official act

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1 by the public officer or employee; or

2 (2) assisted in the transaction by a former
3 public officer or employee of that [~~political subdivision of~~
4 ~~the state~~] local government agency whose official act, while in
5 employment with that [~~political subdivision of the state~~] local
6 government agency, directly resulted in the local government
7 agency's making that contract or taking that action.

8 D. For a period of one year after leaving
9 government service or employment, a former public officer or
10 employee shall not represent for pay a person before the state
11 agency or local government agency at which the former public
12 officer or employee served or worked.

13 E. Upon a showing that a former public officer or
14 employee violated any provision of this section while in the
15 employment of another person who knowingly caused the violation
16 to occur, that person is additionally and separately liable for
17 any civil penalty that is assessed against the former public
18 officer or employee and is subject to other remedies provided
19 for in the Governmental Conduct Act."

20 SECTION 6. Section 10-16-18 NMSA 1978 (being Laws 1995,
21 Chapter 153, Section 23, as amended) is amended to read:

22 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

23 A. If the state ethics commission reasonably
24 believes that a person committed, or is about to commit, a
25 violation of the Governmental Conduct Act, the state ethics

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1 commission may refer the matter to the attorney general or a
2 district attorney for enforcement.

3 B. The state ethics commission may institute a
4 civil action in district court or refer a matter to the
5 attorney general or a district attorney to institute a civil
6 action in district court if a violation has occurred or to
7 prevent a violation of any provision of the Governmental
8 Conduct Act. Relief may include a permanent or temporary
9 injunction, a restraining order or any other appropriate order,
10 including an order for a civil penalty [~~of two hundred fifty~~
11 ~~dollars (\$250) for each violation]~~ not to exceed five thousand
12 dollars (\$5,000) per violation."

13 SECTION 7. REPEAL.--Section 10-16-3 NMSA 1978 (being Laws
14 1993, Chapter 46, Section 28, as amended) is repealed.