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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:

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

SECTION 2. 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;

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

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

6 (1) the rendition of services, including
7 professional services;

8 (2) the furnishing of any material, supplies
9 or equipment;

10 (3) the construction, alteration or repair
11 of any public building or public work;

12 (4) the acquisition, sale or lease of any
13 land or building;

14 (5) a licensing arrangement;

15 (6) a loan or loan guarantee; or

16 (7) the purchase of financial securities or
17 instruments;

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

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

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

24 (1) an ownership interest in business or
25 property; or

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

3 G. "local government agency" means a political
4 subdivision of the state or an agency of a political
5 subdivision of the state;

6 H. "official act" means an official decision,
7 recommendation, approval, disapproval or other action that
8 involves the use of discretionary authority;

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

14 J. "standards" means the conduct required by the
15 Governmental Conduct Act;

16 K. "state agency" means any branch, agency,
17 instrumentality or institution of the state; and

18 L. "substantial interest" means an ownership
19 interest that is greater than twenty percent."

20 SECTION 3. Section 10-16-3 NMSA 1978 (being Laws 1993,
21 Chapter 46, Section 28, as amended) is amended to read:

22 "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN
23 OFFICIAL ACTS PROHIBITED--PENALTY.--

24 A. A legislator or public officer or employee
25 shall treat the legislator's or public officer's or

1 employee's government position as a public trust. The
2 legislator or public officer or employee shall use the powers
3 and resources of public office only to advance the public
4 interest and not to obtain personal benefits or pursue
5 private interests.

6 B. Legislators and public officers and employees
7 shall conduct themselves in a manner that justifies the
8 confidence placed in them by the people, at all times
9 maintaining the integrity and discharging ethically the high
10 responsibilities of public service.

11 C. Full disclosure of real or potential conflicts
12 of interest shall be a guiding principle for determining
13 appropriate conduct. At all times, reasonable efforts shall
14 be made to avoid undue influence and abuse of office in
15 public service.

16 D. No legislator or public officer or employee may
17 request or receive, and no person may offer a legislator or
18 public officer or employee, any money, thing of value or
19 promise thereof that is conditioned upon or given in exchange
20 for promised performance of an official act. Any person who
21 knowingly and willfully violates the provisions of this
22 subsection is guilty of a fourth degree felony and shall be
23 sentenced pursuant to the provisions of Section 31-18-15 NMSA
24 1978."

25 SECTION 4. Section 10-16-3.1 NMSA 1978 (being Laws

1 2007, Chapter 362, Section 9) is amended to read:

2 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--A public
3 officer or employee is prohibited from:

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

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

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

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

21 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST
22 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A
23 PENALTY.--

24 A. It is unlawful for a public officer or employee
25 to take an official act for the primary purpose of directly

1 enhancing the public officer's or employee's financial
2 interest or financial position. Any person who knowingly and
3 willfully violates the provisions of this subsection is
4 guilty of a fourth degree felony and shall be sentenced
5 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

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

20 SECTION 6. Section 10-16-4.2 NMSA 1978 (being Laws
21 2007, Chapter 362, Section 10) is amended to read:

22 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public
23 officer or employee shall disclose in writing to the
24 officer's or employee's respective office or employer all
25 employment engaged in by the officer or employee other than

1 the employment with or service to a state agency or local
2 government agency."

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

5 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator or
6 public officer or employee shall use or disclose confidential
7 information acquired by virtue of the legislator's or public
8 officer's or employee's position with a state agency or local
9 government agency for the legislator's, public officer's or
10 employee's or another's private gain."

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

13 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
14 EMPLOYEES.--

15 A. A state agency shall not enter into a contract
16 with a public officer or employee of the state, with the
17 family of the public officer or employee or with a business
18 in which the public officer or employee or the family of the
19 public officer or employee has a substantial interest unless
20 the public officer or employee has disclosed through public
21 notice the public officer's or employee's substantial
22 interest and unless the contract is awarded pursuant to a
23 competitive process; provided that this section does not
24 apply to a contract of official employment with the state. A
25 person negotiating or executing a contract on behalf of a

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

3 B. Unless a public officer or employee has
4 disclosed the public officer's or employee's substantial
5 interest through public notice and unless a contract is
6 awarded pursuant to a competitive process, a local government
7 agency shall not enter into a contract with a public officer
8 or employee of that local government agency, with the family
9 of the public officer or employee or with a business in which
10 the public officer or employee or the family of the public
11 officer or employee has a substantial interest.

12 C. Subsection B of this section does not apply to
13 a contract of official employment with a political
14 subdivision. A person negotiating or executing a contract on
15 behalf of a local government agency shall exercise due
16 diligence to ensure compliance with the provisions of this
17 section."

18 SECTION 9. 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
22 SERVICE.--

23 A. A state agency shall not enter into a contract
24 with, or take any action favorably affecting, any person or
25 business that is:

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

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

11 B. A former public officer or employee shall not
12 represent a person in the person's dealings with the
13 government on a matter in which the former public officer or
14 employee participated personally and substantially while a
15 public officer or employee.

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

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

25 (2) assisted in the transaction by a former

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

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

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

13 "10-16-13. PROHIBITED BIDDING.--No state agency or
14 local government agency shall accept a bid or proposal from a
15 person who directly participated in the preparation of
16 specifications, qualifications or evaluation criteria on
17 which the specific competitive bid or proposal was based. A
18 person accepting a bid or proposal on behalf of a state
19 agency or local government agency shall exercise due
20 diligence to ensure compliance with this section."

21 SECTION 11. Section 10-16-13.2 NMSA 1978 (being Laws
22 2007, Chapter 362, Section 8) is amended to read:

23 "10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF
24 STATE AGENCIES AND LOCAL GOVERNMENT AGENCIES PROHIBITED.--

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

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
9 goods, services, construction or items of tangible personal
10 property to an employee supervised by the public officer or
11 employee. The provisions of this subsection shall not apply
12 if the supervised employee initiates the sale. It is not a
13 violation of this subsection if a public officer or employee,
14 in good faith, is not aware that the employee to whom the
15 goods, services, construction or items of tangible personal
16 property are being sold is under the supervision of the
17 public officer or employee.

18 B. 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
22 the public officer's or employee's family or a business in
23 which the public officer or employee has a substantial
24 interest, to a person over whom the public officer or
25 employee has regulatory authority.

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

6 D. 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 12. 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
16 SERVICE CONTRACTORS.--

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

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

1 or local government agency that has authority over the
2 investment of public money or issuance of bonds, the revenue
3 of 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
13 dollars (\$100) consumed in a day; and

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

17 SECTION 13. A new section of the Governmental Conduct
18 Act is enacted to read:

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

25 SECTION 14. REPEAL.--Sections 3-10-4, 3-10-5 and

1 4-44-22 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter
2 78, Section 1, Laws 1965, Chapter 300, Section 14-9-5 and
3 Laws 1969, Chapter 244, Sections 1 through 6) are repealed.

4 SECTION 15. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2011. _____

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