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HOUSE BILL 137

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

INTRODUCED BY

Elias Barela

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; AMENDING AND ENACTING
SECTIONS OF THE GOVERNMENTAL CONDUCT ACT TO INCLUDE LOCAL
SCHOOL BOARDS AND SCHOOL DISTRICTS; 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. "agency" means any branch, agency,
instrumentality, institution or other entity of the state,
local school boards and school districts;

~~[A.]~~ B. "business" means a corporation,
partnership, sole proprietorship, firm, organization or

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1 individual carrying on a business;

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

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

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

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

11 (1) an ownership interest in business or
12 property; or

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

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

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

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

25 ~~[I.] "state agency" means any branch, agency,~~

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1 ~~instrumentality or institution of the state,]~~ and

2 J. "substantial interest" means an ownership
3 interest that is greater than twenty percent."

4 Section 2. Section 10-16-3 NMSA 1978 (being Laws 1993,
5 Chapter 46, Section 28, as amended) is amended to read:

6 "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN
7 OFFICIAL ACTS PROHIBITED--PENALTY.--

8 A. A legislator, public officer or employee shall
9 treat the legislator's, public officer's or employee's
10 government position as a public trust. The legislator, public
11 officer or employee shall use the powers and resources of
12 public office only to advance the public interest and not to
13 obtain personal benefits or pursue private interests
14 [~~incompatible with the public interest~~].

15 B. Legislators, public officers and employees shall
16 conduct themselves in a manner that justifies the confidence
17 placed in them by the people, at all times maintaining the
18 integrity and discharging ethically the high responsibilities
19 of public service.

20 C. Full disclosure of real or potential conflicts
21 of interest shall be a guiding principle for determining
22 appropriate conduct. At all times, reasonable efforts shall be
23 made to avoid undue influence and abuse of office in public
24 service.

25 D. No legislator, public officer or employee may

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1 request or receive, and no person may offer a legislator,
2 public officer or employee, any money, thing of value or
3 promise thereof that is conditioned upon or given in exchange
4 for promised performance of an official act. Any person who
5 knowingly and willfully violates the provisions of this
6 subsection is guilty of a fourth degree felony and shall be
7 sentenced pursuant to the provisions of Section 31-18-15 NMSA
8 1978."

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

11 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~
12 ~~officers and employees are]~~ A public officer or employee is
13 prohibited from:

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

18 B. threatening to deny a promotion or pay increase
19 to an employee who does or does not vote for certain
20 candidates, requiring an employee to contribute a percentage of
21 the employee's pay to a political fund, influencing a
22 subordinate employee to purchase a ticket to a political fund-
23 raising dinner or similar event, advising an employee to take
24 part in political activity or similar activities; or

25 C. violating the officer's or employee's duty ~~[to]~~

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1 not to use property [~~state~~] belonging to an agency, or allow
2 its use, for other than authorized purposes."

3 Section 4. Section 10-16-4.2 NMSA 1978 (being Laws 2007,
4 Chapter 362, Section 10) is amended to read:

5 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public
6 officer or employee shall disclose in writing to the
7 [~~supervisor of the officer or employee, or in the event there~~
8 ~~is no supervisor, to the secretary of state~~] officer's or
9 employee's respective agency all employment engaged in by the
10 officer or employee other than the employment with or service
11 to the [~~state~~] agency."

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

14 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,
15 public officer or employee shall use or disclose confidential
16 information acquired by virtue of the legislator's, public
17 officer's or employee's [~~state~~] employment or office for the
18 legislator's, public officer's, employee's or another's private
19 gain."

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

22 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
23 EMPLOYEES.--[~~A state~~] An agency shall not enter into a contract
24 for services, construction or items of tangible personal
25 property with a public officer or employee of [~~the state~~] that

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

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

19 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
20 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT
21 SERVICE.--

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

25 (1) represented personally in the matter by a

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

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

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

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
18 [~~government~~] agency at which the former public officer or
19 employee served or worked."

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

22 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION
23 BEFORE [~~STATE~~] AGENCIES.--

24 A. [~~A state~~] An agency shall not enter into a
25 contract for services, construction or items of tangible

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1 personal property with a legislator, the legislator's family or
2 with a business in which the legislator or the legislator's
3 family has a substantial interest unless the legislator has
4 disclosed the legislator's substantial interest and unless the
5 contract is awarded in accordance with the provisions of the
6 Procurement Code, except the potential contractor shall not be
7 eligible for a sole source or small purchase contract. A
8 person negotiating or executing a contract on behalf of [~~a~~
9 ~~state~~] an agency shall exercise due diligence to ensure
10 compliance with the provisions of this subsection.

11 B. A legislator shall not appear for, represent or
12 assist another person in a matter before [~~a state~~] an agency,
13 unless without compensation or for the benefit of a
14 constituent, except for legislators who are attorneys or other
15 professional persons engaged in the conduct of their
16 professions and, in those instances, the legislator shall
17 refrain from references to the legislator's legislative
18 capacity except as to matters of scheduling, from
19 communications on legislative stationery and from threats or
20 implications relating to legislative actions."

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

23 "10-16-11. CODES OF CONDUCT.--

24 A. By January 1, 1994, each elected statewide
25 executive branch public officer shall adopt a general code of

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1 conduct for employees subject to [~~his~~] the officer's control.
2 The New Mexico legislative council shall adopt a general code
3 of conduct for all legislative branch employees. The general
4 codes of conduct shall be based on the principles set forth in
5 the Governmental Conduct Act.

6 B. Within thirty days after the general codes of
7 conduct are adopted, they shall be given to and reviewed with
8 all executive and legislative branch officers and employees.
9 All new public officers and employees of the executive and
10 legislative branches shall review the employees' general code
11 of conduct prior to or at the time of being hired.

12 C. The head of every executive and legislative
13 agency and institution of the state may draft a separate code
14 of conduct for all public officers and employees in that agency
15 or institution. The separate agency code of conduct shall
16 prescribe standards, in addition to those set forth in the
17 Governmental Conduct Act and the general codes of conduct for
18 all executive and legislative branch public officers and
19 employees, that are peculiar and appropriate to the function
20 and purpose for which the agency or institution was created or
21 exists. The public education department shall adopt a separate
22 code of conduct for local school board members and school
23 districts. The separate codes, upon approval of the
24 responsible executive branch public officer for executive
25 branch public officers and employees or the New Mexico

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1 legislative council for legislative branch employees, govern
2 the conduct of the public officers and employees of that agency
3 or institution and, except for those public officers and
4 employees removable only by impeachment, shall, if violated,
5 constitute cause for dismissal, demotion or suspension. The
6 head of each executive and legislative branch agency shall
7 adopt ongoing education programs to advise public officers and
8 employees about the codes of conduct. All codes shall be filed
9 with the secretary of state and are open to public inspection.

10 D. Codes of conduct shall be reviewed at least once
11 every four years. An amended code shall be filed as provided
12 in Subsection C of this section.

13 E. All legislators shall attend a minimum of two
14 hours of ethics continuing education and training
15 biennially."

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

18 "10-16-13. PROHIBITED BIDDING.--No [~~state~~] agency [~~or~~]
19 and no political subdivision of the state shall accept a bid or
20 proposal from a person who directly participated in the
21 preparation of specifications, qualifications or evaluation
22 criteria on which the specific competitive bid or proposal was
23 based. A person accepting a bid or proposal on behalf of [~~a~~
24 ~~state~~] an agency or a political subdivision of this state shall
25 exercise due diligence to ensure compliance with this section."

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1 Section 11. Section 10-16-13.2 NMSA 1978 (being Laws
2 2007, Chapter 362, Section 8) is amended to read:

3 "10-16-13.2. CERTAIN BUSINESS SALES TO [STATE] AGENCIES
4 AND THEIR EMPLOYEES PROHIBITED.--

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

14 (1) the substantial interest held by the
15 public officer or employee or the public officer's or
16 employee's family in the business that is selling or engaged in
17 a transaction to sell goods, services, construction or items of
18 tangible personal property to the [state] agency by which the
19 public officer or employee is employed; or

20 (2) the sale of or the transaction to sell
21 goods, services, construction or items of tangible personal
22 property by the public officer's or employee's family or by a
23 business in which the public officer or employee or the public
24 officer's or employee's family has a substantial interest to
25 the [state] agency by which the public officer or employee is

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1 employed.

2 B. A public officer or employee shall not sell,
3 offer to sell, coerce the sale of or be a party to a
4 transaction to sell goods, services, construction or items of
5 tangible personal property, directly or indirectly through the
6 public officer's or employee's family or a business in which
7 the public officer or employee has a substantial interest, to
8 an employee supervised by the public officer or employee. A
9 public officer or employee shall not receive a commission or
10 shall not profit from the sale or a transaction to sell goods,
11 services, construction or items of tangible personal property
12 to an employee supervised by the public officer or employee.
13 The provisions of this subsection shall not apply if the
14 supervised employee initiates the sale. It is not a violation
15 of this subsection if a public officer or employee, in good
16 faith, is not aware that the employee to whom the goods,
17 services, construction or items of tangible personal property
18 are being sold is under the supervision of the public officer
19 or employee.

20 C. A public officer or employee shall not sell,
21 offer to sell, coerce the sale of or be a party to a
22 transaction to sell goods, services, construction or items of
23 tangible personal property, directly or indirectly through the
24 public officer's or employee's family or a business in which
25 the public officer or employee has a substantial interest, to a

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1 person over whom the public officer or employee has regulatory
2 authority.

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

8 E. A public officer or employee shall not accept
9 from a person over whom the public officer or employee has
10 regulatory authority an offer of employment or an offer of a
11 contract in which the public officer or employee provides
12 goods, services, construction, items of tangible personal
13 property or other things of value to the person over whom the
14 public officer or employee has regulatory authority."

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

17 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE
18 CONTRACTORS.--

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

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1 B. A public officer or employee of [~~a state~~] an
2 agency that has authority over the investment of public money
3 or issuance of bonds, the revenue of which is used for public
4 projects in the state, shall not knowingly accept a
5 contribution of anything of value from a business that
6 contracts with that [~~state~~] agency to provide financial
7 services involving the investment of public money or issuance
8 of bonds for public 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 13. Section 10-16-14 NMSA 1978 (being Laws 1967,
18 Chapter 306, Section 14, as amended) is amended to read:

19 "10-16-14. ENFORCEMENT PROCEDURES.--

20 A. The secretary of state may refer suspected
21 violations of the Governmental Conduct Act to the attorney
22 general, district attorney or appropriate [~~state~~] agency or
23 legislative body for enforcement. If a suspected violation
24 involves the office of the secretary of state, the attorney
25 general may enforce that act. If a suspected violation

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1 involves the office of the attorney general, a district
2 attorney may enforce that act.

3 B. Violation of the provisions of the Governmental
4 Conduct Act by any legislator is grounds for discipline by the
5 appropriate legislative body.

6 C. If the attorney general determines that there is
7 sufficient cause to file a complaint against a public officer
8 removable only by impeachment, [~~he~~] the attorney general shall
9 refer the matter to the house of representatives of the
10 legislature. If within thirty days after the referral the
11 house of representatives has neither formally declared that the
12 charges contained in the complaint are not substantial nor
13 instituted hearings on the complaint, the attorney general
14 shall make public the nature of the charges, but [~~he~~] the
15 attorney general shall make clear that the merits of the
16 charges have never been determined. Days during which the
17 legislature is not in session shall not be included in
18 determining the thirty-day period.

19 D. Violation of the provisions of the Governmental
20 Conduct Act by any public officer or employee, other than those
21 covered by Subsection C of this section, is grounds for
22 discipline, including dismissal, demotion or suspension.
23 Complaints against executive branch employees may be filed with
24 the agency head and reviewed pursuant to the procedures
25 provided in the Personnel Act. Complaints against legislative

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1 branch employees may be filed with and reviewed pursuant to
2 procedures adopted by the New Mexico legislative council.
3 Complaints against judicial branch employees may be filed and
4 reviewed pursuant to the procedures provided in the judicial
5 personnel rules.

6 E. Subject to the provisions of this section, the
7 provisions of the Governmental Conduct Act may be enforced by
8 the attorney general. Except as regards legislators or
9 statewide elected officials, a district attorney in the county
10 where a person who allegedly violated the provisions resides or
11 where [a] an alleged violation occurred may also enforce that
12 act. Enforcement actions may include seeking civil injunctive
13 or other appropriate orders."

14 Section 14. A new section of the Governmental Conduct Act
15 is enacted to read:

16 "[NEW MATERIAL] LOCAL SCHOOL BOARD AUTHORITY.--Nothing in
17 the Governmental Conduct Act shall be construed to preclude a
18 local school board from adopting laws, ordinances, rules or
19 standards that are more stringent than those required by the
20 Governmental Conduct Act."

21 Section 15. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2010.