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HOUSE BILL 8

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

INTRODUCED BY

Kathleen Cates and Tara Jaramillo

AN ACT

RELATING TO GOVERNMENT CONDUCT; DECLARING THE PUBLIC POLICY OF THE STATE REGARDING CONDUCT OF CURRENT AND FORMER LEGISLATORS AND PUBLIC OFFICERS AND EMPLOYEES; CLARIFYING AND CODIFYING PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT; PRESCRIBING AND INCREASING PENALTIES.

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

1 that by law or practice is not available to the public;

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

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

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

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

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

13 (5) a licensing arrangement;

14 (6) a loan or loan guarantee; or

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

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

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

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

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

25 (2) any employment or prospective employment

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1 for which negotiations have already begun;

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

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

8 I. "political activity" means activity directed
9 toward the success or failure of a political party, candidate
10 for partisan political office or partisan political group;

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

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

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

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

22 SECTION 2. Section 10-16-3 NMSA 1978 (being Laws 1993,
23 Chapter 46, Section 28, as amended) is repealed and a new
24 Section 10-16-3 NMSA 1978 is enacted to read:

25 "10-16-3. [NEW MATERIAL] PURPOSE OF ACT--DECLARATION OF
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1 PUBLIC POLICY.--Recognizing that a government position is a
2 public trust, it is the public policy of the state and the
3 intent of the legislature in enacting the Governmental Conduct
4 Act that the powers and resources of state and local public
5 office should only be used to advance the public interest and
6 not to obtain personal benefits or to pursue private
7 interests."

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

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

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

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

24 [~~C. violating the officer's or employee's duty not~~
25 ~~to use property belonging to a state agency or local government~~

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1 ~~agency, or allow its use, for other than authorized purposes.]~~

2 C. engaging in political activity:

3 (1) while the public officer or employee is on
4 duty;

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

7 (3) while wearing a uniform or official
8 insignia identifying the office or position of the public
9 officer or employee; or

10 (4) while using a vehicle owned or leased by a
11 state agency or local government agency; provided, however,
12 that this subsection does not apply to the governor, the
13 attorney general or any other elected state official for whom
14 state law enforcement officers provide security."

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

17 "10-16-3.2. [NEW MATERIAL] ABUSE OF OFFICE--PROHIBITING
18 QUID PRO QUO CORRUPTION--PENALTY.--

19 A. A legislator or public officer or employee, with
20 the purpose of benefiting the person's own or another's
21 monetary interest or other financial interest, shall not:

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

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

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1 B. A legislator or public officer during the term
2 for which elected or appointed and a public employee during the
3 period of employment shall not acquire a financial interest
4 when the legislator or public officer or employee believes or
5 should have reason to believe that the new financial interest
6 will be directly affected by the legislator's or public
7 officer's or employee's official act.

8 C. A legislator or public officer or employee shall
9 not use:

10 (1) property belonging to a state agency or
11 local government agency or allow its use for an unauthorized
12 purpose; or

13 (2) the power of the public office to
14 knowingly violate a law of the state.

15 D. A legislator or public officer or employee shall
16 not request or receive, and a person shall not offer, any money
17 or thing of value or promise of money or thing of value that is
18 conditioned on or given in exchange for promised performance of
19 an official act. A person who knowingly and willfully violates
20 the provisions of this subsection is guilty of a fourth degree
21 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
22 1978."

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

25 "10-16-4. ~~[OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST~~
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1 ~~PROHIBITED] DISQUALIFICATION FROM OFFICIAL ACT [PROVIDING A~~
2 ~~PENALTY].--~~

3 ~~[A. It is unlawful for a public officer or employee~~
4 ~~to take an official act for the primary purpose of directly~~
5 ~~enhancing the public officer's or employee's financial interest~~
6 ~~or financial position. Any person who knowingly and willfully~~
7 ~~violates the provisions of this subsection is guilty of a~~
8 ~~fourth degree felony and shall be sentenced pursuant to the~~
9 ~~provisions of Section 31-18-15 NMSA 1978.~~

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

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

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

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1 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
2 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE--
3 EMPLOYER OF FORMER PUBLIC OFFICER OR EMPLOYEE ADDITIONALLY AND
4 SEPARATELY LIABLE FOR CIVIL PENALTY.--

5 A. A state agency shall not enter into a contract
6 with or take any action favorably affecting [~~any~~] a person or
7 business that is:

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

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

18 B. A former public officer or employee shall not
19 represent a person in the person's dealings with [~~the~~
20 ~~government~~] a state agency or local government agency on a
21 matter in which the former public officer or employee
22 participated personally and substantially while a public
23 officer or employee.

24 C. A local government agency shall not enter into a
25 contract with or take any action favorably affecting any person

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1 or business that is:

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

8 (2) assisted in the transaction by a former
9 public officer or employee of that [~~political subdivision of~~
10 ~~the state~~] local government agency whose official act, while in
11 employment with that [~~political subdivision of the state~~] local
12 government agency, directly resulted in the local government
13 agency's making that contract or taking that action.

14 D. For a period of one year after leaving
15 government service or employment, a former public officer or
16 employee shall not represent for pay a person before the state
17 agency or local government agency at which the former public
18 officer or employee served or worked.

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

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