

HOUSE BILL 5

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Kathleen Cates and Tara Jaramillo and Charlotte Little and
Eleanor Chávez and Reena Szczepanski

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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; ADDING THE EXCHANGE OF OFFICIAL ACTS FOR SEXUAL FAVORS TO PROVISIONS OF QUID PRO QUO CORRUPTION; HJC → ~~CLARIFYING PROHIBITIONS AGAINST REFERENCES TO A LEGISLATOR'S LEGISLATIVE CAPACITY OR THE USE OF LEGISLATIVE STATIONERY, EMAIL OR OTHER INDICIA WHEN APPEARING, REPRESENTING OR ASSISTING ANOTHER PERSON IN A MATTER BEFORE A STATE AGENCY;~~ ← HJC CLARIFYING AND CODIFYING PROVISIONS OF THE

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GOVERNMENTAL CONDUCT ACT; PRESCRIBING AND INCREASING PENALTIES.

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

Hf11→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 having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or

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(7) the purchase of financial securities or instruments;

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

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

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

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

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

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

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

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

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

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legislators;

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

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

[L-] M. "substantial interest" means an ownership interest that is greater than twenty percent."←Hf11

SECTION Hf11→1.←Hf11 Hf11→2.←Hf11 Section 10-16-3 NMSA 1978 (being Laws 1993, Chapter 46, Section 28, as amended) is repealed and a new Section 10-16-3 NMSA 1978 is enacted to read:

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

SECTION Hf11→2.←Hf11 Hf11→3.←Hf11 Section 10-16-3.1 NMSA 1978 (being Laws 2007, Chapter 362, Section 9, as amended) is amended to read:

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

- A. directly or indirectly coercing or attempting to

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coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization [~~agency~~] or other person for a political purpose;

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

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

C. engaging in political activity:

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

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

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

(4) while using a vehicle owned or leased by a state agency or local government agency HJC→~~."~~←HJC HJC→;←HJC

HJC→provided, however, that this subsection does not apply to

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the governor, the attorney general or any other elected state official for whom state law enforcement officers provide security."←HJC

SECTION Hf11→3.←Hf11 Hf11→4.←Hf11 A new section of the Governmental Conduct Act, Section 10-16-3.2 NMSA 1978, is enacted to read:

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

A. A legislator or public officer or employee, with the purpose of benefiting in a monetary interest or other financial interest or obtaining a sexual favor, shall not:

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

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

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

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

(1) property belonging to a state agency or

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local government agency or allow its use for an unauthorized purpose;

(2) the power of the public office to knowingly violate a law of the state; or

(3) the power of the public office to commit an act relating to the public office if the purpose of the act is to obtain a benefit for that person's self or another person, and committing such an act constitutes an unauthorized exercise of official functions.

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

SECTION Hf11→4.←Hf11 Hf11→5.←Hf11 Section 10-16-4 NMSA 1978 (being Laws 1967, Chapter 306, Section 4, as amended) is amended to read:

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

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

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

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

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

SECTION Hf11→5.←Hf11 Hf11→6.←Hf11 Section 10-16-8 NMSA 1978 (being Laws 1967, Chapter 306, Section 8, as amended) is amended to read:

"10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE--EMPLOYER OF FORMER PUBLIC OFFICER OR EMPLOYEE ADDITIONALLY AND

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SEPARATELY LIABLE FOR CIVIL PENALTY.--

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

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

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

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

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

(1) represented personally in the matter by a person who has been a public officer or employee of that local

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government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

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

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

E. Upon a showing that a former public officer or employee violated any provision of this section while in the employment of another person Hf11→HJC→~~who caused the violation to occur~~←HJC←Hf11 Hf11→who knowingly caused the violation to occur←Hf11 , that person is additionally Hf11→and←Hf11 Hf11→HJC→~~and~~←HJC←Hf11 separately liable for any civil penalty that is assessed against the former public officer or employee and is subject to other remedies provided for in the Governmental Conduct Act."

HJC→~~SECTION 6. Section 10-16-9 NMSA 1978 (being Laws~~

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~~1967, Chapter 306, Section 9, as amended) is amended to read:~~

~~"10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION BEFORE STATE AGENCIES.--~~

~~A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.~~

~~B. Except as otherwise provided in Subsection C of this section, a legislator shall not appear for, represent or assist another person in a matter before a state agency unless that appearance, representation or assistance is:~~

~~(1) provided without compensation; ~~{or}~~~~

~~(2) for the benefit of a constituent ~~{except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the}; and~~~~

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~~(3) not a matter that affects the legislator's financial interest or financial position.~~

~~G. A legislator may appear for, represent or assist another person in a matter before a state agency when the legislator is an attorney or other professional who is making the appearance or providing the representation or assistance while engaged in the conduct of the legislator's profession. The legislator shall [refrain from] not make references to the legislator's legislative capacity except as to matters of scheduling [from communications on] or use legislative stationery, [and from] legislative email or any other indicia of the legislator's legislative capacity while engaged in the conduct of the legislator's profession.~~

~~D. A legislator shall not make direct or indirect threats or implications relating to legislative actions in any instance in which the legislator appears for, represents or assists another person in a matter before a state agency."~~←HJC

SECTION HJC→7.←HJC Hf11→HJC→8.←HJC←Hf11 Hf11→7.←Hf11

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

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

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a

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district attorney for enforcement.

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