

HOUSE BILL 5

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

INTRODUCED BY

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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; 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;
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 10-16-3 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Chapter 46, Section 28, as amended) is repealed and a new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:

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

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

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

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

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

25 [~~C. violating the officer's or employee's duty not~~

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1 ~~to use property belonging to a state agency or local government~~
2 ~~agency, or allow its use, for other than authorized purposes.]~~

3 C. engaging in political activity:

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

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

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

11 (4) while using a vehicle owned or leased by a
12 state agency or local government agency."

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

15 "10-16-3.2. [NEW MATERIAL] ABUSE OF OFFICE--PROHIBITING
16 QUID PRO QUO CORRUPTION--PENALTY.--

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

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

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

24 B. A legislator or public officer during the term
25 for which elected or appointed and a public employee during the

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1 period of employment shall not acquire a financial interest
2 when the legislator or public officer or employee believes or
3 should have reason to believe that the new financial interest
4 will be directly affected by the legislator's or public
5 officer's or employee's official act.

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

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

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

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

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

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

3 "10-16-4. [~~OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST~~
4 ~~PROHIBITED]~~ DISQUALIFICATION FROM OFFICIAL ACT [~~PROVIDING A~~
5 ~~PENALTY]~~.--

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

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

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

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1 ~~or employee's official act.]"~~

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

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

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

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

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

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

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1 officer or employee.

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

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

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

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

22 E. Upon a showing that a former public officer or
23 employee violated any provision of this section while in the
24 employment of another person, that person is additionally
25 separately liable for any civil penalty that is assessed

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1 against the former public officer or employee and is subject to
2 other remedies provided for in the Governmental Conduct Act."

3 SECTION 6. Section 10-16-9 NMSA 1978 (being Laws 1967,
4 Chapter 306, Section 9, as amended) is amended to read:

5 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION
6 BEFORE STATE AGENCIES.--

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

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

- 23 (1) provided without compensation; [~~or~~]
- 24 (2) for the benefit of a constituent [~~except~~
25 ~~for legislators who are attorneys or other professional persons~~

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1 ~~engaged in the conduct of their professions and, in those~~
2 ~~instances, the]; and~~

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

5 C. A legislator may appear for, represent or assist
6 another person in a matter before a state agency when the
7 legislator is an attorney or other professional who is making
8 the appearance or providing the representation or assistance
9 while engaged in the conduct of the legislator's profession.

10 The legislator shall [refrain from] not make references to the
11 legislator's legislative capacity except as to matters of
12 scheduling [~~from communications on~~] or use legislative
13 stationery, [~~and from~~] legislative email or any other indicia
14 of the legislator's legislative capacity while engaged in the
15 conduct of the legislator's profession.

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

20 SECTION 7. 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)~~] ten thousand dollars (\$10,000)."