

AN ACT

RELATING TO ETHICS; AMENDING AND ENACTING SECTIONS OF THE GOVERNMENTAL CONDUCT ACT; PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES; PROHIBITING CERTAIN CONTRACTS.

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

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

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

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

(1) an ownership interest in business; or

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

F. "official act" means an official decision,

recommendation, approval, disapproval or other action that involves the use of discretionary authority;

G. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

H. "standards" means the conduct required by the Governmental Conduct Act;

I. "state agency" means any branch, agency, instrumentality or institution of the state; and

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

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

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

A. A legislator, public officer or employee shall treat the legislator's, public officer's or employee's government position as a public trust. The legislator, public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.

B. Legislators, public officers and employees shall conduct themselves in a manner that justifies the

confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

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

D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. 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."

Section 3. 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."

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

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

Section 5. Section 10-16-7 NMSA 1978 (being Laws 1967, Chapter 306, Section 7, as amended) is amended to read:

"10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR EMPLOYEES.--A state agency shall not enter into a contract for services, construction or items of tangible personal property with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless

the public officer or employee has disclosed the public officer's or employee's substantial interest and unless the contract is awarded pursuant to the Procurement Code, except that the potential contractor shall not be eligible for a sole source or small purchase contract; provided that this section does not apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park Act. 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 section."

Section 6. Section 10-16-9 NMSA 1978 (being Laws 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. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or 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 legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions."

Section 7. Section 10-16-13 NMSA 1978 (being Laws 1967, Chapter 306, Section 13) is amended to read:

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

Section 8. A new section of the Governmental Conduct Act is enacted to read:

"CERTAIN BUSINESS SALES TO STATE AGENCIES AND THEIR
EMPLOYEES PROHIBITED.--

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

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

(2) the sale of or the transaction to sell goods, services, construction or items of tangible personal property by the public officer's or employee's family or by a business in which the public officer or employee or the public officer's or employee's family has a substantial interest to the state agency by which the public officer or employee is employed.

B. A public officer or employee shall not sell,

offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

C. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

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

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

Section 9. A new section of the Governmental Conduct Act is enacted to read:

"PROHIBITED POLITICAL ACTIVITIES.--Public officers and employees are prohibited from:

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

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political

fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty to not use state property, or allow its use, for other than authorized purposes."

Section 10. A new section of the Governmental Conduct Act is enacted to read:

"DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public officer or employee shall disclose in writing to the supervisor of the officer or employee, or in the event there is no supervisor, to the secretary of state, all employment engaged in by the officer or employee other than the employment with the state."

Section 11. A new section of the Governmental Conduct Act is enacted to read:

"PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE CONTRACTORS.--

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

B. A public officer or employee of a state agency that has authority over the investment of public money or

issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

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

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. _____