

1 SENATE BILL 91

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO GOVERNMENT CONDUCT; DECLARING THE PUBLIC POLICY OF
12 THE STATE REGARDING CONDUCT OF CURRENT AND FORMER LEGISLATORS
13 AND PUBLIC OFFICERS AND EMPLOYEES; ADDING THE EXCHANGE OF
14 OFFICIAL ACTS FOR SEXUAL FAVORS TO PROVISIONS OF QUID PRO QUO
15 CORRUPTION; CLARIFYING AND CODIFYING PROVISIONS OF THE
16 GOVERNMENTAL CONDUCT ACT; PRESCRIBING AND INCREASING PENALTIES.

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

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20 Chapter 46, Section 28, as amended) is repealed and a new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

22 "10-16-3. [NEW MATERIAL] PURPOSE OF ACT--DECLARATION OF
23 PUBLIC POLICY.--Recognizing that a government position is a
24 public trust, it is the public policy of the state and the
25 intent of the legislature in enacting the Governmental Conduct

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1 Act that the powers and resources of state and local public
2 office should only be used to advance the public interest and
3 not to obtain personal benefits or to pursue private
4 interests."

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

7 "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--A public
8 officer or employee is prohibited from:

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

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

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

24 C. engaging in political activity:

25 (1) while the public officer or employee is on

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1 duty;

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

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

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

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

11 "10-16-3.2. [NEW MATERIAL] ABUSE OF OFFICE--PROHIBITING
12 QUID PRO QUO CORRUPTION--PENALTY.--

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

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

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

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

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1 officer's or employee's official act.

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

4 (1) property belonging to a state agency or
5 local government agency or allow its use for an unauthorized
6 purpose;

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

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

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

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

24 "10-16-4. ~~[OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST~~
25 ~~PROHIBITED]~~ DISQUALIFICATION FROM OFFICIAL ACT ~~[PROVIDING A~~

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1 PENALTY] .--

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

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

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

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

25 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR
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1 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE--
2 EMPLOYER OF FORMER PUBLIC OFFICER OR EMPLOYEE ADDITIONALLY AND
3 SEPARATELY LIABLE FOR CIVIL PENALTY.--

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

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

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

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

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

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

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

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

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

24 SECTION 6. Section 10-16-18 NMSA 1978 (being Laws 1995,
25 Chapter 153, Section 23, as amended) is amended to read:

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1 "10-16-18. ENFORCEMENT--CIVIL PENALTIES.--

2 A. If the state ethics commission reasonably
3 believes that a person committed, or is about to commit, a
4 violation of the Governmental Conduct Act, the state ethics
5 commission may refer the matter to the attorney general or a
6 district attorney for enforcement.

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