AN ACT

RELATING TO ETHICS; EXTENDING PROVISIONS OF THE GOVERNMENTAL
CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND EMPLOYEES OF
POLITICAL SUBDIVISIONS OF THE STATE; EXPANDING THE DEFINITION
OF "CONTRACT"; ALLOWING PUBLIC OFFICERS AND EMPLOYEES TO
CONTRACT WITH THE AGENCY THAT EMPLOYS THEM; PROHIBITING
CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES; AMENDING,

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

SECTION 1. A new section of the Governmental Conduct
Act is enacted to read:

"PROHIBITED EMPLOYMENT.--It is unlawful for a state
agency employee or local government agency employee who is
participating directly or indirectly in the contracting
process to become or to be, while such an employee, the
employee of any person or business contracting with the
governmental body by whom the employee is employed."

SECTION 2. 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

(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. "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 legislators;

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

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

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

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

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

A. A legislator or public officer or employee shall treat the legislator's or public officer's or
employee's government position as a public trust. The legislator or 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.

B. Legislators and 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 or public officer or employee may request or receive, and no person may offer a legislator or 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 4. Section 10-16-3.1 NMSA 1978 (being Laws
2007, Chapter 362, Section 9) 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 coerce another public 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 not
to use property belonging to a state agency or local
government agency, or allow its use, for other than
authorized purposes."

SECTION 5. 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.

C. 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 6. Section 10-16-4.2 NMSA 1978 (being Laws 2007, Chapter 362, Section 10) is amended to read:

"10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than
the employment with or service to a state agency or local
government agency."

SECTION 7. 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 or
public officer or employee shall use or disclose confidential
information acquired by virtue of the legislator's or public
officer's or employee's position with a state agency or local
government agency for the legislator's, public officer's or
employee's or another's private gain."

SECTION 8. 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. A state agency shall not enter into a contract
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 through public
notice the public officer's or employee's substantial
interest and unless the contract is awarded pursuant to a
competitive process; provided that this section does not
apply to a contract of official employment with the state. 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.

B. Unless a public officer or employee has
disclosed the public officer's or employee's substantial
interest through public notice and unless a contract is
awarded pursuant to a competitive process, a local government
agency shall not enter into a contract with a public officer
or employee of that local government agency, 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.

C. Subsection B of this section does not apply to
a contract of official employment with a political
subdivision. A person negotiating or executing a contract on
behalf of a local government agency shall exercise due
diligence to ensure compliance with the provisions of this
section."

SECTION 9. 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.--

A. A state 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 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 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 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 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

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public officer or employee of that political subdivision of
the state whose official act, while in employment with that
political subdivision of the state, directly resulted in the
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."

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

"10-16-13. PROHIBITED BIDDING.--No state agency or
local government agency 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 local government agency shall exercise due
diligence to ensure compliance with this section."

SECTION 11. Section 10-16-13.2 NMSA 1978 (being Laws
2007, Chapter 362, Section 8) is amended to read:

"10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF
STATE AGENCIES AND LOCAL GOVERNMENT AGENCIES PROHIBITED.--

A. 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.

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 a person over whom the public officer or
employee has regulatory authority.
C. A public officer or employee shall not receive a commission or 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.

D. 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 12. Section 10-16-13.3 NMSA 1978 (being Laws 2007, Chapter 362, Section 11) is amended to read:

"10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE CONTRACTORS.--

A. A business that contracts with a state agency or local government 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 or local government 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
or local government 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 or local
government 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 13. A new section of the Governmental Conduct
Act is enacted to read:

"STATE AGENCY OR LOCAL GOVERNMENT AGENCY AUTHORITY.--
Nothing in the Governmental Conduct Act shall be construed to
preclude a state agency or local government agency from
adopting and publishing ordinances, rules or standards that
are more stringent than those required by the Governmental
Conduct Act."

SECTION 14. REPEAL.--Sections 3-10-4, 3-10-5 and
4-44-22 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter 78, Section 1, Laws 1965, Chapter 300, Section 14-9-5 and Laws 1969, Chapter 244, Sections 1 through 6) are repealed.

SECTION 15. EFFECTIVE DATE.—The effective date of the provisions of this act is July 1, 2011.