



New Mexico Policy Services

July 12, 2011

Senate Bill 432, the Governmental Conduct Act, and some notes of interest.

Senate Bill 432 (S.B. 432) was effective July 1, 2011, and it is the opinion of Policy Services that Districts should move forward toward applying the new law in an ordered fashion. Though most of you are aware that the **Governmental Conduct Act** has a new requirement that officers and employee (Board members and employees) of school districts (local governmental agencies) are required to **reveal all forms of employment outside of the school district to the district**, many have not read the complete statute, 10-16-1 et seq. NMSA 1978. The complete statute has implementation information, provides for a means by which officers and employees can contract with the district that employs them and establishes the order of any penalties that may apply if the law is not followed. **Not all** of the actual law was included in the revised text provided by S.B. 432, therefore, a complete copy should be reviewed.

Because it is a very complex new law, Policy Services will likely be recommending the revision of two or more policies containing parts of S. B. 432 in the near future.

It is important for all to know, however, that a section of that law that was not revised by Senate Bill 432, 10-16-13.1 NMSA 1978, mandates that the secretary of state is to advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles. That section states that "The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. **A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter.** Referrals for civil enforcement of that act shall be pursued **only after** (emphasis added) efforts to secure voluntary compliance with that act have failed."

The local governmental agency can invoke more severe requirements than the Governmental Conduct Act specifies, but that opportunity would best be used only after voluntary means for compliance are attempted.

Policy Services suggests that school districts obtain a complete copy of the Governmental Conduct Act and begin the process of requesting that all officers and employees provide employment information. A form may be used and Policy Services will provide such a form when an advisory is sent out in the near future. In the meantime, it is Policy Services position that there is no need to rush requesting employment information unless there is a new contract being issued in which an officer or employee has a substantial interest. If that is the case then the district's current form for a conflict of interest will do nicely. That form is located at BCB-E or B-0831.

Donn Williams, Ed.D., J.D.
NMSBA Policy Services Director
nmsbapolicy@cox.net
1-505-469-0193

cc Joe Guillen

Governmental Conduct Act

Secretary of State's Office

Ethics Administration
325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503 (505) 476-0354

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

History: 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

10-16-2. Definitions.

As used in the Governmental Conduct Act [this article]:

- 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. "financial interest" means an interest held by an individual, his spouse or dependent minor children that is:
 - (1) an ownership interest in business; or
 - (2) any employment or prospective employment for which negotiations have already begun;
- E. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;
- F. "person" means an individual or entity;
- 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 and judges;
- H. "standards" means the conduct required by the Governmental Conduct Act; and
- I. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

- A. A legislator, public officer or employee shall treat his government position as a public trust. He 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. A legislator, public officer or employee shall conduct himself in a manner that justifies the confidence placed in him 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.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28.

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 his own 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 disqualify himself from engaging in any official act directly affecting his financial interest.
- C. If the public interest so requires, the governor may make an exception to Subsection B of this section for a public officer or employee by expressing the exception and the reasons for it in writing. The exception is effective when the public officer or employee files this writing with the secretary of state.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

History: Laws 1993, ch. 46, § 38. 10-16-5. Repealed.

10-16-6. Confidential information.

No legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30.

10-16-7. Contracts involving public officers or employees.

A state agency shall not enter into any contract with a public officer or employee of the state or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code; 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 [21-28-1 to 21-28-25 NMSA 1978].

History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; 1993, ch. 46, § 31.

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 his 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. 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 government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; 1993, ch. 46, § 32.

10-16-9. Contracts involving legislators; representation before state agencies.

- A. A state agency shall not enter into any procurement contract for services, construction or items of personal property with a legislator or with a business in which the legislator has a substantial interest unless the legislator has disclosed his substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code.

- B. A legislator shall not appear for, represent or assist another person in any 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 his legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; 1993, ch. 46, § 33.

10-16-10. Repealed.

10-16-11. Codes of conduct.

- A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act [this article].
- B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.
- C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.
- D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.
- E. All legislators shall attend a minimum of one hour of ethics continuing education and training annually.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34.

10-16-12. Repealed.

10-16-13. Prohibited bidding.

No state agency shall accept any bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

History: 1953 Comp., § 5-12-13, enacted by Laws 1967, ch. 306, § 13.

10-16-13.1. Education and voluntary compliance.

- A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act [this article] of those duties. This includes advising all those persons at least annually of that act's ethical principles.
- B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35.

10-16-14. Enforcement procedures.

- A. The secretary of state may refer suspected violations of the Governmental Conduct Act [this article] to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.
- B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.
- C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.
- D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.
- E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36.

10-16-15. Repealed.

10-16-16. [Recompiled].

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act [this article], any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

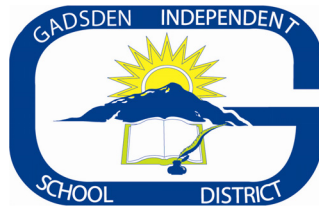
History: Laws 1993, ch. 46, § 37.

10-16-18. Enforcement; civil penalties.

- A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act [this article], the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.
- B. The attorney general or a district attorney may 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).

History: Laws 1995, ch. 153, § 23.

Cynthia Nava
Superintendent



4950 McNutt Road/100 Laura Court
Sunland Park, New Mexico

P.O. Drawer 70
Anthony, N.M. 88021
Phone: (575) 882-6200

Gadsden Independent School District

2011-2012 School Year

Mandatory review of the New Mexico Governmental Conduct Act

Board Member/Employee Disclosure Pursuant to the
New Mexico Governmental Conduct Act



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