



Susana Martinez
GOVERNOR

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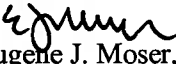
Nivia Thames
DEPUTY DIRECTOR

Ryan Escher
**BOARD VICE-
CHAIRMAN**

General Memorandum 2011-1

Date: April 26, 2011

To: Cabinet Secretaries, Agency Directors and Human Resources Managers

From: 
Eugene J. Moser, State Personnel Director

Subject: Code of Conduct

On April 25, 2011 Governor Susana Martinez issued a Code of Conduct applicable to all employees within the executive service. This Code of Conduct articulates the expectations of the state's officers and employees to maintain an individual commitment to the highest standards of conduct. This is consistent with their roles as public servants of the citizens of the State of New Mexico and with the requirements of the Governmental Conduct Act¹ and any other applicable rules or laws governing their conduct, including but not limited to the Financial Disclosure Act², the Gift Act³ the Lobbyist Regulation Act⁴ and the Procurement Code⁵.

To this end, employees are required at the beginning of each calendar year (January) to acknowledge their receipt, review and understanding of the attached Code of Conduct and copies of the attached statutes referenced above.

¹ Chapter 10, Article 16 NMSA 1978
² Chapter 10, Article 16A NMSA 1978
³ Chapter 10, Article 16B NMSA 1978
⁴ Chapter 2, Article 11 NMSA 1978
⁵ Chapter 13, Article 1 NMSA 1978

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Departments are to ensure that the Code of Conduct is distributed to and acknowledged by all employees on the enclosed classified employee acknowledgement form. This form is to be retained within each employee's personnel file within each department. This is expected to be completed by all classified employees no later than May 6, 2011. Departments are requested to coordinate with the Director of the State Personnel Office on ensuring full compliance.

Each department throughout the year shall incorporate within a new employee hire packet the Code of Conduct and obtain an acknowledge receipt which shall be retained in the employee's personnel file.

CODE OF CONDUCT
Adopted April 25, 2011

ACKNOWLEDGMENT
(CLASSIFIED EMPLOYEES)

I, _____, acknowledge that I have received, reviewed, and understand the requirements contained within the Code of Conduct approved by Governor Susana Martinez on April 25, 2011. I agree to adhere to its terms and understand that violation of those terms constitutes cause for dismissal, demotion, or suspension.

Printed name: _____

Signature: _____

Date: _____



State of New Mexico

Susana Martinez
Governor

CODE OF CONDUCT

The Governor is committed to establishing and maintaining a high level of ethical conduct among executive branch officers and employees. Those officers and employees must each maintain an individual commitment to high standards of conduct. In performing their duties, officers and employees must behave in a manner that is consistent with their roles as public servants of the citizens of the State of New Mexico.

Pursuant to the Governmental Conduct Act (Chapter 10, Article 16 NMSA 1978), the Governor adopts this Code of Conduct for all officers and employees under the Office of the Governor. In addition to the requirements set forth in this Code of Conduct, all officers and employees shall familiarize themselves with and adhere to the requirements of the Governmental Conduct Act (Chapter 10, Article 16 NMSA 1978) and any other applicable rules or laws governing their conduct, including but not limited to the Financial Disclosure Act (Chapter 10, Article 16A NMSA 1978), the Gift Act (Chapter 10, Article 16B NMSA 1978), the Lobbyist Regulation Act (Chapter 2, Article 11 NMSA 1978), and the Procurement Code (Chapter 13, Article 1 NMSA 1978).

1. Public Trust

a. Officers and employees shall treat their government positions as public trusts. They shall use their positions and the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests. They shall strive in all their actions to bring credit to the State of New Mexico.

b. 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 of and discharging ethically the high responsibilities of public office.

c. Officers and employees shall not use or disclose confidential information obtained by virtue of their employment for their own or another person's benefit or private gain.

2. Conflicts of Interest

a. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.

Code of Conduct

Adopted April 25, 2011

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b. Officers and employees shall not take any official act for the primary purpose of enhancing their financial interest or financial position. Officers and employees shall disqualify themselves from decisions or official actions directly affecting their financial interests.

c. Officers and employees shall not engage in any other employment or activity that creates a conflict of interest, interferes with their duties to the public, compromises their ability to discharge effectively their duties, or otherwise adversely affects the performance of their duties. They shall disclose in writing to their supervisor, or in the absence of a direct supervisor, to the secretary of state, all employment other than employment with the state.

d. Officers and employees shall disclose any current outside employment within five days of their receipt of this Code of Conduct and shall disclose anticipated outside employment before it begins.

e. An executive agency shall not enter into contracts for services, construction, or items of tangible property:

- i. With a public officer or employee of the state;
- ii. With the family of a public officer or employee; or
- iii. With a business in which a public officer or employee or his or her family has a substantial interest;

unless the public officer or employee has disclosed the interest and the contract is awarded pursuant to the Procurement Code. Under these circumstances, the potential contractor shall not be eligible for a sole source or small purchase contract.

f. An executive agency shall not enter into contracts with, or take any action favorably affecting, any person or business that is:

- i. Represented personally in the matter by a person who has been a public officer or employee of the state within the previous year and the contract is a direct result of an official act by the former public officer or employee; or
- ii. Assisted in the transaction by a former public officer or employee of the state whose official action, while in state employment, directly resulted in the agency entering the contract or taking the action.

g. A former officer or employee shall not represent a person in dealings with the government on a matter in which the former officer or employee participated personally and substantially while a public officer or employee.

h. For a period of one year after leaving government employment, a former officer or employee shall not receive any pay for representing a person before the government agency at which the former officer or employee served or worked.

3. Gifts

a. Officers and employees shall not request or receive any money, thing of value, or a promise of money or thing of value that is conditioned upon or given in exchange for their promised performance of an official act.

b. Officers and employees shall not accept gifts, compensation, money or any other thing of value from persons affected by state action, where it is known or reasonably should be known that the purpose of the donor in giving the gift, compensation, money, or other thing of value is to influence the employee in the performance of the officer or employee's official duties.

c. Officers and employees, or their family members, shall not accept any gift exceeding \$250 in value from a "restricted donor." A "restricted donor" is a person who:

- i. Is or is seeking to be a party to any sale, purchase, lease, or contract with the agency in which the officer or employee holds office or is employed;
- ii. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the officer or employee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;
- iii. Is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the officer or employee has discretionary authority as part of his or her official duties or employment within the regulatory agency; or
- iv. Is a lobbyist or a client of a lobbyist with respect to matters within the officer or employee's jurisdiction.

d. Officers and employees, or their family members, shall not accept gifts totaling more than \$1,000 in one calendar year from a lobbyist, lobbyist's employer, or government contractor.

e. Officers and employees shall not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. An honorarium does not include reasonable reimbursement for meals, lodging, or actual travel expenses incurred in making the speech or rendering the service.

4. Use of State Information Technology Resources

a. Officers and employees shall use information technology ("IT") resources only to conduct state business, except for the occasional and incidental use of IT resources that does not interfere with the employee's duties and is not inconsistent with the policies expressed in this

Code of Conduct. "Information technology resources" means computer hardware, software, databases, electronic message systems, communications equipment, computer networks, telecommunications circuits and any information used to support programs or operations generated by, transmitted within, or stored on any electronic media.

b. Officers and employees shall not intentionally violate any software licensure agreement entered into by the State of New Mexico.

c. Officers and employees shall not access or attempt to access IT resources for which they do not have authorization by means of user accounts, valid passwords, file permissions, or other legitimate access and authentication methods. "Access" means the ability to read, change, or enter data using a computer or an information system.

d. Officers and employees shall not use IT resources to reveal information protected by state or federal privacy or confidentiality laws, regulations, rules, policies, procedures, or contract terms.

e. Officers and employees shall not use IT resources to download or distribute pirated software or data, including music or video files. "Pirated software" means licensable software for which a license has not been purchased or legally obtained.

f. Officers and employees shall not use IT resources to knowingly propagate any type of code intended to damage, destroy, or delete a computer system, network, file, or data.

g. Officers and employees shall not use IT resources to knowingly disable or overload any computer system or network or to circumvent any system intended to protect the privacy or security of IT resources.

h. Officers and employees shall not access, display, distribute, edit, or record pornographic or offensive material using IT resources except with the written permission of their supervisor in order to fulfill legitimate job responsibilities. The unsolicited receipt of pornographic or offensive material, such as might be received through e-mail, shall not constitute a violation of this provision. "Pornographic" or "offensive materials" means images, documents, or sounds that are: 1) discriminatory or harassing; 2) defamatory or libelous; 3) obscene or pornographic; or 4) threatening to an individual's physical or mental well-being.

i. Officers and employees shall not use IT resources to override or circumvent any security mechanism belonging to the state or to any other government agency, organization, company or individual. "Security mechanism" means a firewall, proxy, Internet address-screening or filtering program, or other system installed to prevent the disruption or denial of services or the unauthorized use, damage, destruction, or modification of data and software.

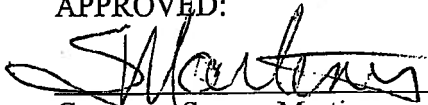
j. Officers and employees shall not use IT resources for illegal activity.

5. Enforcement and Sanctions

a. This Code of Conduct governs the conduct of all officers and employees under the Office of the Governor.

b. Violation of this Code of Conduct shall constitute cause for dismissal, demotion, or suspension.

APPROVED:



Governor Susana Martinez
State of New Mexico

4/25/11

Date

FINANCIAL DISCLOSURE ACT

ARTICLE 16A Financial Disclosures

Sec.

10-16A-1. Short title; Financial Disclosure Act.

10-16A-2. Definitions.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.

Sec.

10-16A-5. Education and voluntary compliance.

10-16A-6. Investigations; binding arbitration; fines; enforcement.

10-16A-7. Criminal penalties.

10-16A-8. Enforcement; civil penalties.

10-16A-1. Short title; Financial Disclosure Act.

Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] [and 10-16A-8 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39.

10-16A-2. Definitions.

As used in the Financial Disclosure Act [10-16A-1 NMSA 1978]:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

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

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

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

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "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.

History: Laws 1993, ch. 46, § 40.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

A. At the time of filing a declaration of candidacy or nominating petition, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in Section 1-8-25 NMSA 1978, a financial disclosure statement on a prescribed form. In addition, each year thereafter during the month of January, a legislator and a person holding a statewide office shall file with the proper filing officer a financial disclosure statement. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within seventy-two hours.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that he holds public office.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. A complete financial disclosure statement shall be filed every year. The secretary of state shall mail each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

E. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

F. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates provided for in the Election Code [Chapter 1 NMSA 1978] shall not have his name printed on the election ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

History: Laws 1993, ch. 46, § 41; 1995, ch. 153, § 24; 1997, ch. 112, § 8.

10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act [10-16A-1 NMSA 1978] and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

History: Laws 1993, ch. 46, § 42.

10-16A-5. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act [10-16A-1 NMSA 1978] of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: Laws 1993, ch. 46, § 43.

10-16A-6. Investigations; binding arbitration; fines; enforcement.

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act [10-16A-1 NMSA 1978] has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: Laws 1993, ch. 46, § 44; 1997, ch. 112, § 9.

10-16A-7. Criminal penalties.

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act [10-16A-1 NMSA 1978] 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.

History: Laws 1993, ch. 46, § 45.

10-16A-8. Enforcement; civil penalties.

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act [10-16A-1 NMSA 1978], 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 Financial Disclosure 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, § 25

GIFT ACT

ARTICLE 16B

Gift Act

Sec.

10-16B-1. Short title.

10-16B-2. Definitions.

Sec.

10-16B-3. Limitation on gifts.

10-16B-4. Penalties.

10-16B-1. Short title.

This act may be cited as the "Gift Act".

History: Laws 2007, ch. 226, § 1.

10-16B-2. Definitions.

As used in the Gift Act [10-16B-1 NMSA 1978]:

A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [1-19-25 NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

C. "market value" means the retail cost a person would incur to purchase a gift;

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

E. "state 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.

History: Laws 2007, ch. 226, § 2.

10-16B-3. Limitation on gifts.

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

History: Laws 2007, ch. 226, § 3.

10-16B-4. Penalties.

A person who violates the provisions of the Gift Act [10-16B-1 NMSA 1978] is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2007, ch. 226, § 4.

LOBBYIST REGULATION ACT

ARTICLE 11 Lobbyist Regulation

Sec.

- 2-11-1. Short title.
- 2-11-2. Definitions.
- 2-11-3. Registration statement to be filed; contents; modification to statement.
- 2-11-4. Recompiled.
- 2-11-5. Other powers and duties of attorney general not limited or restricted.
- 2-11-6. Expenditure report to be filed; contents; reporting periods.

Sec.

- 2-11-7. Registration and expenditure statement; preservation as public records.
- 2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.
- 2-11-8.1. Restrictions on campaign activities and contributions.
- 2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.
- 2-11-9. Penalties.

2-11-1. Short title.

Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".

History: 1953 Comp., § 2-13-1, enacted by Laws 1977, ch. 261, § 1; 1993, ch. 46, § 18.

2-11-2. Definitions.

As used in the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

(1) an individual who appears on his own behalf in connection with legislation or an official action;

(2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;

(3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rule-making proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;

(4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;

(5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;

(7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency, however constituted, public or private corporation or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution of New Mexico.

History: 1953 Comp., § 2-13-2, enacted by Laws 1977, ch. 261, § 2; 1985, ch. 16, § 1; 1993, ch. 46, § 19; 1994, ch. 85, § 1.

2-11-3. Registration statement to be filed; contents; modification to statement.

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of twenty-five dollars (\$25.00) for each of the lobbyist's employers and by filing a single registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. No expenditure statement required by Section 2-11-6 NMSA 1978 shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in his registration statement whether those circumstances apply to him.

C. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

D. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the twenty-five dollar (\$25.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

E. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination report need be filed.

History: 1953 Comp., § 2-13-3, enacted by Laws 1977, ch. 261, § 3; 1985, ch. 16, § 2; 1993, ch. 46, § 20.

2-11-4. Recompiled.

2-11-5. Other powers and duties of attorney general not limited or restricted.

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

History: 1953 Comp., § 2-13-5, enacted by Laws 1977, ch. 261, § 5.

2-11-6. Expenditure report to be filed; contents; reporting periods.

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

(a) meals and beverages;

- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. If the expenditure report is filed electronically, the report shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act [14-15-1 NMSA 1978] and the Uniform Electronic Transactions Act [14-16-1 NMSA 1978]. For the purposes of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978], a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

E. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

F. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

G. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

H. An organization of two or more persons, including an individual who holds himself out as an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hun-

dred dollars (\$2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses and occupations of the contributors, to the secretary of state on a prescribed form.

History: 1953 Comp., § 2-13-6, enacted by Laws 1977, ch. 261, § 6; 1985, ch. 16, § 3; 1993, ch. 46, § 21; 1994, ch. 84, § 2; 1995, ch. 153, § 20; 1997, ch. 112, § 6; 2005, ch. 330, § 1.

2-11-7. Registration and expenditure statement; preservation as public record.

Each registration and expenditure statement as required by the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed two years after the date of filing.

History: 1953 Comp., § 2-13-7, enacted by Laws 1977, ch. 261, § 7; 1993, ch. 46, § 22.

2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

History: 1953 Comp., § 2-13-8, enacted by Laws 1977, ch. 261, § 8.

2-11-8.1. Restrictions on campaign activities and contributions.

A. No lobbyist may serve as a campaign chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

(1) the day the session ends for:

(a) any statewide elected official or candidate for statewide office except the governor;

and

(b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.

History: 1978 Comp., § 2-11-8.1, enacted by Laws 1993, ch. 46, § 23; 1995, ch. 153, § 21.

2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] of those duties. This includes advising all

registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall be due and payable within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: 1953 Comp., § 2-13-4, enacted by Laws 1977, ch. 261, § 4; amended and recompiled as §

2-11-8.2 NMSA 1978 by Laws 1993, ch. 46, § 24; 1995, ch. 153, § 22; 1997, ch. 112, § 7.

2-11-9. Penalties.

In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] shall be punished by

a fine of up to five thousand dollars (\$5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years.

History: 1953 Comp., § 2-13-9, enacted by Laws 1977, ch. 261, § 9; 1993, ch. 46, § 25.