

Typically, court-orders around corruption include restitution. An unintended consequence may be the inability to pay that restitution if pension benefit income is forfeited to the respective fund.

SIGNIFICANT ISSUES

The bill affects retirement benefits earned under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the Educational Retirement Act.

The bill affects persons that serve in a “public trust position” defined as an elected position or appointed position that requires Senate confirmation and to public employees who are convicted of serious violent offenses, which also include sex offenses and first or second degree felonies.

The bill provides for a stay of pension forfeiture pending an appeal of a conviction or disposition of community property proceedings or child support obligations filed prior to the conviction.

If the convicted member is subsequently pardoned, the forfeiture is then treated as a voluntary withdrawal by the member or retiree of that person’s own accumulated member contributions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts/relates to HB 96, HB 155 and SB 260 that also contain pension forfeiture provisions.

OTHER SUBSTANTIVE ISSUES

Currently, only members of the Judicial and Magistrate retirement systems are subject to a forfeiture of pension benefits provision with refund of that member’s own contributions.

PERA had the following comments:

Many PERA retirees retire with reciprocal service credit under more than one state retirement system. Under current law retired members may, subject to certain conditions, return to public employment or take office as an elected official. The bill will not affect a retired member’s pension benefits earned through previous public employment if the felony in question did not arise from a campaign offense or a public corruption offense committed on or after July 1, 2016.

Upon meeting the minimum service requirements of a state retirement plan, a member acquires a vested property right with due process protections under both the New Mexico and the United States Constitutions. The bill provides the defendant member of the retirement system with due process protections pending a direct appeal or disposition of a dissolution of marriage or child support matter filed prior to conviction and upon subsequent pardon.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Pension benefits of certain corrupt public officials and public employees will remain not subject to forfeiture.

AHO/jo/jle/al/jo