

HOUSE BILL 287

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO STATE LEGISLATORS; PROVIDING FOR THE FORFEITURE OF PENSIONS OR RETIREMENT SERVICE CREDIT UPON CONVICTION OF PUBLIC CORRUPTION OFFENSES; SPECIFYING THE CRIMINAL ACTS THAT QUALIFY AS PUBLIC CORRUPTION OFFENSES.

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

SECTION 1. [NEW MATERIAL] FORFEITURE OF PENSION OR SERVICE CREDIT FOR PUBLIC CORRUPTION OFFENSES.--

A. If, in the adjudication of a public corruption offense in a New Mexico district court, it appears that the defendant is a state legislator member or retired state legislator member as defined in the Public Employees Retirement Act, the prosecutor shall, in addition to the felony complaint, file a request for entry of an order of forfeiture of pension or service credit.

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1 B. Upon the filing of a request for entry of an
2 order of forfeiture of pension or service credit, the
3 forfeiture proceeding shall be brought in the same proceeding
4 as the criminal matter and presented to the same trier of fact;
5 provided that:

6 (1) the two issues shall be bifurcated;
7 (2) the Rules of Criminal Procedure for the
8 District Courts shall apply in the criminal matter and the
9 Rules of Civil Procedure for the District Courts shall apply in
10 the forfeiture proceeding; and

11 (3) if the criminal defendant is represented
12 by the public defender department, the chief public defender
13 may authorize department representation of the defendant in the
14 forfeiture proceeding.

15 C. If, in the forfeiture proceeding, the state
16 proves by clear and convincing evidence that the defendant is a
17 state legislator member or retired state legislator member and
18 has been convicted of a public corruption offense, after
19 determining issues related to community property and child
20 support obligations and issuing orders to that effect, the
21 court shall order the forfeiture of the state legislator
22 member's service credit accrued pursuant to a state legislator
23 member coverage plan or the retired state legislator member's
24 pension attributable to coverage under a state legislator
25 member coverage plan.

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1 D. The prosecutor shall serve notice of the entry
2 of the forfeiture order upon the public employees retirement
3 association.

4 E. After receipt by the public employees retirement
5 association of a forfeiture order, pending a final appeal, the
6 public employees retirement association shall:

7 (1) if the forfeited member has not retired,
8 suspend further accrual of the forfeited member's service
9 credit and payment of member contributions; or

10 (2) if the forfeited member has retired,
11 suspend payment of any pension.

12 F. If a forfeiture order was issued and was not
13 appealed or, upon final appeal, was upheld, the prosecutor
14 shall notify the public employees retirement association and
15 the public employees retirement association shall:

16 (1) if the forfeited member is not retired,
17 permanently revoke the forfeited member's service credit
18 accrued under a state legislator member coverage plan and
19 refund accumulated member contributions associated with the
20 state legislator member coverage plan to the forfeited member;
21 or

22 (2) if the forfeited member has retired,
23 permanently terminate the pension associated with a state
24 legislator member coverage plan and refund any associated
25 unexpended accumulated member contributions to the forfeited

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1 member, except as provided in Paragraphs (3) and (4) of this
2 subsection;

3 (3) if, prior to the order of forfeiture, a
4 court has issued an order pursuant to Section 10-11-136,
5 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, or if,
6 as part of the forfeiture order, orders were issued addressing
7 community property interests or child support obligations, then
8 any action by the public employees retirement association
9 pursuant to Paragraphs (1) and (2) of this subsection shall be
10 in compliance with those court orders; and

11 (4) if the forfeited member is currently
12 receiving a pension from the public employees retirement
13 association due to previous employment, the order shall not
14 affect the pension related to the previous employment if the
15 public corruption offense did not arise from conduct related to
16 the previous employment.

17 G. If a forfeiture order was issued and was
18 reversed on final appeal, the prosecutor shall notify the
19 public employees retirement association and the public
20 employees retirement association shall:

21 (1) if the state legislator member has not
22 retired, permit the state legislator member to pay
23 contributions and accrue service credit that would have accrued
24 during the period of suspension, provided that the state
25 legislator member otherwise qualifies for membership; or

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1 (2) if the state legislator member has
2 retired, reinstate payment of the suspended pension and pay in
3 full any suspended pension payments.

4 H. The provisions of this section apply to crimes
5 committed on or after July 1, 2018.

6 I. As used in this section:

7 (1) "conviction" means a judgment of guilty of
8 a felony or acceptance of a plea of guilty or nolo contendere
9 to a public corruption offense by a court of competent
10 jurisdiction;

11 (2) "forfeited member" means a state
12 legislator member or retired state legislator member who, under
13 a court order issued pursuant to this section, has forfeited
14 service credit or pension rights pursuant to a state legislator
15 member coverage plan;

16 (3) "member contributions" means the amounts
17 contributed by a state legislator member and credited to the
18 state legislator member's account in the public employees
19 retirement association, together with interest, if any,
20 credited to that account; and

21 (4) "public corruption offense" means any of
22 the following offenses committed by a state legislator member
23 or a retired state legislator member:

24 (a) violating any provision of the
25 Governmental Conduct Act that results in a felony conviction;

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1 (b) taking an official act for personal
2 financial interest, as provided in Section 10-16-4 NMSA 1978;

3 (c) paying or receiving public money for
4 services not rendered, as provided in Section 30-23-2 NMSA
5 1978;

6 (d) making or permitting a false public
7 voucher, as provided in Section 30-23-3 NMSA 1978;

8 (e) committing unlawful interest in a
9 public contract where the value received is more than fifty
10 dollars (\$50.00), as provided in Section 30-23-6 NMSA 1978;

11 (f) committing bribery of a public
12 officer or public employee, as provided in Section 30-24-1 NMSA
13 1978;

14 (g) demanding or receiving a bribe by a
15 public officer or employee, as provided in Section 30-24-2 NMSA
16 1978;

17 (h) tampering with public records, as
18 provided in Section 30-26-1 NMSA 1978;

19 (i) soliciting or receiving an illegal
20 kickback, as provided in Section 30-41-1 NMSA 1978; and

21 (j) offering or paying an illegal
22 kickback, as provided in Section 30-41-2 NMSA 1978.

23 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is July 1, 2018.