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## FISCAL IMPACT REPORT

SPONSOR McQueen/Moores ORIGINAL DATE 1/26/18  
LAST UPDATED 2/9/18 HB 109/aHJC

SHORT TITLE Public Corruption Act SB \_\_\_\_\_

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB111

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Secretary of State (SOS)  
New Mexico Attorney General's Office (NMAG)  
New Mexico Educational Retirement Board (NMERB)  
Public Employees Retirement Association (PERA)

### SUMMARY

#### Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 109 adopts the suggestion to change "elected" to "public" official to conform to the Criminal Code.

#### Synopsis of Original Bill

House Bill 109 proposes to create the Public Corruption Act which would require elected public officials who are found guilty, plead guilty or nolo contendere to offenses enumerated in the act to forfeit a portion or all of the service credits earned during the time the person served as public official or campaigned for public office, or refund any portion of the pension benefits received that are attributable to the time the public official was in office when an offense under the Public Corruption Act was committed.

The bill requires prosecutors to notify the Public Employees Retirement Association of the conviction for acts committed on or after July 1, 2018.

### **SIGNIFICANT ISSUES**

The Attorney General's Office (NMAG) points out that the bribery provisions in the bill needs to be conformed to Article IV, Sections 39 and 40 of the New Mexico Constitution. Article IV, Section 39, which states that a legislator convicted of bribery “shall be deemed guilty of a felony and upon conviction shall be punished by fine of not more than one thousand dollars or by imprisonment in the penitentiary for not less than one nor more than five years.” N.M. Const. art. IV, § 40; See e.g. *State v. Olguin*, 1994-NMCA-050, ¶ 8, 118 N.M. 91, 879 P.2d 92 (affirmed in part, set aside in part, 1995- NMSC-077, 120 N.M. 740, 906 P.2d 731).

The Public Employees Retirement Association (PERA) notes that upon meeting the minimum service requirements of a state retirement plan, a member of a retirement plan acquires a vested property right with due process protections under both the New Mexico and the United States Constitutions. A criminal proceeding for violation of the Public Corruption Act appears to afford necessary due process protections.

According to the New Mexico Educational Retirement Board (NMERB), this bill would only have a minor tangential effect on the retirement benefits administered by NMERB. As the bill recognizes, all public officials receive retirement benefits through the Public Employees Retirement Act. However, pursuant to the Reciprocity Retirement Act, NMSA 1978, Section 10-13-1, *et seq.*, public employees who have earned service credit in both the PERA and NMERB systems are permitted to combine service credit to determine eligibility for retirement benefits. The Reciprocity Act also allows members to use salary earned under one system to calculate the “final average salary” component of the pension benefit under both systems. As a result, if a corrupt public official (PERA member) with reciprocal service credit under the NMERB system sought to retire under the NMERB system, NMERB would not recognize any PERA service credit or salary which had previously been forfeited under the Public Corruption Act when NMERB determined the member's eligibility for retirement and final average salary. As of this date, there are currently 1,397 NMERB retirees who have reciprocal service credit with the PERA and 1,764 PERA retirees who have reciprocal service credit with NMERB.

The Administrative Office of the Courts (AOC) suggests that it is unclear whether the bill forfeiture penalties are to become part of a court-ordered sentence upon conviction for a “public corruption offense” or are to be applied by the PERA subsequent to conviction. If the intention were to have the forfeiture become part of a court-ordered sentence upon conviction, the bill needs to direct the court to include the penalties in a sentence handed down upon conviction.

### **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the following performance measures:

- District Courts:
  - Cases disposed of as a percent of cases filed;
  - Percent change in case filings by case type;

## **ADMINISTRATIVE IMPLICATIONS**

NMERB and PERA staff would have to coordinate the determination of retirement eligibility and calculate final average salary.

## **RELATIONSHIP**

Relates to HB111 Elected Official Pension Forfeiture

## **TECHNICAL ISSUES**

AOC and NMAG suggest defining “elected official,” to avoid confusion with “public official” and “public office”.

The Criminal Code defines “public officer” as any elected or appointed officer of the state or any of its political subdivisions...whether or not he receives remuneration for his services.”

The Campaign Reporting Act defines "public official" as a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act.

The bill defines “public official” as a person campaigning for or elected or appointed to an office in any primary, general or statewide special election, including county elections but not including judicial, municipal, school board or special district elections.

SOS suggest removing “in any primary, general or statewide special election, including county elections but not including judicial, municipal, school board or special district elections” to clarify the language since judicial officials are elected on the primary and general ballots and congressional candidates are elected on the primary and general ballot but do not accrue PERA benefits.

## **OTHER SUBSTANTIVE ISSUES**

SOS states that the bill suggests that the public officials included in the proposed legislation are those that are elected on the primary, general, or statewide special election and excludes other public officials including judicial positions.

PERA notes that the following laws allow for some of the provisions in this bill:

- The Judicial Retirement Act [NMSA 1978, Section 10-12B-17] provides for the forfeiture of pension benefits if a member is removed from office pursuant to the provisions of Article 6, Section 32 of the Constitution of New Mexico.
- The Magistrate Retirement Act [NMSA 1978, Section 10-12C-16] provides for the forfeiture of pension benefits if a member is removed from office pursuant to the provisions of Article 6, Section 32 of the Constitution of New Mexico.