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FISCAL IMPACT REPORT

SPONSOR Moore/McQueen **ORIGINAL DATE** 2/12/21
LAST UPDATED _____ **HB** _____
SHORT TITLE Public Corruption Act **SB** 194
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI	NFI	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Education Retirement Board (ERB)
 New Mexico Attorney General (NMAG)
 Public Employees Retirement Association (PERA)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 194 (SB194) creates the Public Corruption Act. Under the act, a public official forfeits service credit and retirement benefits they have earned under the Public Employees Retirement Act (PERA) while serving as a public official on conviction or guilty plea for a public corruption offense. A public official is defined as a person campaigning for or elected or appointed to an elected office, although it excludes judicial, municipal, school boards and special districts. Public corruption offenses include the following felonies: fraud, embezzlement, extortion, forgery, bribery of a public official or employee, demanding or receiving a bribe involving a public official or employee, racketeering, computer crimes, money laundering, perjury, or offering or receiving bribes and kickbacks.

The penalty under the act is a nonreversible forfeiture of all service credit earned with PERA for the time the public official held public office. This forfeiture is in addition to any penalties the public official may have received for the underlying offense. If the public official has already retired, the official must forfeit the part of the pension earned while holding public office or all of

the pension if it was all earned while employed as a public official. If the retired person has earned the entire retirement benefit as a public official, the retirement benefit will be cancelled. If the official has been paid less in retirement benefits than the total amount of contributions plus interest, the official will be paid the difference. Any benefits subject to court orders dividing benefits for child support or community property purposes are not affected if the orders were issued prior to the offense committed by the public official.

The act prospectively eliminates a penalty enhancement for public officials contained in Section 31-18-15.4 NMSA 1978.

FISCAL IMPLICATIONS

Because SB194 does not create a new offense, but rather increases the penalty for existing offenses, it will not lead to additional prosecutions and will therefore have no fiscal impact.

SIGNIFICANT ISSUES

PERA reports currently only members of the judicial and magistrate retirement systems are subject to a forfeiture of pension benefit provision. Under both the judicial and magistrate retirement systems, if a judge or magistrate is removed from office by the Judicial Standards Commission [Article 6, Section 32 of the Constitution of New Mexico], his or her only entitlement from the retirement fund is a refund of the member's own contributions.

AOC notes:

It is unclear whether the SB194 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, SB 194 would need to direct the court to include the penalties in a sentence handed down upon conviction.

CJ/sb