

SENATE RULES COMMITTEE SUBSTITUTE FOR  
SENATE BILL 261

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO RETIREMENT BENEFITS; PROVIDING FOR THE FORFEITURE  
OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT  
SYSTEMS UPON THE CONVICTION FOR CERTAIN CRIMES.

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

Section 1. FORFEITURE OF PENSION FOR CERTAIN PENALTY  
CONVICTIONS.--

A. As used in this section:

(1) "conviction" means a judgment of guilty of  
a felony or acceptance of a plea of nolo contendere to a felony  
charge by a state or federal court of competent jurisdiction;

(2) "felony" means a crime designated by law  
as a felony or a crime for which the authorized penalty is  
imprisonment for one year or more;

(3) "forfeited member" means an individual

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1 who, under a court order issued pursuant to this section, has  
2 forfeited pension rights in a state system;

3 (4) "member" means an individual who is  
4 classified as a "member" of a state system pursuant to the laws  
5 governing that state system;

6 (5) "member contributions" means the amounts  
7 deducted from a member's salary and credited to the member's  
8 account in a state system, together with interest, if any,  
9 credited to that account;

10 (6) "public employment" means a position held  
11 as an elected or appointed official or as an employee of the  
12 state or one of its agencies, departments, political  
13 subdivisions or institutions;

14 (7) "retired member" means an individual who  
15 has retired and is receiving a pension from a state system; and

16 (8) "state system" means a retirement program  
17 provided for in the Educational Retirement Act, the Public  
18 Employees Retirement Act, the Magistrate Retirement Act or the  
19 Judicial Retirement Act.

20 B. If, in the adjudication of a felony in a New  
21 Mexico district court, it appears that the defendant is a  
22 member or retired member and that the felony is one arising  
23 from the misuse of public money and related to the member's or  
24 retired member's public employment, the district attorney or  
25 attorney general shall, in addition to the felony complaint,

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1 file for an order of forfeiture of pension. Upon the filing,  
2 the forfeiture of pension proceeding shall be brought in the  
3 same proceeding as the criminal matter and presented to the  
4 same trier of fact; provided that:

5 (1) the two issues shall be bifurcated;

6 (2) the rules of criminal procedure shall  
7 apply in the criminal matter and the rules of civil procedure  
8 shall apply in the forfeiture proceeding;

9 (3) if the criminal defendant is represented  
10 by the public defender department, the chief public defender or  
11 the district public defender may authorize department  
12 representation of the defendant in the forfeiture proceeding;  
13 and

14 (4) if the state proves by clear and  
15 convincing evidence that the defendant is a member or retired  
16 member and has been convicted of a felony arising out of the  
17 misuse of public money and related to the member's or retired  
18 member's public employment, after determining issues related to  
19 community property and child support obligations and issuing  
20 orders to that effect, the court may order the forfeiture of  
21 the member's or retired member's right to a pension and other  
22 retirement benefits from a state system and serve the order  
23 upon the appropriate state system.

24 C. Upon a person's initial conviction in a court of  
25 another state or a federal court of a felony that appears to

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1 arise out of the misuse of public money and related to public  
2 employment, the attorney general or a district attorney shall  
3 initiate the forfeiture of a state system pension by filing for  
4 an order of forfeiture of pension with the district court for  
5 the county of Santa Fe or the district court for the county in  
6 which the member or retired member resides or in which the  
7 member or retired member was engaged in public employment;  
8 provided that no action shall be brought pursuant to this  
9 subsection after three years from the date of the person's  
10 initial conviction. If, after notice and hearing, the state  
11 proves, by clear and convincing evidence, that the person is a  
12 member or retired member, that the member or retired member was  
13 convicted of a felony and that the felony was one arising out  
14 of the misuse of public money and related to the member's or  
15 retired member's public employment, after determining issues  
16 related to community property and child support obligations and  
17 issuing orders to that effect, the court may order the  
18 forfeiture of the member's or retired member's right to a  
19 pension and other retirement benefits from a state system and  
20 notify the appropriate state system of the order.

21 D. After receipt by a state system of an order  
22 issued pursuant to Subsection B or C of this section, pending a  
23 final appeal, the state system shall suspend the forfeited  
24 member's service credit and, if the forfeited member is a  
25 retired member, shall suspend any pension.

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1           E. After notification to a state system that an  
2 order issued pursuant to Subsection B or C of this section was  
3 not appealed or, upon final appeal, was upheld:

4           (1) except as provided in Paragraph (5) of  
5 this subsection, the state system shall revoke the forfeited  
6 member's service credit;

7           (2) if the forfeited member is not currently  
8 receiving a pension, except as provided in Paragraph (4) of  
9 this subsection, the state system shall refund accumulated  
10 member contributions to the forfeited member;

11           (3) if the forfeited member is currently  
12 receiving a pension, except as provided in Paragraph (4) or (5)  
13 of this subsection, the state system shall cease paying a  
14 pension and shall refund any unexpended accumulated member  
15 contributions to the forfeited member;

16           (4) if, prior to the order of forfeiture, a  
17 court has issued an order pursuant to Section 10-11-136,  
18 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, or as  
19 part of the forfeiture order, orders were issued addressing  
20 community property interests or child support obligations, then  
21 any action by a state system pursuant to Paragraph (2) or (3)  
22 of this subsection shall be in compliance with those court  
23 orders; and

24           (5) if the forfeited member is currently  
25 receiving a pension from a state system due to previous

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1 employment but had subsequently returned to public employment  
2 while continuing to receive the pension, the order shall not  
3 affect the pension related to the previous employment if the  
4 felony did not arise from conduct related to the previous  
5 employment.

6 F. If, on final appeal, the court finding pursuant  
7 to Subsection B or C of this section or the conviction is  
8 overturned, the forfeiture order is voided, the attorney  
9 general shall notify the state system and the state system  
10 shall reinstate the forfeited service credit and pay in full  
11 any suspended pension payments.

12 G. If no appeal is made from a court finding  
13 pursuant to Subsection B or C of this section or if, on final  
14 appeal, the court finding is upheld, the district attorney or  
15 the attorney general shall notify the state system and the  
16 state system shall comply with the procedures of Subsection E  
17 of this section.

18 Section 2. APPLICABILITY.--The provisions of this act  
19 apply to crimes committed on or after the effective date of  
20 this act.