

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 8

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2005

INTRODUCED BY

Rod Adair

AN ACT

**RELATING TO PUBLICLY FUNDED BENEFITS; PROVIDING FOR THE
REVOCATION OF MEMBERSHIP AND PENSIONS FOR MEMBERS OF THE STATE
RETIREMENT SYSTEM ACTS AND THE EDUCATIONAL RETIREMENT SYSTEM
UPON CONVICTION OF A FELONY ARISING OUT OF SERVICE.**

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

**Section 1. A new section of the Public Employees
Retirement Act is enacted to read:**

**"NEW MATERIAL PENSION CONDITIONAL-- EFFECT OF FELONY
CONVICTION. --**

A. As used in this section:

**(1) "conviction" means a judgment of guilty or
acceptance of a plea of nolo contendere by a state or federal
court of competent jurisdiction for a felony arising out of
service as a public employee;**

underscored material = new
[bracketed material] = delete

1 (2) "felony arising out of service as a public
2 employee" means conviction of one or more of the following
3 related to the public employee's powers and duties:

- 4 (a) fraud;
5 (b) embezzlement;
6 (c) extortion;
7 (d) soliciting or receiving bribes,
8 kickbacks or rebates;
9 (e) forgery;
10 (f) tampering with public records;
11 (g) fraudulent securities practices;
12 (h) any other felony whereby the public
13 employee realizes or attempts to realize a gain or advantage
14 for the employee or another person through use of power,
15 rights, privilege, duties or position; and
16 (i) any other felony that is otherwise
17 related to the employee's service as a public employee;

18 (3) "member" means a member or retired member
19 of a retirement system administered by the public employees
20 retirement association, including the Public Employees
21 Retirement Act, the Judicial Retirement Act, the Magistrate
22 Retirement Act and the Volunteer Firefighters Retirement Act;

23 (4) "public employee" means a member who is
24 elected or appointed to public office or employed by or retired
25 from an affiliated public employer; and

underscored material = new
[bracketed material] = delete

1 (5) "publicly funded pension" means a pension
2 administered by the public retirement association that is
3 funded in whole or in part by an affiliated public employer.

4 B. The receipt of a publicly funded pension is
5 expressly conditioned on the rendering of honorable service by
6 a public employee. Conviction of a felony arising out of
7 service as a public employee is prima facie evidence of
8 dishonorable service and the public employee's membership in a
9 retirement system administered by the association and any
10 pension benefit shall be revoked.

11 C. Upon the initial conviction in a state or
12 federal court of competent jurisdiction of a member for a
13 felony that appears to be a felony arising out of service as a
14 public employee, the attorney general or a district attorney
15 shall initiate the revocation of a publicly funded pension by
16 filing for an order of revocation of pension and other
17 retirement benefits with the first judicial district court or
18 the district court in the district in which the member resides
19 or was employed by an affiliated public employer.

20 D. After hearing and upon the issuance of the order
21 of revocation of pension and other retirement benefits, the
22 association shall refund the accumulated member contributions
23 to the member who has not retired. If the member retired after
24 the commission of a felony arising out of service as a public
25 employee, the association shall cease paying a pension to the

underscored material = new
[bracketed material] = delete

1 revoked member and shall refund any remaining portion of the
2 accumulated member contributions.

3 E. If the conviction is overturned on appeal, the
4 revocation order is voided and the person may rejoin the
5 association upon payment of the amount of the refund payment. "

6 Section 2. A new section of the Educational Retirement
7 Act is enacted to read:

8 "[NEW MATERIAL] RETIREMENT BENEFIT CONDITIONAL-- EFFECT OF
9 FELONY CONVICTION. --

10 A. As used in this section:

11 (1) "conviction" means a judgment of guilty or
12 acceptance of a plea of nolo contendere by a state or federal
13 court of competent jurisdiction for a felony arising out of
14 service as an educational employee;

15 (2) "educational employee" means a member who
16 is elected or appointed to public office or employed by or
17 retired from a local administrative unit;

18 (3) "felony arising out of service as an
19 educational employee" means conviction of one or more of the
20 following related to the educational employee's powers and
21 duties:

- 22 (a) fraud;
- 23 (b) embezzlement;
- 24 (c) extortion;
- 25 (d) soliciting or receiving bribes,

1 kickbacks or rebates;

2 (e) forgery;

3 (f) tampering with public records;

4 (g) fraudulent securities practices;

5 (h) any other felony whereby the public
6 employee realizes or attempts to realize a gain or advantage
7 for the employee or another person through use of power,
8 rights, privilege, duties or position; and

9 (i) any other felony that is otherwise
10 related to the employee's service as an educational employee;

11 (4) "member" means a member, retired member or
12 participant of the educational retirement system administered
13 by the board; and

14 (5) "publicly funded retirement benefit" means
15 a retirement benefit administered by the board that is funded
16 in whole or in part by a local administrative unit.

17 B. The receipt of a publicly funded retirement
18 benefit is expressly conditioned on the rendering of honorable
19 service by an educational employee. Conviction of a felony
20 arising out of service as an educational employee is prima
21 facie evidence of dishonorable service and the educational
22 employee's membership in the retirement system administered by
23 the board and any retirement benefit shall be revoked.

24 C. Upon the initial conviction in a state or
25 federal court of competent jurisdiction of a member for a

1 felony that appears to be a felony arising out of service as an
2 educational employee, the attorney general or a district
3 attorney may initiate the revocation of a publicly funded
4 retirement benefit by filing for an order of revocation of
5 retirement benefits with the first judicial district court or
6 the district court in the district in which the member resides
7 or was employed by a local administrative unit.

8 D. After hearing and upon the issuance of the order
9 of revocation of retirement benefits, the board shall refund
10 the member's contributions plus interest to the member who has
11 not retired. If the member retired after the commission of a
12 felony arising out of service as an educational employee, the
13 board shall cease paying a retirement benefit to the revoked
14 member and shall refund any remaining portion of the member's
15 contributions plus interest.

16 E. If the conviction is overturned on appeal, the
17 revocation order is voided and the person may rejoin the
18 retirement system upon payment of the amount of the refund
19 payment. "

20 Section 3. APPLICABILITY.--This act applies to crimes
21 committed on or after the effective date of this act.