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SENATE BILL 261

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

INTRODUCED BY

Sue Wilson Beffort

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 conduct related to the member's or retired member's public
24 employment, the district attorney or attorney general shall, in
25 addition to the felony complaint, file for an order of

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1 forfeiture of pension. Upon the filing, the forfeiture of
2 pension proceeding shall be brought in the same proceeding as
3 the criminal matter and presented to the same trier of fact;
4 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
17 conduct related to the member's or retired member's public
18 employment, the court may order the forfeiture of the member's
19 or retired member's right to a pension and other retirement
20 benefits from a state system and serve the order upon the
21 appropriate state system.

22 C. Upon a person's initial conviction in a court of
23 another state or a federal court of a felony that appears to
24 arise out of conduct related to public employment, the attorney
25 general or a district attorney shall initiate the forfeiture of

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1 a state system pension by filing for an order of forfeiture of
2 pension with the district court for the county of Santa Fe or
3 the district court for the county in which the member or
4 retired member resides or in which the member or retired member
5 was engaged in public employment. If, after notice and
6 hearing, the state proves, by clear and convincing evidence,
7 that the person is a member or retired member, that the member
8 or retired member was convicted of a felony and that the felony
9 was one arising out of conduct related to the member's or
10 retired member's public employment, the court may order the
11 forfeiture of the member's or retired member's right to a
12 pension and other retirement benefits from a state system and
13 notify the appropriate state system of the order.

14 D. After receipt by a state system of an order
15 issued pursuant to Subsection B or C of this section:

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

19 (2) if the forfeited member is not currently
20 receiving a pension, except as provided in Paragraph (4) of
21 this subsection, the state system shall refund accumulated
22 member contributions to the forfeited member;

23 (3) if the forfeited member is currently
24 receiving a pension, except as provided in Paragraph (4) or (5)
25 of this subsection, the state system shall cease paying a

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1 pension and shall refund any unexpended accumulated member
2 contributions to the forfeited member;

3 (4) 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, then any
6 action by a state system pursuant to Paragraph (2) or (3) of
7 this subsection shall be in compliance with the prior court
8 order; and

9 (5) if the forfeited member is currently
10 receiving a pension from a state system due to previous
11 employment but had subsequently returned to public employment
12 while continuing to receive the pension, the order shall not
13 affect the pension related to the previous employment if the
14 felony did not arise from conduct related to the previous
15 employment.

16 E. If, on final appeal, the court finding pursuant
17 to Subsection B or C of this section or the conviction is
18 overturned, the forfeiture order is voided and the member may
19 reinstate the forfeited service credit pursuant to the laws
20 governing the state system, provided that, notwithstanding any
21 law to the contrary, the state system shall waive any
22 membership requirement for the purchase of forfeited service
23 credit.

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

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this act.

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