

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 259aa

50th Legislature, 1st Session, 2011

Tracking Number: .183880.2

Short Title: Forfeiture of Public Official Benefits

Sponsor(s): Senator William H. Payne

Analyst: Craig J. Johnson

Date: May 6, 2011

AS AMENDED

The House Judiciary Committee amendments:

- **strike provisions requiring pension forfeiture proceedings against a public official convicted of a felony related to their holding of an elected office; and**
- **provide for an additional fine not to exceed the offenders compensation and benefits, as opposed to salary and benefits.**

The Senate Judiciary Committee amendments add language clarifying that the forfeiture or suspension of benefits is to occur “after the commission of the first act that was a basis for the felony conviction.”

With this amendment, a person convicted of a felony related to their holding of an elected office would forfeit only those pension benefits that were accrued after the commission of the first felony act, rather than their entire pension.

Original Bill Summary:

SB 259 adds a new section to the *Criminal Sentencing Act* that:

- requires pension forfeiture proceedings against a public official¹ convicted of a felony related to their holding of an elected office; and
- provides for an additional fine in the amount of salary and fringe benefits earned since the felony was committed.

Fiscal Impact:

SB 259 does not contain an appropriation.

¹ SB 259 defines “public official” as a person holding an office covered by the *Campaign Reporting Act*.

Fiscal Issues:

SB 259 deals with a public official who is convicted of a felony that “relates to, arises out of or is in connection with” the office. SB 259 outlines the actions to be taken by the state retirement system upon receipt of an order of forfeiture. If no appeal is made or, on final appeal, the conviction is upheld, the retirement system procedures are as follows:

- revoke the member’s service credit;
- refund the accumulated member contributions, if the member is not yet receiving a pension;
- cease pension payments if the member is receiving a pension and refund any unexpended member contributions;
- comply with prior court orders related to community property interests or child support obligations; and
- apply the forfeiture order only to the pension funds related to the period of employment during which the felony occurred.

Substantive Issues:

The analysis from the Attorney General’s Office (AGO) noted concerns about the definition of the underlying crime in SB 259. The AGO wrote, “it is unclear what ‘relates to, arises out of or is in connection with’ means.”

The analysis from the Administrative Office of the Courts provided the following information. The National Association of State Retirement Systems compiled an analysis of selected state policies governing the termination or garnishment of public pensions in December 2010. New Mexico was included in the 41 states for which state policies were described. Of the 41 states, 23 have some provisions for the forfeiture or revocation of a public employee’s pension due to a variety of felony convictions, most related to the individual’s employment. Of the 23 states with policies regarding forfeiture of pension and benefits, five apply only to elected officials and four specifically refer to both employees and elected officials.

Related Bill(s):

SB 247a *Forfeiture of Retirement for Certain Crimes*