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HOUSE BILL 111

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; SPECIFYING THE CRIMINAL ACTS THAT QUALIFY AS PUBLIC CORRUPTION OFFENSES; MANDATING POSTING OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES; PROVIDING FOR ENHANCEMENT OF A SENTENCE FOR CONVICTION OF A CRIME DEALING WITH PUBLIC CORRUPTION; BARRING PERSONS CONVICTED OF PUBLIC CORRUPTION OFFENSES FROM LOBBYING OR ENTERING INTO CONTRACTS WITH THE STATE; PROVIDING FOR THE FORFEITURE OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT SYSTEMS UPON CONVICTION OF PUBLIC CORRUPTION OFFENSES; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 30-16-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 16-7, as amended) is amended to read:

"30-16-8. EMBEZZLEMENT.--

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1 A. Embezzlement consists of a person embezzling or
2 converting to the person's own use anything of value, with
3 which the person has been entrusted, with fraudulent intent to
4 deprive the owner thereof.

5 B. Whoever commits embezzlement when the value of
6 the thing embezzled or converted is two hundred fifty dollars
7 (\$250) or less is guilty of a petty misdemeanor.

8 C. Whoever commits embezzlement when the value of
9 the thing embezzled or converted is over two hundred fifty
10 dollars (\$250) but not more than five hundred dollars (\$500) is
11 guilty of a misdemeanor.

12 D. Whoever commits embezzlement when the value of
13 the thing embezzled or converted is over five hundred dollars
14 (\$500) but not more than two thousand five hundred dollars
15 (\$2,500) is guilty of a fourth degree felony.

16 E. Whoever commits embezzlement when the value of
17 the thing embezzled or converted is over two thousand five
18 hundred dollars (\$2,500) but not more than twenty thousand
19 dollars (\$20,000) is guilty of a third degree felony.

20 F. Whoever commits embezzlement when the value of
21 the thing embezzled or converted exceeds twenty thousand
22 dollars (\$20,000) is guilty of a second degree felony.

23 G. A person elected or appointed to a position with
24 or employed by a public entity who commits embezzlement against
25 the public entity when the value of the thing embezzled or

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1 converted is over five hundred dollars (\$500) shall have the
2 basic sentence of imprisonment as provided for in this section
3 increased by one year.

4 H. A person convicted under the provisions of this
5 section shall not, individually or in association with others,
6 submit a bid to or enter into a contract for services,
7 construction or items of tangible personal property with a
8 public entity or act as a lobbyist, as defined in Section
9 2-11-2 NMSA 1978. Any person who knowingly and willfully
10 violates the provisions of this subsection is guilty of a third
11 degree felony.

12 I. As used in this section, "public entity" means
13 the state or one of its agencies, departments, institutions or
14 political subdivisions."

15 SECTION 2. Section 30-23-2 NMSA 1978 (being Laws 1963,
16 Chapter 303, Section 23-2) is amended to read:

17 "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES
18 NOT RENDERED.--

19 A. Paying or receiving public money for services
20 not rendered consists of knowingly making or receiving payment
21 or causing payment to be made from public funds where such
22 payment purports to be for wages, salary or remuneration for
23 personal services [~~which~~] that have not in fact been rendered.

24 B. Nothing in this section shall be construed to
25 prevent the payment of public funds where such payments are

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1 intended to cover lawful remuneration to public officers or
2 public employees for vacation periods or absences from
3 employment because of sickness or for other lawfully authorized
4 purposes.

5 C. Whoever commits paying or receiving public money
6 for services not rendered is guilty of a fourth degree felony;
7 provided that, if a person elected to or appointed to a
8 position with or employed by a public entity is convicted of
9 paying or receiving public money for services not rendered, the
10 basic sentence of imprisonment shall be increased by one year.

11 D. A person convicted under the provisions of this
12 section shall not, individually or in association with others,
13 submit a bid to or enter into a contract for services,
14 construction or items of tangible personal property with a
15 public entity or act as a lobbyist, as defined in Section
16 2-11-2 NMSA 1978. Any person who knowingly and willfully
17 violates the provisions of this subsection is guilty of a third
18 degree felony.

19 E. As used in this section, "public entity" means
20 the state or one of its agencies, departments, institutions or
21 political subdivisions."

22 SECTION 3. Section 30-23-3 NMSA 1978 (being Laws 1963,
23 Chapter 303, Section 23-3, as amended) is amended to read:

24 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

25 A. Making or permitting false public voucher

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1 consists of knowingly, intentionally or [~~wilfully~~] willfully
2 making, causing to be made or permitting to be made a false
3 material statement or forged signature upon any public voucher,
4 or invoice supporting a public voucher, with intent that the
5 voucher or invoice shall be relied upon for the expenditure of
6 public money.

7 B. Whoever commits making or permitting false
8 public voucher is guilty of a fourth degree felony; provided
9 that, if a person elected to or appointed to a position with or
10 employed by a public entity is convicted of making or
11 permitting false public voucher, the basic sentence of
12 imprisonment shall be increased by one year.

13 C. A person convicted under the provisions of this
14 section shall not, individually or in association with others,
15 submit a bid to or enter into a contract for services,
16 construction or items of tangible personal property with a
17 public entity or act as a lobbyist, as defined in Section
18 2-11-2 NMSA 1978. Any person who knowingly and willfully
19 violates the provisions of this subsection is guilty of a third
20 degree felony.

21 D. As used in this section, "public entity" means
22 the state or one of its agencies, departments, institutions or
23 political subdivisions."

24 **SECTION 4.** Section 30-23-6 NMSA 1978 (being Laws 1963,
25 Chapter 303, Section 23-6) is amended to read:

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1 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

2 A. Unlawful interest in a public contract consists
3 of:

4 [~~A.—any~~] (1) a public officer or public
5 employee receiving anything of value, directly or indirectly,
6 from either a seller or a seller's agents or a purchaser or a
7 purchaser's agents in connection with the sale or purchase of
8 securities, goods, leases, lands or anything of value by the
9 state or any of its political subdivisions, unless:

10 [~~(1)~~] (a) prior written consent of the
11 head of the department of the state or political subdivision
12 involved in the transaction is obtained and filed as a matter
13 of public record in the office of secretary of state; and

14 [~~(2)~~] (b) subsequent to the transaction,
15 a statement is filed as a matter of public record in the office
16 of secretary of state by the purchaser or seller giving
17 anything of value to a public officer or public employee and
18 this statement contains the date the services were rendered,
19 the amount of remuneration for the rendered services and the
20 nature of the rendered services; and

21 [~~B.—any~~] (2) a seller or [~~his~~] the seller's
22 agents or a purchaser or [~~his~~] the purchaser's agents offering
23 to pay or paying anything of value, directly or indirectly, to
24 a public officer or public employee in connection with the sale
25 or purchase of securities or goods by the state or any of its

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1 political subdivisions unless the requirements of [~~Paragraphs~~
2 ~~(1) and (2)~~] Subparagraphs (a) and (b) of Paragraph (1) of
3 [~~Subsection A of~~] this [~~section~~] subsection are complied with.
4 [~~Any~~]

5 B. A person violating the provisions of Paragraph
6 (2) of Subsection [~~B~~] A of this section, where [~~such~~] the
7 violations [~~forms~~] form the basis for prosecution and
8 conviction of a public officer or public employee, shall be
9 disqualified from transacting [~~any~~] business with the state or
10 its political subdivisions for a period of five years from the
11 date of [~~such~~] the violation.

12 C. Nothing in this section shall prohibit a public
13 officer or public employee from receiving [~~his~~] regular
14 remuneration for services rendered to the state or its
15 political subdivisions in connection with the aforementioned
16 transactions.

17 D. Whoever commits unlawful interest in public
18 contracts where the value received by [~~him~~] the person is fifty
19 dollars (\$50.00) or less is guilty of a misdemeanor.

20 E. Whoever commits unlawful interest in public
21 contracts where the value received by [~~him~~] the person is more
22 than fifty dollars (\$50.00) is guilty of a fourth degree
23 felony; provided that the basic sentence of imprisonment shall
24 be increased by one year. A public officer or public employee
25 convicted of a felony [~~hereunder~~] under the provisions of this

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1 section is forever disqualified from employment by the state or
2 any of its political subdivisions.

3 F. A person convicted under the provisions of
4 Paragraph (1) or (2) of Subsection A of this section, where the
5 value received by the person is more than fifty dollars
6 (\$50.00), shall not, individually or in association with
7 others, submit a bid to or enter into a contract for services,
8 construction or items of tangible personal property with a
9 public entity or act as a lobbyist, as defined in Section
10 2-11-2 NMSA 1978. Any person who knowingly and willfully
11 violates the provisions of this subsection is guilty of a third
12 degree felony.

13 G. As used in this section, "public entity" means
14 the state or one of its agencies, departments, institutions or
15 political subdivisions."

16 **SECTION 5.** Section 30-24-1 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 24-1) is amended to read:

18 "30-24-1. BRIBERY OF PUBLIC OFFICER OR PUBLIC EMPLOYEE.--

19 A. Bribery of public officer or public employee
20 consists of any person giving or offering to give, directly or
21 indirectly, anything of value to any public officer or public
22 employee, with intent to induce or influence [~~such~~] that
23 public officer or public employee to:

24 [~~A.~~] (1) give or render any official opinion,
25 judgment or decree;

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1 [~~B-~~] (2) be more favorable to one party than
2 to the other in any cause, action, suit, election, appointment,
3 matter or thing pending or to be brought before [~~such~~] that
4 person;

5 [~~G-~~] (3) procure [~~him~~] the person to vote or
6 withhold [~~his~~] the person's vote on [~~any~~] a question, matter or
7 proceeding [~~which~~] that is then or may thereafter be pending,
8 and [~~which~~] that may by law come or be brought before [~~him~~] the
9 person in [~~his~~] the person's public capacity;

10 [~~D-~~] (4) execute any of the powers [~~in him~~]
11 vested in the person; or

12 [~~E-~~] (5) perform [~~any~~] a public duty otherwise
13 than as required by law, or to delay in or omit to perform
14 [~~any~~] a public duty required of [~~him~~] the person by law.

15 B. Whoever commits bribery of a public officer or
16 public employee is guilty of a third degree felony; provided
17 that, if a person elected to or appointed to a position with or
18 employed by a public entity is convicted of bribery of a public
19 officer or public employee, the basic sentence of imprisonment
20 shall be increased by one year.

21 C. A person convicted under the provisions of
22 Subsection A of this section shall not, individually or in
23 association with others, submit a bid to or enter into a
24 contract for services, construction or items of tangible
25 personal property with a public entity or act as a lobbyist, as

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1 defined in Section 2-11-2 NMSA 1978. Any person who knowingly
2 and willfully violates the provisions of this subsection is
3 guilty of a third degree felony.

4 D. As used in this section, "public entity" means
5 the state or one of its agencies, departments, institutions or
6 political subdivisions."

7 SECTION 6. Section 30-24-2 NMSA 1978 (being Laws 1963,
8 Chapter 303, Section 24-2) is amended to read:

9 "30-24-2. DEMANDING OR RECEIVING BRIBE BY PUBLIC OFFICER
10 OR PUBLIC EMPLOYEE.--

11 A. Demanding or receiving bribe by public officer
12 or public employee consists of any public officer or public
13 employee soliciting or accepting, directly or indirectly,
14 anything of value, with intent to have [~~his~~] the officer's or
15 employee's decision or action on any question, matter, cause,
16 proceeding or appointment influenced [~~thereby~~] by the bribe,
17 and which decision or action, by law, is pending or might be
18 brought before [~~him~~] the officer or employee in [~~his~~] the
19 officer's or employee's official capacity.

20 B. Whoever commits demanding or receiving a bribe
21 by a public officer or public employee is guilty of a third
22 degree felony [~~and~~]; provided that the basic sentence of
23 imprisonment prescribed for the offense shall be increased by
24 one year. Upon conviction, [~~thereof such~~] a public officer or
25 public employee shall forfeit the office then held by [~~him~~] the

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1 officer or employee.

2 C. A person convicted under the provisions of this
3 section shall not, individually or in association with others,
4 submit a bid to or enter into a contract for services,
5 construction or items of tangible personal property with a
6 public entity or act as a lobbyist, as defined in Section
7 2-11-2 NMSA 1978. Any person who knowingly and willfully
8 violates the provisions of this subsection is guilty of a third
9 degree felony.

10 D. As used in this section, "public entity" means
11 the state or one of its agencies, departments, institutions or
12 political subdivisions."

13 SECTION 7. Section 30-41-1 NMSA 1978 (being Laws 1979,
14 Chapter 384, Section 1) is amended to read:

15 "30-41-1. SOLICITING OR RECEIVING ILLEGAL KICKBACK.--

16 A. Whoever knowingly solicits or receives, [~~any~~]
17 directly or indirectly, a remuneration in the form of any
18 kickback, bribe or rebate [~~directly or indirectly, overtly or~~
19 ~~covertly~~] in cash or in kind from a person:

20 [~~A-~~] (1) in return for referring an individual
21 to that person for the furnishing or arranging for the
22 furnishing of any item or service for which payment may be made
23 in whole or in part with public money; or

24 [~~B-~~] (2) in return for purchasing, leasing,
25 ordering or arranging for or recommending purchasing, leasing

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1 or ordering any goods, facilities, services or items for which
2 payment may be made in whole or in part with public money,
3 [~~shall be~~] is guilty of a fourth degree felony; provided that,
4 if a person elected or appointed to a position with or employed
5 by a public entity is convicted of soliciting or receiving
6 illegal kickback, the basic sentence of imprisonment shall be
7 increased by one year.

8 B. A person convicted under the provisions of this
9 section shall not, individually or in association with others,
10 submit a bid to or enter into a contract for services,
11 construction or items of tangible personal property with a
12 public entity or act as a lobbyist, as defined in Section
13 2-11-2 NMSA 1978. Any person who knowingly and willfully
14 violates the provisions of this subsection is guilty of a third
15 degree felony.

16 C. As used in this section:

17 (1) "kickback" means a percentage of income
18 given to a person in a position of influence as payment for
19 having made the income possible; and

20 (2) "public entity" means the state or one of
21 its agencies, departments, institutions or political
22 subdivisions."

23 **SECTION 8.** Section 30-41-2 NMSA 1978 (being Laws 1979,
24 Chapter 384, Section 2) is amended to read:

25 "30-41-2. OFFERING OR PAYING ILLEGAL KICKBACK.--

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1 A. Whoever knowingly offers or pays, ~~[any]~~ directly
2 or indirectly, a remuneration in the form of any kickback,
3 bribe or rebate ~~[directly or indirectly, overtly or covertly]~~
4 in cash or in kind to any person to induce such person:

5 ~~[A-]~~ (1) to refer an individual to a person
6 for the furnishing or arranging for the furnishing of ~~[any]~~ an
7 item or service for which payment may be made in whole or in
8 part with public money; or

9 ~~[B-]~~ (2) to purchase, lease, order or arrange
10 for or recommend purchasing, leasing or ordering any goods,
11 facilities, services or items for which payment may be made in
12 whole or in part with public money, shall be guilty of a fourth
13 degree felony; provided that, if a person elected to or
14 appointed to a position with or employed by a public entity is
15 convicted of offering or paying illegal kickback, the basic
16 sentence of imprisonment shall be increased by one year.

17 B. A person convicted under the provisions of this
18 section shall not, individually or in association with others,
19 submit a bid to or enter into a contract for services,
20 construction or items of tangible personal property with a
21 public entity or act as a lobbyist, as defined in Section
22 2-11-2 NMSA 1978. Any person who knowingly and willfully
23 violates the provisions of this subsection is guilty of a third
24 degree felony.

25 C. As used in this section:

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1 (1) "kickback" means a percentage of income
2 given to a person in a position of influence as payment for
3 having made the income possible; and

4 (2) "public entity" means the state or one of
5 its agencies, departments, institutions or political
6 subdivisions."

7 SECTION 9. [NEW MATERIAL] PUBLICATION AND DISSEMINATION
8 OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES AND OTHER
9 CORRUPT PRACTICES.--

10 A. Every state agency, department, political
11 subdivision and institution shall post in a conspicuous place a
12 listing of all crimes constituting public corruption offenses
13 and other corrupt practices and the penalties associated with
14 such crimes.

15 B. As used in this section, "public corruption
16 offense" means:

17 (1) violating the ethical principles of public
18 service, as provided in Subsection D of Section 10-16-3 NMSA
19 1978;

20 (2) taking an official act for personal
21 financial interest, as provided in Section 10-16-4 NMSA 1978;

22 (3) embezzlement, as provided in Section
23 30-16-8 NMSA 1978; provided that the embezzlement is committed
24 by a person elected to or appointed to a position with or
25 employed by the state or one of its agencies, departments,

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1 institutions or political subdivisions and the embezzlement is
2 committed against the state or its agency, department,
3 institution or political subdivision;

4 (4) paying or receiving public money for
5 services not rendered, as provided in Section 30-23-2 NMSA
6 1978;

7 (5) making or permitting false public voucher,
8 as provided in Section 30-23-3 NMSA 1978;

9 (6) committing unlawful interest in a public
10 contract, where the value received is more than fifty dollars
11 (\$50.00), as provided in Section 30-23-6 NMSA 1978;

12 (7) committing bribery of public officer or
13 public employee, as provided in Section 30-24-1 NMSA 1978;

14 (8) demanding or receiving bribe by public
15 officer or employee, as provided in Section 30-24-2 NMSA 1978;

16 (9) tampering with public records, as provided
17 in Section 30-26-1 NMSA 1978;

18 (10) soliciting or receiving illegal kickback,
19 as provided in Section 30-41-1 NMSA 1978; and

20 (11) offering or paying illegal kickback, as
21 provided in Section 30-41-2 NMSA 1978.

22 SECTION 10. [NEW MATERIAL] FORFEITURE OF PENSION FOR
23 PUBLIC CORRUPTION OFFENSES.--

24 A. If, in the adjudication of a public corruption
25 offense in a New Mexico district court, it appears that the

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1 defendant is a member or retired member and the alleged
2 corruption relates to, arises out of or is in connection to the
3 member's public office or public employment, the district
4 attorney or attorney general shall, in addition to the felony
5 complaint, file for an order of forfeiture of pension. Upon
6 the filing, the forfeiture of pension proceeding shall be
7 brought in the same proceeding as the criminal matter and
8 presented to the same trier of fact; provided that:

9 (1) the two issues shall be bifurcated;

10 (2) the rules of criminal procedure shall
11 apply in the criminal matter and the rules of civil procedure
12 shall apply in the forfeiture proceeding;

13 (3) if the criminal defendant is represented
14 by the public defender department, the chief public defender or
15 the district public defender may authorize department
16 representation of the defendant in the forfeiture proceeding;
17 and

18 (4) if the state proves by clear and
19 convincing evidence that the defendant is a member or retired
20 member and has been convicted of a public corruption offense
21 that is directly related to, arises out of or is in connection
22 to the member's public office or employment, after determining
23 issues related to community property and child support
24 obligations and issuing orders to that effect, the court may
25 order the forfeiture of the member's or retired member's right

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1 to a pension and other retirement benefits from a state system
2 and serve the order upon the appropriate state system.

3 B. After receipt by a state system of an order
4 issued pursuant to Subsection A of this section, pending a
5 final appeal, the state system shall suspend the forfeited
6 member's service credit and, if the forfeited member is a
7 retired member, shall suspend any pension.

8 C. After notification to a state system that an
9 order issued pursuant to Subsection A of this section was not
10 appealed or, upon final appeal, was upheld:

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

14 (2) if the forfeited member is not currently
15 receiving a pension, except as provided in Paragraph (4) of
16 this subsection, the state system shall refund accumulated
17 member contributions to the forfeited member;

18 (3) if the forfeited member is currently
19 receiving a pension, except as provided in Paragraph (4) or (5)
20 of this subsection, the state system shall cease paying a
21 pension and shall refund any unexpended accumulated member
22 contributions to the forfeited member;

23 (4) if, prior to the order of forfeiture, a
24 court has issued an order pursuant to Section 10-11-136,
25 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, or as

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1 part of the forfeiture order, orders were issued addressing
2 community property interests or child support obligations, then
3 any action by a state system pursuant to Paragraph (2) or (3)
4 of this subsection shall be in compliance with those court
5 orders; and

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

13 D. If, on final appeal, the court finding pursuant
14 to Subsection A of this section or the conviction is
15 overturned, the forfeiture order is voided, the attorney
16 general shall notify the state system and the state system
17 shall reinstate the forfeited service credit and pay in full
18 any suspended pension payments.

19 E. If no appeal is made from a court finding
20 pursuant to Subsection A of this section or if, on final
21 appeal, the court finding is upheld, the district attorney or
22 the attorney general shall notify the state system and the
23 state system shall comply with the procedures of Subsection C
24 of this section.

25 F. The provisions of this section apply to crimes

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1 committed on or after July 1, 2012.

2 G. As used in this section:

3 (1) "conviction" means a judgment of guilty of
4 a felony or acceptance of a plea of nolo contendere to a public
5 corruption offense by a state or federal court of competent
6 jurisdiction;

7 (2) "forfeited member" means an individual
8 who, under a court order issued pursuant to this section, has
9 forfeited pension rights in a state system;

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

13 (4) "member contributions" means the amounts
14 deducted from a member's salary and credited to the member's
15 account in a state system, together with interest, if any,
16 credited to that account;

17 (5) "public corruption offense" means:

18 (a) embezzlement, as provided in Section
19 30-16-8 NMSA 1978; provided that the embezzlement is committed
20 by a person elected to or appointed to a position with or
21 employed by the state or one of its agencies, departments,
22 institutions or political subdivisions and the embezzlement is
23 committed against the state or its agency, department,
24 institution or political subdivision;

25 (b) paying or receiving public money for

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1 services not rendered, as provided in Section 30-23-2 NMSA
2 1978;

3 (c) making or permitting false public
4 voucher, as provided in Section 30-23-3 NMSA 1978;

5 (d) committing unlawful interest in a
6 public contract, where the value received is more than fifty
7 dollars (\$50.00), as provided in Section 30-23-6 NMSA 1978;

8 (e) committing bribery of public officer
9 or public employee, as provided in Section 30-24-1 NMSA 1978;

10 (f) demanding or receiving bribe by a
11 public officer or employee, as provided in Section 30-24-2 NMSA
12 1978;

13 (g) soliciting or receiving an illegal
14 kickback, as provided in Section 30-41-1 NMSA 1978; and

15 (h) offering or paying an illegal
16 kickback, as provided in Section 30-41-2 NMSA 1978;

17 (6) "public employment" means a position held
18 as an elected or appointed official or as an employee of the
19 state or one of its agencies, departments, institutions or
20 political subdivisions;

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

23 (8) "state system" means a retirement program
24 provided for in the Educational Retirement Act, the Public
25 Employees Retirement Act, the Magistrate Retirement Act or the

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1 Judicial Retirement Act.

2 SECTION 11. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2012.

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