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HOUSE BILL 155

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO PUBLIC OFFICIALS; CREATING THE PUBLIC CORRUPTION  
ACT; ENACTING PENALTIES; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE NMSA 1978.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 25 of this act may be cited as the "Public Corruption  
Act".

**SECTION 2.** [NEW MATERIAL] DEFINITIONS.--As used in the  
Public Corruption Act:

A. "public office" means an office, election to  
which is covered by the Campaign Reporting Act; and

B. "public official" means a person campaigning for  
or elected to an office in an election covered by the Campaign  
Reporting Act or a person appointed to an office that is

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1 subject to an election covered by that act.

2 SECTION 3. [NEW MATERIAL] FRAUD BY A PUBLIC OFFICIAL.--

3 A. Fraud by a public official consists of the  
4 intentional misappropriation or taking of anything of value  
5 that belongs to another by means of fraudulent conduct,  
6 practices or representations.

7 B. Whoever commits fraud by a public official when  
8 the value of the property misappropriated or taken is over five  
9 hundred dollars (\$500) but not more than two thousand five  
10 hundred dollars (\$2,500) is guilty of a fourth degree felony.

11 C. Whoever commits fraud by a public official when  
12 the value of the property misappropriated or taken is over two  
13 thousand five hundred dollars (\$2,500) but not more than twenty  
14 thousand dollars (\$20,000) is guilty of a third degree felony.

15 D. Whoever commits fraud by a public official when  
16 the value of the property misappropriated or taken exceeds  
17 twenty thousand dollars (\$20,000) is guilty of a second degree  
18 felony.

19 E. Whoever commits fraud by a public official when  
20 the property misappropriated or taken is a firearm that is  
21 valued at less than two thousand five hundred dollars (\$2,500)  
22 is guilty of a fourth degree felony.

23 SECTION 4. [NEW MATERIAL] EMBEZZLEMENT BY A PUBLIC  
24 OFFICIAL.--

25 A. Embezzlement by a public official consists of a

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

5 B. Whoever commits embezzlement by a public  
6 official when the value of the thing embezzled or converted is  
7 over five hundred dollars (\$500) but not more than two thousand  
8 five hundred dollars (\$2,500) is guilty of a fourth degree  
9 felony.

10 C. Whoever commits embezzlement by a public  
11 official when the value of the thing embezzled or converted is  
12 over two thousand five hundred dollars (\$2,500) but not more  
13 than twenty thousand dollars (\$20,000) is guilty of a third  
14 degree felony.

15 D. Whoever commits embezzlement by a public  
16 official when the value of the thing embezzled or converted  
17 exceeds twenty thousand dollars (\$20,000) is guilty of a second  
18 degree felony.

19 SECTION 5. [NEW MATERIAL] EXTORTION BY A PUBLIC  
20 OFFICIAL.--

21 A. Extortion by a public official consists of the  
22 communication or transmission of any threat to another by any  
23 means whatsoever with intent thereby to wrongfully obtain  
24 anything of value or to wrongfully compel the person threatened  
25 to do or refrain from doing any act against that person's will.

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1 Any of the following acts shall be sufficient to constitute a  
2 threat under this section:

3 (1) a threat to do an unlawful injury to the  
4 person or property of the person threatened or of another;

5 (2) a threat to accuse the person threatened,  
6 or another, of any crime;

7 (3) a threat to expose, or to impute to, the  
8 person threatened, or another, any deformity or disgrace;

9 (4) a threat to expose any secret affecting  
10 the person threatened or another; or

11 (5) a threat to kidnap the person threatened  
12 or another.

13 B. Whoever commits extortion by a public official  
14 is guilty of a third degree felony.

15 SECTION 6. [NEW MATERIAL] FORGERY BY A PUBLIC OFFICIAL.--

16 A. Forgery by a public official consists of:

17 (1) falsely making or altering any signature  
18 to, or any part of, any writing purporting to have any legal  
19 efficacy with intent to injure or defraud; or

20 (2) knowingly issuing or transferring a  
21 forged writing with intent to injure or defraud.

22 B. Whoever commits forgery by a public official  
23 when there is no quantifiable damage or when the damage is two  
24 thousand five hundred dollars (\$2,500) or less is guilty of a  
25 fourth degree felony.

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1 C. Whoever commits forgery by a public official  
2 when the damage is over two thousand five hundred dollars  
3 (\$2,500) but not more than twenty thousand dollars (\$20,000) is  
4 guilty of a third degree felony.

5 D. Regardless of value, a public official who  
6 commits forgery by a public official of a will, codicil, trust  
7 instrument, deed, mortgage, lien or any other instrument  
8 affecting title to real property is guilty of a third degree  
9 felony.

10 E. Whoever commits forgery by a public official  
11 when the damage is over twenty thousand dollars (\$20,000) is  
12 guilty of a second degree felony.

13 SECTION 7. [NEW MATERIAL] PAYING OR RECEIVING MONEY FOR  
14 SERVICES NOT RENDERED BY A PUBLIC OFFICIAL.--

15 A. Paying or receiving public money for services  
16 not rendered by a public official consists of a public official  
17 knowingly making or receiving payment or causing payment to be  
18 made from public funds where such payment purports to be for  
19 wages, salary or remuneration for personal services that have  
20 not in fact been rendered.

21 B. Nothing in this section shall be construed to  
22 prevent the payment of public funds where such payments are  
23 intended to cover lawful remuneration to public officers or  
24 public employees for vacation periods or absences from  
25 employment because of sickness or for other lawfully authorized

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1 purposes.

2 C. Whoever commits paying or receiving public money  
3 for services not rendered by a public official is guilty of a  
4 fourth degree felony.

5 SECTION 8. [NEW MATERIAL] MAKING OR PERMITTING FALSE  
6 PUBLIC VOUCHER BY A PUBLIC OFFICIAL.--

7 A. Making or permitting false public voucher by a  
8 public official consists of a public official knowingly,  
9 intentionally or willfully making, causing to be made or  
10 permitting to be made a false material statement or forged  
11 signature upon any public voucher, or invoice supporting a  
12 public voucher, with intent that the voucher or invoice shall  
13 be relied upon for the expenditure of public money.

14 B. Whoever commits making or permitting false  
15 public voucher by a public official is guilty of a fourth  
16 degree felony.

17 SECTION 9. [NEW MATERIAL] UNLAWFUL INTEREST IN A PUBLIC  
18 CONTRACT BY A PUBLIC OFFICIAL.--

19 A. Unlawful interest in a public contract by a  
20 public official consists of:

- 21 (1) any public official receiving anything of  
22 value, directly or indirectly, from either a seller or a  
23 seller's agents, or a purchaser or a purchaser's agents, in  
24 connection with the sale or purchase of securities, goods,  
25 leases, lands or anything of value by the state or any of its

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1 political subdivisions, unless:

2 (a) prior written consent of the head of  
3 a department of the state or political subdivision involved in  
4 the transaction is obtained and filed as a matter of public  
5 record in the office of secretary of state; and

6 (b) subsequent to the transaction, a  
7 statement is filed as a matter of public record in the office  
8 of secretary of state by the purchaser or seller giving  
9 anything of value to a public official and this statement  
10 contains the date the services were rendered, the amount of  
11 remuneration for the rendered services and the nature of the  
12 rendered services; and

13 (2) a seller or the seller's agents, or a  
14 purchaser or the purchaser's agents, offering to pay or paying  
15 anything of value, directly or indirectly, to a public official  
16 in connection with the sale or purchase of securities or goods  
17 by the state or any of its political subdivisions, unless the  
18 requirements of Subparagraphs (a) and (b) of Paragraph (1) of  
19 this subsection are complied with.

20 B. A person violating the provisions of Paragraph  
21 (2) of Subsection A of this section, where the violation forms  
22 the basis for prosecution and conviction of a public official,  
23 shall be disqualified from transacting any business with the  
24 state or its political subdivisions for a period of five years  
25 from the date of the violation.

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1 C. Nothing in this section shall prohibit a public  
2 official from receiving the public official's regular  
3 remuneration for services rendered to the state or its  
4 political subdivisions in connection with the aforementioned  
5 transactions.

6 D. Whoever commits unlawful interest in a public  
7 contract by a public official where the value received by the  
8 public official is more than fifty dollars (\$50.00) is guilty  
9 of a fourth degree felony.

10 E. A public official convicted of a felony under  
11 the provisions of this section is forever disqualified from  
12 employment by the state or any of its political subdivisions.

13 SECTION 10. [NEW MATERIAL] BRIBERY OF A PUBLIC OFFICER OR  
14 A PUBLIC EMPLOYEE BY A PUBLIC OFFICIAL.--

15 A. Bribery of a public officer or a public employee  
16 by a public official consists of a public official giving or  
17 offering to give, directly or indirectly, anything of value to  
18 any public officer or public employee with intent to induce or  
19 influence the public officer or public employee to:

20 (1) give or render any official opinion,  
21 judgment or decree;

22 (2) be more favorable to one party than to  
23 another in any cause, action, suit, election, appointment,  
24 matter or thing pending or to be brought before such person;

25 (3) procure the public officer or public

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1 employee to vote or withhold the officer's or employee's vote  
2 on any question, matter or proceeding that is then or may  
3 thereafter be pending and that may by law come or be brought  
4 before the officer or employee in the officer's or employee's  
5 public capacity;

6 (4) execute any of the powers vested in the  
7 public officer or public employee; or

8 (5) perform any public duty otherwise than as  
9 required by law or to delay or omit to perform any public duty  
10 required of the public officer or public employee by law.

11 B. Whoever commits bribery of a public officer or a  
12 public employee by a public official is guilty of a third  
13 degree felony.

14 SECTION 11. [NEW MATERIAL] DEMANDING OR RECEIVING A BRIBE  
15 BY A PUBLIC OFFICIAL.--

16 A. Demanding or receiving a bribe by a public  
17 official consists of any public official soliciting or  
18 accepting, directly or indirectly, anything of value with  
19 intent to have the official's decision or action on any  
20 question, matter, cause, proceeding or appointment influenced  
21 thereby and that, by law, is pending or might be brought before  
22 the official in the official's official capacity.

23 B. Whoever commits demanding or receiving a bribe  
24 by a public official is guilty of a third degree felony and  
25 upon conviction shall forfeit the office then held by the

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1 official.

2 SECTION 12. [NEW MATERIAL] BRIBERY OR INTIMIDATION OF OR  
3 RETALIATION AGAINST A WITNESS BY A PUBLIC OFFICIAL.--

4 A. Bribery or intimidation of a witness by a public  
5 official consists of a public official knowingly:

6 (1) giving or offering to give anything of  
7 value to any witness or to any person likely to become a  
8 witness in any judicial, administrative, legislative or other  
9 official cause or proceeding to testify falsely or to abstain  
10 from testifying to any fact in such cause or proceeding;

11 (2) intimidating or threatening any witness or  
12 person likely to become a witness in any judicial,  
13 administrative, legislative or other official cause or  
14 proceeding for the purpose of preventing such individual from  
15 testifying to any fact, to abstain from testifying or to  
16 testify falsely; or

17 (3) intimidating or threatening any person or  
18 giving or offering to give anything of value to any person with  
19 the intent to keep the person from truthfully reporting to a  
20 law enforcement officer or any agency of government that is  
21 responsible for enforcing criminal laws information relating to  
22 the commission or possible commission of a felony offense or a  
23 violation of conditions of probation, parole or release pending  
24 judicial proceedings.

25 B. Retaliation against a witness by a public

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1 official consists of a public official knowingly engaging in  
2 conduct that causes bodily injury to another person or damage  
3 to the tangible property of another person, or threatening to  
4 do so, with the intent to retaliate against any person for any  
5 information relating to the commission or possible commission  
6 of a felony offense or a violation of conditions of probation,  
7 parole or release pending judicial proceedings given by a  
8 person to a law enforcement officer.

9 C. Whoever commits bribery or intimidation of a  
10 witness by a public official is guilty of a third degree  
11 felony.

12 D. Whoever commits retaliation against a witness by  
13 a public official is guilty of a second degree felony.

14 SECTION 13. [NEW MATERIAL] ACCEPTANCE OF A BRIBE BY A  
15 WITNESS WHO IS A PUBLIC OFFICIAL.--

16 A. No public official who is a witness or is likely  
17 to become a witness shall receive, agree to receive or solicit  
18 any bribe or anything of value to:

19 (1) testify falsely or to abstain from  
20 testifying to any fact in any cause in any judicial,  
21 administrative, legislative or other proceeding; or

22 (2) abstain from truthfully reporting to a law  
23 enforcement officer, or any agency of government that is  
24 responsible for enforcing criminal laws, information relating  
25 to the commission or possible commission of a felony offense or

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1 a violation of conditions of probation, parole or release  
2 pending judicial proceedings.

3 B. A public official who receives, agrees to  
4 receive or solicits a bribe is guilty of a fourth degree  
5 felony.

6 SECTION 14. [NEW MATERIAL] PERJURY BY A PUBLIC  
7 OFFICIAL.--

8 A. Perjury by a public official consists of a  
9 public official making a false statement under oath,  
10 affirmation or penalty of perjury that is material to the issue  
11 or matter involved in the course of any judicial,  
12 administrative, legislative or other official proceeding or  
13 matter, knowing such statement to be untrue.

14 B. Whoever commits perjury by a public official is  
15 guilty of a fourth degree felony.

16 SECTION 15. [NEW MATERIAL] TAMPERING WITH PUBLIC RECORDS  
17 BY A PUBLIC OFFICIAL.--

18 A. Tampering with public records by a public  
19 official consists of:

20 (1) a public official knowingly altering any  
21 public record without lawful authority;

22 (2) a public official knowingly filing or  
23 recording any written instrument, judicial order, judgment or  
24 decree in a form other than as the original thereof in fact  
25 appeared;

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1 (3) a public official knowingly falsifying or  
2 falsely making any record or file authorized or required by law  
3 to be kept;

4 (4) a public official knowingly issuing or  
5 causing to be issued any false or untrue certified copy of a  
6 public record; or

7 (5) a public official knowingly destroying,  
8 concealing, mutilating or removing without lawful authority any  
9 public record or public document belonging to or received or  
10 kept by any public authority for information or record or  
11 pursuant to law.

12 B. Whoever commits tampering with public records by  
13 a public official is guilty of a fourth degree felony.

14 SECTION 16. [NEW MATERIAL] SOLICITING OR RECEIVING A  
15 KICKBACK, BRIBE OR REBATE BY A PUBLIC OFFICIAL.--A public  
16 official who knowingly solicits or receives any remuneration in  
17 the form of any kickback, bribe or rebate, directly or  
18 indirectly, overtly or covertly, in cash or in kind from a  
19 person:

20 A. in return for referring an individual to that  
21 person for the furnishing or arranging for the furnishing of  
22 any item or service for which payment may be made in whole or  
23 in part with public money is guilty of a fourth degree felony;  
24 or

25 B. in return for purchasing, leasing, ordering or

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1 arranging for or recommending purchasing, leasing or ordering  
2 any goods, facilities, services or items for which payment may  
3 be made in whole or in part with public money is guilty of a  
4 fourth degree felony.

5 SECTION 17. [NEW MATERIAL] OFFERING OR PAYING A KICKBACK,  
6 BRIBE OR REBATE BY A PUBLIC OFFICIAL.--A public official who  
7 knowingly offers or pays any remuneration in the form of any  
8 kickback, bribe or rebate, directly or indirectly, overtly or  
9 covertly, in cash or in kind to any person to induce such  
10 person:

11 A. to refer an individual to a person for the  
12 furnishing or arranging for the furnishing of any item or  
13 service for which payment may be made in whole or in part with  
14 public money is guilty of a fourth degree felony; or

15 B. to purchase, lease, order or arrange for or  
16 recommend purchasing, leasing or ordering any goods,  
17 facilities, services or items for which payment may be made in  
18 whole or in part with public money is guilty of a fourth degree  
19 felony.

20 SECTION 18. [NEW MATERIAL] RACKETEERING BY A PUBLIC  
21 OFFICIAL.--Racketeering by a public official consists of a  
22 public official committing a felony violation of the  
23 Racketeering Act.

24 SECTION 19. [NEW MATERIAL] COMPUTER CRIMES BY A PUBLIC  
25 OFFICIAL.--Computer crimes by a public official consists of a

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1 public official committing a felony violation of the Computer  
2 Crimes Act.

3 SECTION 20. [NEW MATERIAL] MONEY LAUNDERING BY A PUBLIC  
4 OFFICIAL.--Money laundering by a public official consists of a  
5 public official committing a felony violation of the Money  
6 Laundering Act.

7 SECTION 21. [NEW MATERIAL] VIOLATION OF THE GOVERNMENTAL  
8 CONDUCT ACT BY A PUBLIC OFFICIAL.--Violation of the  
9 Governmental Conduct Act by a public official consists of a  
10 public official committing a felony violation of the  
11 Governmental Conduct Act.

12 SECTION 22. [NEW MATERIAL] VIOLATION OF THE PROCUREMENT  
13 CODE BY A PUBLIC OFFICIAL.--Violation of the Procurement Code  
14 by a public official consists of a public official committing a  
15 felony violation of the Procurement Code.

16 SECTION 23. [NEW MATERIAL] VIOLATION OF THE ELECTION CODE  
17 BY A PUBLIC OFFICIAL.--Violation of the Election Code by a  
18 public official consists of a public official committing a  
19 felony violation of a provision of the Election Code.

20 SECTION 24. [NEW MATERIAL] CONSPIRACY TO COMMIT A  
21 VIOLATION OF THE PUBLIC CORRUPTION ACT.--Conspiracy to commit a  
22 violation of the Public Corruption Act consists of a public  
23 official conspiring to commit any of the offenses set forth in  
24 the Public Corruption Act, as provided in Section 30-28-2 NMSA  
25 1978.

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1           SECTION 25.   ~~[NEW MATERIAL]~~ SENTENCING.--

2           A.   Whoever is convicted, pleads guilty to or pleads  
3   nolo contendere to a crime under the Public Corruption Act, in  
4   addition to the penalties prescribed in the particular crime  
5   and in Section 31-18-15 NMSA 1978:

6                   (1) shall have an additional fine imposed, not  
7   to exceed the value of the salary and fringe benefits paid to  
8   the offender by virtue of holding an elected public office,  
9   from the date of the commission of the first act that was the  
10   basis of the offense; and

11                   (2) shall forfeit the person's pension under  
12   the Public Employees Retirement Act attributed to any time  
13   served as a public official after the person's first election  
14   or appointment to a public office.

15           B.   Any portion of a pension that, pursuant to a  
16   court order, is committed to satisfy community property  
17   interest or child support obligations pursuant to Section  
18   10-11-136, 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA  
19   1978, or in any other proceeding, shall not be affected under  
20   this section for the duration of the obligation.

21           C.   If, pursuant to this section, a public official  
22   has forfeited the official's pension, any amounts contributed  
23   by the official and credited to the official's account in the  
24   state retirement system shall be refunded to the official,  
25   pursuant to the satisfaction of any of the obligations in

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1 Subsection B of this section.

2 D. Any pension subject to forfeiture under  
3 Subsection B of Section 10-12B-17 NMSA 1978 shall not be  
4 affected by the provisions of this section.

5 SECTION 26. Section 30-23-6 NMSA 1978 (being Laws 1963,  
6 Chapter 303, Section 23-6) is amended to read:

7 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

8 A. Unlawful interest in a public contract consists  
9 of:

10 [~~A. any~~] (1) a public officer, other than a  
11 public official covered under the Public Corruption Act, or  
12 public employee receiving anything of value, directly or  
13 indirectly, from either a seller or a seller's agents or a  
14 purchaser or a purchaser's agents in connection with the sale  
15 or purchase of securities, goods, leases, lands or anything of  
16 value by the state or any of its political subdivisions,  
17 unless:

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

22 [~~(2)~~] (b) subsequent to the transaction,  
23 a statement is filed as a matter of public record in the office  
24 of secretary of state by the purchaser or seller giving  
25 anything of value to a public officer or public employee and

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1 this statement contains the date the services were rendered,  
2 the amount of remuneration for the rendered services and the  
3 nature of the rendered services; and

4 ~~[B.—any]~~ (2) a seller or [his] the seller's  
5 agents or a purchaser or [his] the purchaser's agents offering  
6 to pay or paying anything of value, directly or indirectly, to  
7 a public officer, other than a public official covered under  
8 the Public Corruption Act, or public employee in connection  
9 with the sale or purchase of securities or goods by the state  
10 or any of its political subdivisions unless the requirements of  
11 ~~[Paragraphs (1) and (2) of Subsection A of this section]~~  
12 Subparagraphs (a) and (b) of Paragraph (1) of this subsection  
13 are complied with.

14 ~~[Any]~~ B. A person violating the provisions of  
15 Paragraph (2) of Subsection [B] A of this section, where ~~[such]~~  
16 the violations ~~[forms]~~ form the basis for prosecution and  
17 conviction of a public officer or public employee, shall be  
18 disqualified from transacting ~~[any]~~ business with the state or  
19 its political subdivisions for a period of five years from the  
20 date of ~~[such]~~ the violation.

21 C. Nothing in this section shall prohibit a public  
22 officer or public employee from receiving ~~[his]~~ regular  
23 remuneration for services rendered to the state or its  
24 political subdivisions in connection with the aforementioned  
25 transactions.

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

4           E. Whoever commits unlawful interest in public  
5 contracts where the value received by [~~him~~] the person is more  
6 than fifty dollars (\$50.00) is guilty of a fourth degree  
7 felony. [~~Any~~] A public officer or public employee convicted of  
8 a felony [hereunder] under the provisions of this section is  
9 forever disqualified from employment by the state or any of its  
10 political subdivisions."

11           SECTION 27. Section 30-24-2 NMSA 1978 (being Laws 1963,  
12 Chapter 303, Section 24-2) is amended to read:

13           "30-24-2. DEMANDING OR RECEIVING A BRIBE BY A PUBLIC  
14 OFFICER OR PUBLIC EMPLOYEE.--Demanding or receiving a bribe by  
15 a public officer or public employee consists of [~~any~~] a public  
16 officer, other than a public official covered under the Public  
17 Corruption Act, or public employee soliciting or accepting,  
18 directly or indirectly, anything of value, with intent to have  
19 [~~his~~] the officer's or employee's decision or action on [~~any~~] a  
20 question, matter, cause, proceeding or appointment influenced  
21 [~~thereby~~] by the bribe, and which decision or action, by law,  
22 is pending or might be brought before [~~him~~] the officer or  
23 employee in [~~his~~] the officer's or employee's official  
24 capacity.

25           Whoever commits demanding or receiving a bribe by a public

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1 officer or public employee is guilty of a third degree felony,  
2 and upon conviction, [~~thereof such~~] that public officer or  
3 public employee shall forfeit the office then held by [~~him~~] the  
4 officer or employee."

5 SECTION 28. Section 30-26-1 NMSA 1978 (being Laws 1963,  
6 Chapter 303, Section 26-1) is amended to read:

7 "30-26-1. TAMPERING WITH PUBLIC RECORDS.--Tampering with  
8 public records consists of:

9 A. knowingly altering any public record without  
10 lawful authority;

11 B. any public officer, other than a public official  
12 covered under the Public Corruption Act, or public employee  
13 knowingly filing or recording any written instrument, judicial  
14 order, judgment or decree in a form other than as the original  
15 thereof in fact appeared;

16 C. any public officer, other than a public official  
17 covered under the Public Corruption Act, or public employee  
18 knowingly falsifying or falsely making any record or file,  
19 authorized or required by law to be kept;

20 D. any public officer, other than a public official  
21 covered under the Public Corruption Act, or public employee  
22 knowingly issuing or causing to be issued any false or untrue  
23 certified copy of a public record; or

24 E. knowingly destroying, concealing, mutilating or  
25 removing without lawful authority [~~and~~] any public record or

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