

1 HOUSE BILL 260

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

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10 AN ACT

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

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. Section 10-11-135 NMSA 1978 (being Laws 1987,
24 Chapter 253, Section 135, as amended) is amended to read:

25 "10-11-135. FUNDS NOT SUBJECT TO PROCESS.--Except as

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1 provided in Sections 10-11-136 and 10-11-136.1 NMSA 1978 and
2 Section 14 of this 2016 act, none of the money, pensions or
3 other benefits mentioned in the Public Employees Retirement Act
4 shall be assignable either in law or in equity or be subject to
5 execution, levy, attachment, garnishment or other legal
6 process."

7 SECTION 2. Section 10-12B-7 NMSA 1978 (being Laws 1992,
8 Chapter 111, Section 7, as amended) is amended to read:

9 "10-12B-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION
10 OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD
11 SUPPORT OBLIGATIONS.--

12 A. Except as provided in Subsections B and C of
13 this section and Section 14 of this 2016 act, none of the
14 money, pensions or other benefits provided pursuant to the
15 provisions of the Judicial Retirement Act shall be assignable
16 either in law or in equity or be subject to execution, levy,
17 attachment, garnishment or other legal process.

18 B. A court of competent jurisdiction, solely for
19 the purposes of effecting a division of community property in a
20 divorce or legal separation proceeding, may provide by
21 appropriate order for a determination and division of a
22 community interest in the pensions or other benefits provided
23 for in the Judicial Retirement Act. The court shall fix the
24 manner in which warrants are issued, may order direct payments
25 to a person with a community interest in the pensions or other

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1 benefits, may require the election of a specific form of
2 payment and designation of a specific survivor beneficiary or
3 refund beneficiary and may restrain the refund of accumulated
4 member contributions. Payments made pursuant to such orders
5 shall only be made when member contributions are refunded or a
6 pension is payable in accordance with the provisions of the
7 Judicial Retirement Act. The court shall not alter the manner
8 in which the amount of pensions or other benefits are
9 calculated by the association or cause any increase in the
10 actuarial present value of the pensions or other benefits to be
11 paid by the association.

12 C. A court of competent jurisdiction, solely for
13 the purposes of enforcing current or delinquent [~~child-support~~]
14 child support obligations, may provide by appropriate order for
15 withholding amounts due in satisfaction of current or
16 delinquent [~~child-support~~] child support obligations from the
17 pensions or other benefits provided for in the Judicial
18 Retirement Act and for payment of such amounts to third
19 parties. The court shall not alter the manner in which the
20 amount of pensions or other benefits are calculated by the
21 association. The court shall not cause any increase in the
22 actuarial present value of the pensions or other benefits to be
23 paid from the fund. Payments made pursuant to such orders
24 shall only be made when member contributions are refunded or
25 when a pension is payable in accordance with the provisions of

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1 the Judicial Retirement Act. In no case shall more money be
2 paid out, either in a lump sum or in monthly pension payments,
3 of the fund in enforcement of current or delinquent [~~child-~~
4 ~~support~~] child support obligations than would otherwise be
5 payable at that time."

6 SECTION 3. Section 10-12C-7 NMSA 1978 (being Laws 1992,
7 Chapter 118, Section 7, as amended) is amended to read:

8 "10-12C-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION
9 OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD
10 SUPPORT OBLIGATIONS.--

11 A. Except as provided in Subsections B and C of
12 this section and Section 14 of this 2016 act, none of the
13 money, pensions or other benefits provided pursuant to the
14 provisions of the Magistrate Retirement Act shall be assignable
15 either in law or in equity or be subject to execution, levy,
16 attachment, garnishment or other legal process.

17 B. A court of competent jurisdiction, solely for
18 the purposes of effecting a division of community property in a
19 divorce or legal separation proceeding, may provide by
20 appropriate order for a determination and division of a
21 community interest in the pensions or other benefits provided
22 for in the Magistrate Retirement Act. The court shall fix the
23 manner in which warrants are issued, may order direct payments
24 to a person with a community interest in the pensions or other
25 benefits, may require the election of a specific form of

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1 payment and designation of a specific survivor beneficiary or
2 refund beneficiary and may restrain the refund of accumulated
3 member contributions. Payments made pursuant to such orders
4 shall only be made when member contributions are refunded or a
5 pension is payable in accordance with the provisions of the
6 Magistrate Retirement Act. The court shall not alter the
7 manner in which the amount of pensions or other benefits is
8 calculated by the association or cause any increase in the
9 actuarial present value of the pensions or other benefits to be
10 paid by the association.

11 C. A court of competent jurisdiction, solely for
12 the purposes of enforcing current or delinquent [~~child-support~~]
13 child support obligations, may provide by appropriate order for
14 withholding amounts due in satisfaction of current or
15 delinquent [~~child-support~~] child support obligations from the
16 pensions or other benefits provided for in the Magistrate
17 Retirement Act and for payment of such amounts to third
18 parties. The court shall not alter the manner in which the
19 amount of pensions or other benefits is calculated by the
20 association. The court shall not cause any increase in the
21 actuarial present value of the pensions or other benefits to be
22 paid from the fund. Payments made pursuant to such orders
23 shall only be made when member contributions are refunded or
24 when a pension is payable in accordance with the provisions of
25 the Magistrate Retirement Act. In no case shall more money be

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1 paid out, either in a lump sum or in monthly pension payments,
2 of the fund in enforcement of current or delinquent [~~child-~~
3 ~~support~~] child support obligations than would otherwise be
4 payable at that time."

5 SECTION 4. Section 22-11-42 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 165, as amended) is amended to read:

7 "22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS
8 COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS.--

9 A. Except as specifically provided in the
10 Educational Retirement Act and the provisions of Subsections B
11 and C of this section and Section 14 of this 2016 act,
12 contributions or benefits mentioned in the Educational
13 Retirement Act shall not be assignable either in law or in
14 equity or be subject to execution, levy, attachment,
15 garnishment, guarantee fund or similar assessment or any other
16 legal process.

17 B. A court of competent jurisdiction, solely for
18 the purposes of effecting a division of community property, may
19 provide by appropriate order for a determination and division
20 of a community interest in the pensions or other benefits
21 provided for in the Educational Retirement Act. In so doing,
22 the court shall fix the manner in which the warrants shall be
23 issued, may order direct payments by the board to a person with
24 a community interest in the pensions or benefits and may
25 restrain the refund of member or participant contributions.

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1 The court shall not alter the manner in which the amount of
2 pensions or other benefits is calculated by the board or a
3 carrier or contractor for the alternative retirement plan, nor
4 shall the court cause any increase in the actuarial present
5 value of the pensions or other benefits to be paid by the board
6 or a carrier or contractor for the alternative retirement plan.
7 A payment, ordered by a court pursuant to this subsection,
8 shall only be made when the member or participant terminates
9 employment and requests a refund or when the member or
10 participant retires or is otherwise entitled to receive
11 benefits pursuant to the Educational Retirement Act. In no
12 case shall a court order pursuant to this subsection result in
13 more money being paid from the fund or from an alternative
14 retirement plan, whether in a lump sum or in monthly benefits,
15 than would otherwise be payable.

16 C. A court of competent jurisdiction, solely for
17 the purposes of enforcing current or delinquent child support
18 obligations, may provide by appropriate order for withholding
19 amounts due in satisfaction of current or delinquent child
20 support obligations from the pensions or other benefits
21 provided for in the Educational Retirement Act and for payment
22 of such amounts to third parties. The court shall not alter
23 the manner in which the amount of pensions or other benefits is
24 calculated by the board or a carrier or contractor for the
25 alternative retirement plan. The court shall not cause any

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1 increase in the actuarial present value of the pensions or
2 other benefits to be paid by the board or a carrier or
3 contractor for the alternative retirement plan. Payments made
4 pursuant to such orders shall only be made when the member or
5 participant terminates employment and requests a refund of
6 contributions or when the member or participant retires; in no
7 case shall more money be paid out, either in a lump sum or in
8 monthly benefits, of the fund or alternative retirement plan in
9 enforcement of current or delinquent child support obligations
10 than would otherwise be payable. In no case shall a court
11 order pursuant to this subsection result in more money being
12 paid from the fund or from an alternative retirement plan,
13 whether in a lump sum or in monthly benefits, than would
14 otherwise be payable."

15 SECTION 5. Section 30-16-8 NMSA 1978 (being Laws 1963,
16 Chapter 303, Section 16-7, as amended) is amended to read:

17 "30-16-8. EMBEZZLEMENT.--

18 A. Embezzlement consists of a person embezzling or
19 converting to the person's own use anything of value, with
20 which the person has been entrusted, with fraudulent intent to
21 deprive the owner thereof.

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

25 C. Whoever commits embezzlement when the value of

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1 the thing embezzled or converted is over two hundred fifty
2 dollars (\$250) but not more than five hundred dollars (\$500)
3 is guilty of a misdemeanor.

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

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

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

15 G. A person elected or appointed to a position with
16 or employed by a public entity who commits embezzlement against
17 the public entity when the value of the thing embezzled or
18 converted is over five hundred dollars (\$500) shall have the
19 basic sentence of imprisonment as provided for in this section
20 increased by one year.

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

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

4 I. 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 30-23-2 NMSA 1978 (being Laws 1963,
8 Chapter 303, Section 23-2) is amended to read:

9 "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES
10 NOT RENDERED.--

11 A. Paying or receiving public money for services
12 not rendered consists of knowingly making or receiving payment
13 or causing payment to be made from public funds where such
14 payment purports to be for wages, salary or remuneration for
15 personal services [~~which~~] that have not in fact been rendered.

16 B. Nothing in this section shall be construed to
17 prevent the payment of public funds where such payments are
18 intended to cover lawful remuneration to public officers or
19 public employees for vacation periods or absences from
20 employment because of sickness or for other lawfully authorized
21 purposes.

22 C. Whoever commits paying or receiving public money
23 for services not rendered is guilty of a fourth degree felony;
24 provided that if a person elected or appointed to a position
25 with or employed by a public entity is convicted of paying or

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1 receiving public money for services not rendered, the basic
2 sentence of imprisonment shall be increased by one year.

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

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

14 SECTION 7. Section 30-23-3 NMSA 1978 (being Laws 1963,
15 Chapter 303, Section 23-3) is amended to read:

16 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

17 A. Making or permitting false public voucher
18 consists of knowingly, intentionally or [~~wilfully~~] willfully
19 making, causing to be made or permitting to be made a false
20 material statement or forged signature upon any public voucher,
21 or invoice supporting a public voucher, with intent that the
22 voucher or invoice shall be relied upon for the expenditure of
23 public money.

24 B. Whoever commits making or permitting false
25 public voucher is guilty of a fourth degree felony; provided

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1 that if a person elected or appointed to a position with or
2 employed by a public entity is convicted of making or
3 permitting false public voucher, the basic sentence of
4 imprisonment shall be increased by one year.

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

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

16 SECTION 8. Section 30-23-6 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 23-6) is amended to read:

18 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

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

21 [~~A. any~~] (1) a public officer or public
22 employee receiving anything of value, directly or indirectly,
23 from either a seller or a seller's agents or a purchaser or a
24 purchaser's agents in connection with the sale or purchase of
25 securities, goods, leases, lands or anything of value by the

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1 state or any of its political subdivisions, unless:

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

6 [~~(2)~~] (b) subsequent to the transaction,
7 a 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 officer or public employee and
10 this statement contains the date the services were rendered,
11 the amount of remuneration for the rendered services and the
12 nature of the rendered services; and

13 [~~B.—any~~] (2) a seller or [~~his~~] the seller's
14 agents or a purchaser or [~~his~~] the purchaser's agents offering
15 to pay or paying anything of value, directly or indirectly, to
16 a public officer or public employee in connection with the sale
17 or purchase of securities or goods by the state or any of its
18 political subdivisions unless the requirements of [~~Paragraphs~~
19 ~~(1) and (2) of Subsection A of this section~~] Subparagraphs (a)
20 and (b) of Paragraph (1) of this subsection are complied with.

21 [~~Any~~] B. A person violating the provisions of
22 Paragraph (2) of Subsection [B] A of this section, where [~~such~~]
23 the violations [~~forms~~] form the basis for prosecution and
24 conviction of a public officer or public employee, shall be
25 disqualified from transacting [~~any~~] business with the state or

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1 its political subdivisions for a period of five years from the
2 date of [~~such~~] the violation.

3 C. Nothing in this section shall prohibit a public
4 officer or public employee from receiving [~~his~~] regular
5 remuneration for services rendered to the state or its
6 political subdivisions in connection with the aforementioned
7 transactions.

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

11 E. Whoever commits unlawful interest in public
12 contracts where the value received by [~~him~~] the person is more
13 than fifty dollars (\$50.00) is guilty of a fourth degree
14 felony; [~~Any~~] provided that the basic sentence of imprisonment
15 shall be increased by one year. A public officer or public
16 employee convicted of a felony [~~hereunder~~] under the provisions
17 of this section is forever disqualified from employment by the
18 state or any of its political subdivisions.

19 F. A person convicted under the provisions of
20 Paragraph (1) or (2) of Subsection A of this section, where the
21 value received by the person is more than fifty dollars
22 (\$50.00), shall not, individually or in association with
23 others, submit a bid to or enter into a contract for services,
24 construction or items of tangible personal property with a
25 public entity or act as a lobbyist, as defined in Section

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

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

7 SECTION 9. Section 30-24-1 NMSA 1978 (being Laws 1963,
8 Chapter 303, Section 24-1) is amended to read:

9 "30-24-1. BRIBERY OF A PUBLIC OFFICER OR PUBLIC
10 EMPLOYEE.--

11 A. Bribery of a public officer or public employee
12 consists of [~~any~~] a person giving or offering to give, directly
13 or indirectly, anything of value to [~~any~~] a public officer or
14 public employee, with intent to induce or influence [~~such~~] that
15 public officer or public employee to:

16 [~~A-~~] (1) give or render [~~any~~] an official
17 opinion, judgment or decree;

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

22 [~~G-~~] (3) procure [~~him~~] the person to vote or
23 withhold [~~his~~] the person's vote on [~~any~~] a question, matter or
24 proceeding [~~which~~] that is then or may thereafter be pending,
25 and [~~which~~] that may by law come or be brought before [~~him~~] the

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1 person in [~~his~~] the person's public capacity;

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

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

7 B. Whoever commits bribery of a public officer or
8 public employee is guilty of a third 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 bribery of a public
11 officer or public employee, the basic sentence of imprisonment
12 shall be increased by one year.

13 C. A person convicted under the provisions of
14 Subsection A of this section shall not, individually or in
15 association with others, submit a bid to contract for, or enter
16 into a contract for, services, construction or items of
17 tangible personal property with a public entity or act as a
18 lobbyist, as defined in Section 2-11-2 NMSA 1978. Any person
19 who knowingly and willfully violates the provisions of this
20 subsection is guilty of a third 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 10.** Section 30-24-2 NMSA 1978 (being Laws 1963,
25 Chapter 303, Section 24-2) is amended to read:

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1 "30-24-2. DEMANDING OR RECEIVING A BRIBE BY A PUBLIC
2 OFFICER OR PUBLIC EMPLOYEE.--

3 A. Demanding or receiving a bribe by a public
4 officer or public employee consists of [~~any~~] a public officer
5 or public employee soliciting or accepting, directly or
6 indirectly, anything of value, with intent to have [~~his~~] the
7 officer's or employee's decision or action on [~~any~~] a question,
8 matter, cause, proceeding or appointment influenced [~~thereby~~]
9 by the bribe, and which decision or action, by law, is pending
10 or might be brought before [~~him~~] the officer or employee in
11 [~~his~~] the officer's or employee's official capacity.

12 B. Whoever commits demanding or receiving a bribe
13 by a public officer or public employee is guilty of a third
14 degree felony [~~and~~]; provided that the basic sentence of
15 imprisonment prescribed for the offense shall be increased by
16 one year. Upon conviction, [~~thereof such~~] that public officer
17 or public employee shall forfeit the office then held by [~~him~~]
18 the officer or employee.

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

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1 of a third degree felony.

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

5 SECTION 11. Section 30-41-1 NMSA 1978 (being Laws 1979,
6 Chapter 384, Section 1) is amended to read:

7 "30-41-1. SOLICITING OR RECEIVING AN ILLEGAL KICKBACK.--

8 A. Whoever knowingly solicits or receives, [~~any~~]
9 directly or indirectly, a remuneration in the form of any
10 kickback, bribe or rebate, [~~directly or indirectly, overtly or~~
11 ~~evertly~~] in cash or in kind from a person:

12 [~~A-~~] (1) in return for referring an individual
13 to that person for the furnishing or arranging for the
14 furnishing of any item or service for which payment may be made
15 in whole or in part with public money, is guilty of a fourth
16 degree felony; or

17 [~~B-~~] (2) in return for purchasing, leasing,
18 ordering or arranging for or recommending purchasing, leasing
19 or ordering any goods, facilities, services or items for which
20 payment may be made in whole or in part with public money,
21 [~~shall be~~] is guilty of a fourth degree felony.

22 B. If a person elected or appointed to a position
23 with or employed by a public entity is convicted of soliciting
24 or receiving an illegal kickback, the basic sentence of
25 imprisonment shall be increased by one year.

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

9 D. As used in this section:

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

13 (2) "public entity" means the state or one of
14 its agencies, departments, institutions or political
15 subdivisions."

16 SECTION 12. Section 30-41-2 NMSA 1978 (being Laws 1979,
17 Chapter 384, Section 2) is amended to read:

18 "30-41-2. OFFERING OR PAYING AN ILLEGAL KICKBACK.--

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

23 [~~A.~~] (1) to refer an individual to a person
24 for the furnishing or arranging for the furnishing of [~~any~~] an
25 item or service for which payment may be made in whole or in

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1 part with public money, is guilty of a fourth degree felony; or
2 ~~[B-]~~ (2) to purchase, lease, order or arrange
3 for or recommend purchasing, leasing or ordering any goods,
4 facilities, services or items for which payment may be made in
5 whole or in part with public money, ~~[shall be]~~ is guilty of a
6 fourth degree felony.

7 B. If a person elected to or appointed to a
8 position with or employed by a public entity is convicted of
9 offering or paying an illegal kickback, the basic sentence of
10 imprisonment shall be increased by one year.

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

19 D. As used in this section:

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

23 (2) "public entity" means the state or one of
24 its agencies, departments, institutions or political
25 subdivisions."

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1 SECTION 13. ~~[NEW MATERIAL]~~ PUBLICATION AND DISSEMINATION
2 OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES AND OTHER
3 CORRUPT PRACTICES.--

4 A. Every state agency, department, political
5 subdivision and institution shall post in a conspicuous place a
6 listing of all crimes constituting public corruption offenses
7 and other corrupt practices and the penalties associated with
8 such crimes.

9 B. As used in this section, "public corruption
10 offense" means:

11 (1) violating the ethical principles of public
12 service, as provided in Subsection D of Section 10-16-3 NMSA
13 1978;

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

16 (3) embezzlement, as provided in Section
17 30-16-8 NMSA 1978; provided that the embezzlement is committed
18 by a person elected to or appointed to a position with or
19 employed by the state or one of its agencies, departments,
20 institutions or political subdivisions and the embezzlement is
21 committed against the state or its agency, department,
22 institution or political subdivision;

23 (4) paying or receiving public money for
24 services not rendered, as provided in Section 30-23-2 NMSA
25 1978;

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

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

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

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

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

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

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

16 SECTION 14. [NEW MATERIAL] FORFEITURE OF PENSION FOR
17 PUBLIC CORRUPTION OFFENSES.--

18 A. If, in the adjudication of a public corruption
19 offense in district court, it appears that the defendant is a
20 member or retired member and the alleged corruption relates to,
21 arises out of or is in connection to the member's public office
22 or public employment, the district attorney or attorney general
23 may, in addition to the felony complaint, file an ancillary
24 claim for forfeiture of pension. Upon the filing, the
25 forfeiture of pension proceeding shall be brought in the same

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1 proceeding as the criminal matter and presented to the same
2 trier of fact; provided that:

3 (1) the two issues shall be bifurcated;

4 (2) the rules of criminal procedure shall
5 apply in the criminal matter and the rules of civil procedure
6 shall apply in the forfeiture proceeding;

7 (3) if the criminal defendant is represented
8 by the public defender department, the chief public defender or
9 the district public defender may authorize department
10 representation of the defendant in the forfeiture proceeding;

11 (4) if the state proves in the forfeiture
12 proceeding by clear and convincing evidence that the defendant
13 is a member or retired member and has been convicted of a
14 public corruption offense that is directly related to, arises
15 out of or is in connection to the member's public office or
16 employment, after determining issues related to community
17 property and child support obligations and issuing orders to
18 that effect, the court may order the forfeiture of some or all
19 of the member's or retired member's right to a pension and
20 other retirement benefits from a state system and serve the
21 order upon the appropriate state system;

22 (5) the amount of the pension to be forfeited
23 by the member shall not exceed the greater of:

24 (a) five times the benefit received by
25 the member from the public corruption offense; or

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1 (b) five times the quantifiable harm to
2 the state, excluding any costs and fees associated with the
3 criminal matter and forfeiture proceeding;

4 (6) the member may pay in full the amount that
5 would otherwise be deducted from the member's pension; and

6 (7) during the ancillary hearing, claims
7 pertaining to community property or child support may be
8 entertained by the judge.

9 B. If a member has been terminated because of an
10 allegation of a public corruption offense, the state system may
11 hold and not disburse the accumulated member contribution until
12 resolution of a proceeding under Subsection A of this section,
13 or until public corruption charges are no longer pending
14 against the member.

15 C. After receipt by a state system of an order
16 issued pursuant to Subsection A of this section, pending a
17 final appeal, the state system:

18 (1) shall, if the forfeited member is a
19 retired member, suspend any pension; and

20 (2) shall not permit withdrawal of a member's
21 accumulated contribution.

22 D. After notification to a state system that an
23 order issued pursuant to Subsection A of this section was not
24 appealed or, upon final appeal, was upheld:

25 (1) except as provided in Paragraph (3) of

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1 this subsection, the state system shall deduct the amount of
2 the pension to be forfeited from the member's or the retired
3 member's pension in a manner provided by the association or
4 board of the state system under which the member is covered;

5 (2) if, prior to the order of forfeiture under
6 this section, a court has issued an order addressing community
7 property interest or child support obligations, whether as a
8 part of a forfeiture under this section, pursuant to Section
9 10-11-136, 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA
10 1978 or in any other proceeding, any action taken by a state
11 system pursuant to this subsection shall be in compliance with
12 that court order; and

13 (3) if the forfeited member is currently
14 receiving a pension from a state system due to previous
15 employment but had subsequently returned to public employment
16 while continuing to receive the pension, the order shall not
17 affect the pension related to the previous employment if the
18 public corruption offense did not arise from conduct related to
19 the previous employment.

20 E. If, on final appeal, the court finding pursuant
21 to Subsection A of this section or the conviction is
22 overturned, the forfeiture order is voided, the attorney
23 general shall notify the state system and the state system
24 shall pay in full any suspended pension payments.

25 F. If no appeal is made from a court finding

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1 pursuant to Subsection A of this section or if, on final
2 appeal, the court finding is upheld, the district attorney or
3 the attorney general shall notify the state system and the
4 state system shall comply with the procedures of Subsection C
5 of this section.

6 G. The provisions of this section apply to pensions
7 earned on or after July 1, 2012.

8 H. As used in this section:

9 (1) "conviction" means a judgment of guilty of
10 a felony or acceptance of a plea of nolo contendere to a public
11 corruption offense by a state or federal court of competent
12 jurisdiction;

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

16 (3) "member" means an individual who is
17 classified as a "member" of a state system pursuant to the laws
18 governing that state system;

19 (4) "member contribution" means the amounts
20 deducted from a member's salary and credited to the member's
21 account in a state system, together with interest, if any,
22 credited to that account;

23 (5) "public corruption offense" means:

24 (a) embezzlement, as provided in Section
25 30-16-8 NMSA 1978; provided that the embezzlement is committed

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1 by a person elected to or appointed to a position with or
2 employed by the state or one of its agencies, departments,
3 institutions or political subdivisions and the embezzlement is
4 committed against the state or its agency, department,
5 institution or political subdivision;

6 (b) paying or receiving public money for
7 services not rendered, as provided in Section 30-23-2 NMSA
8 1978;

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

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

14 (e) committing bribery of a public
15 officer or public employee, as provided in Section 30-24-1 NMSA
16 1978;

17 (f) demanding or receiving a bribe by a
18 public officer or employee, as provided in Section 30-24-2 NMSA
19 1978;

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

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

24 (6) "public employment" means a position held
25 as an elected or appointed official or as an employee of the

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1 state or one of its agencies, departments, institutions or
2 political subdivisions;

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

5 (8) "state system" means a retirement program
6 provided for in the Educational Retirement Act, the Public
7 Employees Retirement Act, the Magistrate Retirement Act or the
8 Judicial Retirement Act.

9 SECTION 15. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2016.