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HOUSE BILL 109

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Matthew McQueen and Mark Moores

AN ACT

RELATING TO PUBLIC OFFICIALS; CREATING THE PUBLIC CORRUPTION ACT; PROVIDING PENALTIES; AMENDING 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 3 of this act may be cited as the "Public Corruption Act".

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

A. "accumulated member contributions" means the amounts contributed by a member of the public employees retirement system to the member's individual account, together with interest, if any, credited to that account;

B. "public corruption offense" means any of the

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1 following offenses committed while campaigning for or serving a
2 term as a public official on or after July 1, 2018:

3 (1) a violation with a first, second or third
4 degree felony penalty for any of the following offenses:

5 (a) fraud, as provided in Section
6 30-16-6 NMSA 1978;

7 (b) embezzlement, as provided in Section
8 30-16-8 NMSA 1978;

9 (c) extortion, as provided in Section
10 30-16-9 NMSA 1978;

11 (d) forgery, as provided in Section
12 30-16-10 NMSA 1978;

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

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

18 (g) bribery or intimidation of a witness
19 or retaliation against a witness, as provided in Section
20 30-24-3 NMSA 1978;

21 (h) racketeering, as provided in the
22 Racketeering Act;

23 (i) a computer crime, as provided in the
24 Computer Crimes Act; and

25 (j) money laundering, as provided in the

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1 Money Laundering Act;

2 (2) any of the following offenses:

3 (a) perjury, as provided in Section
4 30-25-1 NMSA 1978;

5 (b) soliciting or receiving a kickback,
6 bribe or rebate, as provided in Section 30-41-1 NMSA 1978; and

7 (c) offering or paying a kickback, bribe
8 or rebate, as provided in Section 30-41-2 NMSA 1978; and

9 (3) conspiracy to commit any of the offenses
10 set forth in this subsection, as provided in Section 30-28-2
11 NMSA 1978; and

12 C. "public official" means a person campaigning for
13 or elected or appointed to an office in any primary, general or
14 statewide special election, including county elections but not
15 including judicial, municipal, school board or special district
16 elections.

17 SECTION 3. [NEW MATERIAL] PUBLIC CORRUPTION--PENALTIES.--

18 A. A public official who is convicted of or pleads
19 guilty or nolo contendere to a public corruption offense shall,
20 in addition to the penalties for the underlying offense
21 prescribed in the Criminal Sentencing Act, forfeit service
22 credit accrued pursuant to the Public Employees Retirement Act
23 during all periods of service as a public official; provided
24 that:

25 (1) only service credit accrued during time

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1 served as a public official shall be forfeited as provided in
2 this section;

3 (2) service credit accrued, if any, by the
4 public official during employment by an affiliated public
5 employer in a capacity other than as a public official shall
6 not be forfeited;

7 (3) service credit forfeited pursuant to this
8 section shall not be reinstated;

9 (4) if the public official has retired and the
10 pension is based solely on service credit accrued during
11 service as a public official, the pension shall be permanently
12 terminated effective on the first day of the month following
13 the receipt by the public employees retirement association of
14 the written notice from the prosecutor as provided in
15 Subsection B of this section and:

16 (a) if the retired public official has
17 not been paid an aggregate amount of pension payments equal to
18 the amount of the retired public official's accumulated member
19 contributions, the difference between the amount of accumulated
20 member contributions and the aggregate amount of pension paid
21 shall be refunded, subject to the provisions of Paragraph (8)
22 of this subsection; or

23 (b) if the retired public official has
24 been paid an amount in pension payments equal to or greater
25 than the amount of accumulated member contributions paid, no

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1 accumulated member contributions shall be refunded;

2 (5) if the public official has retired and the
3 pension is based in part on service credit accrued during
4 employment by an affiliated public employer in a capacity other
5 than as a public official, the pension shall be recalculated
6 without the forfeited service credit effective on the first day
7 of the month following the receipt by the public employees
8 retirement association of the written notice from the
9 prosecutor as provided in Subsection B of this section and:

10 (a) if the retired public official has
11 not been paid an aggregate amount of pension payments equal to
12 the amount of the retired public official's accumulated member
13 contributions paid during time served as a public official, the
14 difference between the amount of accumulated member
15 contributions paid during time served as a public official and
16 the aggregate amount of pension paid shall be refunded, subject
17 to the provisions of Paragraph (8) of this subsection; or

18 (b) if the retired public official has
19 been paid an amount in pension payments equal to or greater
20 than the amount of accumulated member contributions paid during
21 time served as a public official, no accumulated member
22 contributions shall be refunded;

23 (6) if the elected official has retired and
24 the pension is based on a final average salary that includes
25 concurrent salaries from public employment and elected office,

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1 the pension shall be recalculated without the salary from
2 elected office;

3 (7) the retired public official shall not be
4 required to pay back any pension payments received; and

5 (8) any portion of a pension that is subject
6 to court-ordered child support or satisfaction of the community
7 interest in the pension incident to a decree of dissolution of
8 marriage that was entered before the public corruption offense
9 was committed shall not be affected by forfeiture of service
10 credit pursuant to this section.

11 B. Within thirty days after a public official is
12 convicted of, or pleads guilty or nolo contendere to, a public
13 corruption offense, the prosecutor shall notify the public
14 employees retirement association in writing of the conviction
15 or plea.

16 SECTION 4. Section 31-18-15.4 NMSA 1978 (being Laws 2012,
17 Chapter 3, Section 1) is amended to read:

18 "31-18-15.4. FELONIES--PUBLIC OFFICIALS--ENHANCEMENT OF
19 SENTENCES.--

20 A. When a separate finding of fact by the trier of
21 fact shows beyond a reasonable doubt that an offender is a
22 public official and that the felony conviction relates to,
23 arises out of or is in connection with the offender's holding
24 of an elected office, the basic sentence may be increased by an
25 additional fine not to exceed the value of the salary and

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1 fringe benefits paid to the offender, by virtue of holding an
2 elected public office, after the commission of the first act
3 that was a basis for the felony conviction.

4 B. As used in this section, "public official"
5 means a person elected to an office in an election covered by
6 the Campaign Reporting Act or a person appointed to an office
7 that is subject to an election covered by that act.

8 C. The provisions of this section are not
9 applicable to any felony conviction for an offense that
10 relates to, arises out of or is in connection with the
11 offender's holding of an elected office that is committed on
12 or after July 1, 2018."

13 SECTION 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2018.