

1 SENATE BILL 303

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mark Moores and Matthew McQueen

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10 AN ACT

11 RELATING TO PUBLIC OFFICIALS; CREATING THE PUBLIC CORRUPTION  
12 ACT; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE  
13 NMSA 1978.

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

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
17 through 3 of this act may be cited as the "Public Corruption  
18 Act".

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

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

25 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, 2019:

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 public official has retired and the  
24 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 or appointed office, the basic sentence may be  
25 increased by an additional fine not to exceed the value of the

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

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

9 C. The provisions of this section are not  
10 applicable to any felony conviction for an offense that relates  
11 to, arises out of or is in connection with the offender's  
12 holding of an elected or appointed office that is committed on  
13 or after July 1, 2019."

14 SECTION 5. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2019.