F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	2/4/19		
Moores/McQueen		LAST UPDATED		HB	

SHORT TITLE	Public Corruption Act		SB	303
		ANALYST	Jorgensen	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	**FY20**	**FY21**	**3 Year Total Cost**	**Recurring or Nonrecurring**	**Fund Affected**
Total		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates House Bill 169

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Education Retirement Board (ERB)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 303 creates the "Public Corruption Act." Upon conviction of 'public corruption,' a public official becomes ineligible to receive a Public Employees Retirement Association (PERA) pension in addition to the penalties of the specific crime they are convicted of.

Public corruption is defined as committing certain offenses while campaigning or serving as a public official on or after July 1, 2019. The offenses include a violation with a first, second or third degree felony penalty for fraud, embezzlement, extortion, forgery, bribery of public officer or public employee, demanding or receiving a bribe by public employee, bribery or intimidation of a witness or retaliation against a witness, racketeering, computer crimes, and money laundering. They also include a violation of perjury, soliciting or receiving a kickback, offering or paying a kickback and conspiracy to commit any of the offenses.

Public official is defined as a person campaigning for or elected or appointed to an office in any primary, general or statewide special election, including county elections but not including

judicial, municipal, school board, or special district elections.

SB303 defines accumulated member contribution as the amounts contributed by a member of the public employee's retirement system to the member's individual account, together with interest, if any, credited to that account. The penalty for being convicted of, pleading guilty or nolo contendere to any of these crimes is forfeiture of all service credit accrued pursuant to PERA retirement during all periods of service as a public official. However, the service credit accrued by the public official during employment by an affiliated public employer shall not be forfeited.

SB303 also creates an exception for any portion of a pension that is subject to court-ordered child support or satisfaction of the community interest in the pension to a decree of dissolution of marriage that was entered before the public corruption offense was committed. The bill does require the prosecutor to notify PERA in writing within 30 days of the conviction or plea to the public corruption offense. SB303 amends §31-18-15.4 subsection (a) by adding and including public officers with appointed offices. SB303 further amends §31-18-15.4 creating subsection (c) which specifies that the provisions of the section are not applicable to any felony conviction for an offense that relates to, arises out of or is in connection with the offender's holding of an elected or appointed office that is committed on or after July 1, 2019.

FISCAL IMPLICATIONS

Because it is not known if passage of this legislation will lead to additional convictions and pension forfeiture, it is not possible to determine the impact on the PERA plan.

SIGNIFICANT ISSUES

The Administrative Office of the Courts reports:

> It is unclear whether the SB303 forfeiture penalties are to become part of a court-ordered sentence upon conviction for a "public corruption offense" or are to be applied by the PERA subsequent to conviction. If the intention were to have the forfeiture become part of a court-ordered sentence upon conviction, SB303 would need to direct the court to include the penalties in a sentence handed down upon conviction.

ADMINISTRATIVE IMPLICATIONS

SB303 does not specify what agency is able to prosecute violations of the Public Corruption Act, such as the District Attorney, the Attorney General or other entity.

TECHNICAL ISSUES

New Mexico Attorney General Office notes:

> The bribery provisions of SB303 specifically relate to legislators. Thus, SB303 may need to be harmonized with Article IV, Sections 39 and 40 of the New Mexico Constitution. Article IV, Section 39, which defines bribery, as it related to legislators. Article IV, Section 40 states that a legislator convicted of bribery "shall be deemed guilty of a felony and upon conviction shall be punished by fine of not more than one thousand dollars or by imprisonment in the penitentiary for not less than one nor more than five years." N.M.

Const. art. IV, § 40; See e.g. *State v. Olguin*, 1994-NMCA-050, 8, 118 N.M. 91, 879 P.2d 92 (affirmed in part, set aside in part, 1995- NMSC-077, 120 N.M. 740, 906 P.2d 731). This may be contrary to SB303.

The Criminal Code defines "public officer" as any elected or appointed officer of the state or any of its political subdivision, and whether or not he receives remuneration for his services." NMSA 1978, § 30-1-12(I). If the intent is to exclude "public officials" covered under the Public Corruption Act from any duplicative and/or conflicting provision in the Criminal Code, it may be best to amend the definition of "public officer" found in the Criminal Code to explicitly exclude "public officials." Not all references to individuals in "appointed office" are clear in SB303, including Section 4, where it does not differentiate from appointed officials (such as boards and commissions, general counsel, etc) from a more limited definition, such as "public official" as defined in Section 2(C) of SB303.

CJ /gb