

1 HOUSE BILL 378

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Nate Gentry and Timothy M. Keller

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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; LIMITING
14 THE AMOUNT THAT A SENTENCE MAY BE SUSPENDED, DEFERRED OR TAKEN
15 UNDER ADVISEMENT FOR CONVICTION OF A CRIME DEALING WITH PUBLIC
16 CORRUPTION; BARRING PERSONS CONVICTED OF PUBLIC CORRUPTION
17 OFFENSES FROM LOBBYING OR ENTERING INTO CONTRACTS WITH THE
18 STATE; LIMITING THE MERITORIOUS DEDUCTION AMOUNT FOR PERSONS
19 CONVICTED OF PUBLIC CORRUPTION OFFENSES; PROVIDING FOR THE
20 FORFEITURE OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE
21 RETIREMENT SYSTEMS UPON CONVICTION OF PUBLIC CORRUPTION
22 OFFENSES; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS
23 OF THE NMSA 1978.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. Section 10-16-3 NMSA 1978 (being Laws 1993,
2 Chapter 46, Section 28, as amended) is amended to read:

3 "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN
4 OFFICIAL ACTS PROHIBITED--PENALTY.--

5 A. A legislator or public officer or employee shall
6 treat the legislator's or public officer's or employee's
7 government position as a public trust. The legislator or
8 public officer or employee shall use the powers and resources
9 of public office only to advance the public interest and not to
10 obtain personal benefits or pursue private interests
11 incompatible with the public interest.

12 B. Legislators and public officers and employees
13 shall conduct themselves in a manner that justifies the
14 confidence placed in them by the people, at all times
15 maintaining the integrity and discharging ethically the high
16 responsibilities of public service.

17 C. Full disclosure of real or potential conflicts
18 of interest shall be a guiding principle for determining
19 appropriate conduct. At all times, reasonable efforts shall be
20 made to avoid undue influence and abuse of office in public
21 service.

22 D. No legislator or public officer or employee may
23 request or receive, and no person may offer a legislator or
24 public officer or employee, any money, thing of value or
25 promise thereof that is conditioned upon or given in exchange

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1 for promised performance of an official act. Any person who
2 knowingly and willfully violates the provisions of this
3 subsection is guilty of a fourth degree felony and shall be
4 sentenced pursuant to the provisions of Section 31-18-15 NMSA
5 1978, and nine months of the sentence shall not be suspended,
6 deferred or taken under advisement.

7 E. A person convicted under the provisions of
8 Subsection D of this section shall not, individually or in
9 association with others, submit a bid to or enter into a
10 contract for services, construction or items of tangible
11 personal property with a state agency or act as a lobbyist, as
12 defined in Section 2-11-2 NMSA 1978. Any person who knowingly
13 and willfully violates the provisions of this subsection is
14 guilty of a third degree felony and shall be sentenced pursuant
15 to the provisions of Section 31-18-15 NMSA 1978.

16 F. As used in this section, "state agency" means
17 any branch, agency, instrumentality or institution of the
18 state."

19 SECTION 2. Section 10-16-4 NMSA 1978 (being Laws 1967,
20 Chapter 306, Section 4, as amended) is amended to read:

21 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST
22 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A
23 PENALTY.--

24 A. It is unlawful for a public officer or employee
25 to take an official act for the primary purpose of directly

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1 enhancing the public officer's or employee's financial interest
2 or financial position. Any person who knowingly and willfully
3 violates the provisions of this subsection is guilty of a
4 fourth degree felony and shall be sentenced pursuant to the
5 provisions of Section 31-18-15 NMSA 1978, and nine months of
6 the sentence shall not be suspended, deferred or taken under
7 advisement.

8 B. A public officer or employee shall be
9 disqualified from engaging in any official act directly
10 affecting the public officer's or employee's financial
11 interest.

12 C. A person convicted under the provisions of
13 Subsection A of this section shall not, individually or in
14 association with others, submit a bid to or enter into a
15 contract for services, construction or items of tangible
16 personal property with a state agency or act as a lobbyist, as
17 defined in Section 2-11-2 NMSA 1978. Any person who knowingly
18 and willfully violates the provisions of this subsection is
19 guilty of a third degree felony and shall be sentenced pursuant
20 to the provisions of Section 31-18-15 NMSA 1978.

21 D. As used in this section, "state agency" means
22 any branch, agency, instrumentality or institution of the
23 state."

24 SECTION 3. Section 30-23-2 NMSA 1978 (being Laws 1963,
25 Chapter 303, Section 23-2) is amended to read:

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1 "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES
2 NOT RENDERED.--

3 A. Paying or receiving public money for services
4 not rendered consists of knowingly making or receiving payment
5 or causing payment to be made from public funds where such
6 payment purports to be for wages, salary or remuneration for
7 personal services [~~which~~] that have not in fact been rendered.

8 B. Nothing in this section shall be construed to
9 prevent the payment of public funds where such payments are
10 intended to cover lawful remuneration to public officers or
11 public employees for vacation periods or absences from
12 employment because of sickness or for other lawfully authorized
13 purposes.

14 C. Whoever commits paying or receiving public money
15 for services not rendered is guilty of a fourth degree felony,
16 and nine months of the sentence shall not be suspended,
17 deferred or taken under advisement.

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

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1 E. As used in this section, "state agency" means
2 any branch, agency, instrumentality or institution of the
3 state."

4 SECTION 4. Section 30-23-3 NMSA 1978 (being Laws 1963,
5 Chapter 303, Section 23-3, as amended) is amended to read:

6 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

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

14 B. Whoever commits making or permitting false
15 public voucher is guilty of a fourth degree felony, and nine
16 months of the sentence shall not be suspended, deferred or
17 taken under advisement.

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

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1 D. As used in this section, "state agency" means
2 any branch, agency, instrumentality or institution of the
3 state."

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

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

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

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

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

19 [~~(2)~~] (b) subsequent to the transaction,
20 a statement is filed as a matter of public record in the office
21 of secretary of state by the purchaser or seller giving
22 anything of value to a public officer or public employee and
23 this statement contains the date the services were rendered,
24 the amount of remuneration for the rendered services and the
25 nature of the rendered services; and

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

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

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

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

25 E. Whoever commits unlawful interest in public

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1 contracts where the value received by [~~him~~] the person is more
2 than fifty dollars (\$50.00) is guilty of a fourth degree
3 felony, [~~Any~~] and nine months of the sentence shall not be
4 suspended, deferred or taken under advisement. A public
5 officer or public employee convicted of a felony [~~hereunder~~]
6 under the provisions of this section is forever disqualified
7 from employment by the state or any of its political
8 subdivisions.

9 F. A person convicted under the provisions of
10 Paragraph (1) or (2) of Subsection A of this section, where the
11 value received by the person is more than fifty dollars
12 (\$50.00), shall not, individually or in association with
13 others, submit a bid to or enter into a contract for services,
14 construction or items of tangible personal property with a
15 state agency or act as a lobbyist, as defined in Section 2-11-2
16 NMSA 1978. Any person who knowingly and willfully violates the
17 provisions of this subsection is guilty of a third degree
18 felony.

19 G. As used in this section, "state agency" means
20 any branch, agency, instrumentality or institution of the
21 state."

22 SECTION 6. Section 30-24-1 NMSA 1978 (being Laws 1963,
23 Chapter 303, Section 24-1) is amended to read:

24 "30-24-1. BRIBERY OF PUBLIC OFFICER OR PUBLIC EMPLOYEE--
25 FAILURE TO REPORT.--

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1 A. Bribery of public officer or public employee
2 consists of any person giving or offering to give, directly or
3 indirectly, anything of value to any public officer or public
4 employee, with intent to induce or influence [~~such~~] that
5 public officer or public employee to:

6 [~~A.~~] (1) give or render any official opinion,
7 judgment or decree;

8 [~~B.~~] (2) be more favorable to one party than
9 to the other in any cause, action, suit, election, appointment,
10 matter or thing pending or to be brought before [~~such~~] that
11 person;

12 [~~C.~~] (3) procure [~~him~~] the person to vote or
13 withhold [~~his~~] the person's vote on [~~any~~] a question, matter or
14 proceeding [~~which~~] that is then or may thereafter be pending,
15 and [~~which~~] that may by law come or be brought before [~~him~~] the
16 person in [~~his~~] the person's public capacity;

17 [~~D.~~] (4) execute any of the powers [~~in him~~]
18 vested in the person; or

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

22 B. Whoever commits bribery of a public officer or
23 public employee is guilty of a third degree felony, and
24 eighteen months of the sentence shall not be suspended,
25 deferred or taken under advisement.

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

9 D. It is unlawful for a public officer or public
10 employee who has direct knowledge of bribery of a public
11 officer or public employee to fail to report the bribery to a
12 law enforcement officer or the supervisor of the reporting
13 officer or employee. If the bribery is reported to the
14 supervisor of the officer or employee reporting the bribery,
15 the supervisor shall report the bribery to a law enforcement
16 officer. Any person who knowingly and willfully violates the
17 provisions of this subsection is guilty of a misdemeanor.

18 E. As used in this section, "state agency" means
19 any branch, agency, instrumentality or institution of the
20 state."

21 SECTION 7. Section 30-24-2 NMSA 1978 (being Laws 1963,
22 Chapter 303, Section 24-2) is amended to read:

23 "30-24-2. DEMANDING OR RECEIVING BRIBE BY PUBLIC OFFICER
24 OR PUBLIC EMPLOYEE--FAILURE TO REPORT.--

25 A. Demanding or receiving bribe by public officer

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

9 B. Whoever commits demanding or receiving a bribe
10 by a public officer or public employee is guilty of a third
11 degree felony, and eighteen months of the sentence shall not be
12 suspended, deferred or taken under advisement. Upon
13 conviction, [~~thereof such~~] a public officer or public employee
14 shall forfeit the office then held by [~~him~~] the officer or
15 employee.

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

24 D. It is unlawful for a public officer or public
25 employee who has direct knowledge of demanding or receiving a

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1 bribe by a public officer or public employee to fail to report
2 the bribery to a law enforcement officer or the supervisor of
3 the reporting officer or employee. If the demanding of or
4 receiving of a bribe is reported to the supervisor of the
5 officer or employee reporting the incident, the supervisor
6 shall report the demanding of or receiving of a bribe to a law
7 enforcement officer. Any person who knowingly and willfully
8 violates the provisions of this subsection is guilty of a
9 misdemeanor.

10 E. As used in this section, "state agency" means
11 any branch, agency, instrumentality or institution of the
12 state."

13 SECTION 8. Section 30-26-1 NMSA 1978 (being Laws 1963,
14 Chapter 303, Section 26-1) is amended to read:

15 "30-26-1. TAMPERING WITH PUBLIC RECORDS.--

16 A. Tampering with public records consists of:

17 [~~A.~~] (1) knowingly altering any public record
18 without lawful authority;

19 [~~B.~~] (2) any public officer or public employee
20 knowingly filing or recording any written instrument, judicial
21 order, judgment or decree in a form other than as the original
22 thereof in fact appeared;

23 [~~C.~~] (3) any public officer or public employee
24 knowingly falsifying or falsely making any record or file,
25 authorized or required by law to be kept;

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1 [~~D-~~] (4) any public officer or public employee
2 knowingly issuing or causing to be issued any false or untrue
3 certified copy of a public record; or

4 [~~E-~~] (5) knowingly destroying, concealing,
5 mutilating or removing without lawful authority [~~and~~] any
6 public record or public document belonging to or received or
7 kept by any public authority for information or record or
8 pursuant to law.

9 B. Whoever commits tampering with public records is
10 guilty of a fourth degree felony, and nine months of the
11 sentence shall not be suspended, deferred or taken under
12 advisement.

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

21 D. As used in this section, "state agency" means
22 any branch, agency, instrumentality or institution of the
23 state."

24 SECTION 9. Section 30-41-1 NMSA 1978 (being Laws 1979,
25 Chapter 384, Section 1) is amended to read:

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

2 A. Whoever knowingly solicits or receives, [~~any~~]
3 directly or indirectly, a remuneration in the form of any
4 kickback, bribe or rebate [~~directly or indirectly, overtly or~~
5 ~~evertly~~] in cash or in kind from a person:

6 [~~A.~~] (1) in return for referring an individual
7 to that person for the furnishing or arranging for the
8 furnishing of any item or service for which payment may be made
9 in whole or in part with public money; or

10 [~~B.~~] (2) in return for purchasing, leasing,
11 ordering or arranging for or recommending purchasing, leasing
12 or ordering any goods, facilities, services or items for which
13 payment may be made in whole or in part with public money,
14 [~~shall be~~] is guilty of a fourth degree felony, and nine months
15 of the sentence shall not be suspended, deferred or taken under
16 advisement.

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

25 C. It is unlawful for a public officer or public

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1 employee who has direct knowledge of a person soliciting or
2 receiving an illegal kickback to fail to report the
3 solicitation or receipt of the illegal kickback to a law
4 enforcement officer or the supervisor of the reporting officer
5 or employee. If the solicitation or receipt of the illegal
6 kickback is reported to the supervisor of the officer or
7 employee reporting the solicitation or receipt of the illegal
8 kickback, the supervisor shall report the solicitation or
9 receipt of the illegal kickback to a law enforcement officer.
10 Any person who knowingly and willfully violates the provisions
11 of this subsection is guilty of a misdemeanor.

12 D. As used in this section, "state agency" means
13 any branch, agency, instrumentality or institution of the
14 state."

15 SECTION 10. Section 30-41-2 NMSA 1978 (being Laws 1979,
16 Chapter 384, Section 2) is amended to read:

17 "30-41-2. OFFERING OR PAYING ILLEGAL KICKBACK.--

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

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

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1 [~~B.~~] (2) to purchase, lease, order or arrange
2 for or recommend purchasing, leasing or ordering any goods,
3 facilities, services or items for which payment may be made in
4 whole or in part with public money, shall be guilty of a fourth
5 degree felony, and nine months of the sentence shall not be
6 suspended, deferred or taken under advisement.

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

15 C. It is unlawful for a public officer or public
16 employee who has direct knowledge of a person offering or
17 paying an illegal kickback to fail to report the offer or
18 payment of the illegal kickback to a law enforcement officer or
19 the supervisor of the reporting officer or employee. If the
20 offer or payment of the illegal kickback is reported to the
21 supervisor of the officer or employee reporting the offer or
22 payment of the illegal kickback, the supervisor shall report
23 the offer or payment of the illegal kickback to a law
24 enforcement officer. Any person who knowingly and willfully
25 violates the provisions of this subsection is guilty of a

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1 misdemeanor.

2 D. As used in this section, "state agency" means
3 any branch, agency, instrumentality or institution of the
4 state."

5 SECTION 11. Section 33-2-34 NMSA 1978 (being Laws 1999,
6 Chapter 238, Section 1, as amended) is amended to read:

7 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
8 DEDUCTIONS.--

9 A. To earn meritorious deductions, a prisoner
10 confined in a correctional facility designated by the
11 corrections department must be an active participant in programs
12 recommended for the prisoner by the classification supervisor
13 and approved by the warden or the warden's designee.

14 Meritorious deductions shall not exceed the following amounts:

15 (1) for a prisoner confined for committing a
16 serious violent offense or a public corruption offense, up to a
17 maximum of four days per month of time served;

18 (2) for a prisoner confined for committing a
19 nonviolent offense, up to a maximum of thirty days per month of
20 time served;

21 (3) for a prisoner confined following
22 revocation of parole for the alleged commission of a new felony
23 offense or for absconding from parole, up to a maximum of four
24 days per month of time served during the parole term following
25 revocation; and

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1 (4) for a prisoner confined following
2 revocation of parole for a reason other than the alleged
3 commission of a new felony offense or absconding from parole:

4 (a) up to a maximum of eight days per
5 month of time served during the parole term following
6 revocation, if the prisoner was convicted of a serious violent
7 offense or failed to pass a drug test administered as a
8 condition of parole; or

9 (b) up to a maximum of thirty days per
10 month of time served during the parole term following
11 revocation, if the prisoner was convicted of a nonviolent
12 offense.

13 B. A prisoner may earn meritorious deductions upon
14 recommendation by the classification supervisor, based upon the
15 prisoner's active participation in approved programs and the
16 quality of the prisoner's participation in those approved
17 programs. A prisoner may not earn meritorious deductions
18 unless the recommendation of the classification supervisor is
19 approved by the warden or the warden's designee.

20 C. If a prisoner's active participation in approved
21 programs is interrupted by a lockdown at a correctional
22 facility, the prisoner may continue to be awarded meritorious
23 deductions at the rate the prisoner was earning meritorious
24 deductions prior to the lockdown, unless the warden or the
25 warden's designee determines that the prisoner's conduct

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1 contributed to the initiation or continuance of the lockdown.

2 D. A prisoner confined in a correctional facility
3 designated by the corrections department is eligible for lump-
4 sum meritorious deductions as follows:

5 (1) for successfully completing an approved
6 vocational, substance abuse or mental health program, one
7 month; except when the prisoner has a demonstrable physical,
8 mental health or developmental disability that prevents the
9 prisoner from successfully earning a general education diploma,
10 in which case, the prisoner shall be awarded three months;

11 (2) for earning a general education diploma,
12 three months;

13 (3) for earning an associate's degree, four
14 months;

15 (4) for earning a bachelor's degree, five
16 months;

17 (5) for earning a graduate qualification, five
18 months; and

19 (6) for engaging in a heroic act of saving
20 life or property, engaging in extraordinary conduct for the
21 benefit of the state or the public that is at great expense or
22 risk to or involves great effort on [~~behalf~~] the part of the
23 prisoner or engaging in extraordinary conduct far in excess of
24 normal program assignments that demonstrates the prisoner's
25 commitment to self-rehabilitation. The classification

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1 supervisor and the warden or the warden's designee may
2 recommend the number of days to be awarded in each case based
3 upon the particular merits, but any award shall be determined
4 by the director of the adult institutions division of the
5 corrections department or the director's designee.

6 E. Lump-sum meritorious deductions, provided in
7 Paragraphs (1) through (6) of Subsection D of this section, may
8 be awarded in addition to the meritorious deductions provided
9 in Subsections A and B of this section. Lump-sum meritorious
10 deductions shall not exceed one year per award and shall not
11 exceed a total of one year for all lump-sum meritorious
12 deductions awarded in any consecutive twelve-month period.

13 F. A prisoner is not eligible to earn meritorious
14 deductions if the prisoner:

15 (1) disobeys an order to perform labor,
16 pursuant to Section 33-8-4 NMSA 1978;

17 (2) is in disciplinary segregation;

18 (3) is confined for committing a serious
19 violent offense and is within the first sixty days of receipt
20 by the corrections department; or

21 (4) is not an active participant in programs
22 recommended and approved for the prisoner by the classification
23 supervisor.

24 G. The provisions of this section shall not be
25 interpreted as providing eligibility to earn meritorious

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1 deductions from a sentence of life imprisonment or a sentence
2 of death.

3 H. The corrections department shall promulgate
4 rules to implement the provisions of this section, and the
5 rules shall be matters of public record. A concise summary of
6 the rules shall be provided to each prisoner, and each prisoner
7 shall receive a quarterly statement of the meritorious
8 deductions earned.

9 I. A New Mexico prisoner confined in a federal or
10 out-of-state correctional facility is eligible to earn
11 meritorious deductions for active participation in programs on
12 the basis of the prisoner's conduct and program reports
13 furnished by that facility to the corrections department. All
14 decisions regarding the award and forfeiture of meritorious
15 deductions at such facility are subject to final approval by
16 the director of the adult institutions division of the
17 corrections department or the director's designee.

18 J. In order to be eligible for meritorious
19 deductions, a prisoner confined in a federal or out-of-state
20 correctional facility designated by the corrections department
21 must actively participate in programs that are available. If a
22 federal or out-of-state correctional facility does not have
23 programs available for a prisoner, the prisoner may be awarded
24 meritorious deductions at the rate the prisoner could have
25 earned meritorious deductions if the prisoner had actively

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1 participated in programs.

2 K. A prisoner confined in a correctional facility
3 in New Mexico that is operated by a private company, pursuant
4 to a contract with the corrections department, is eligible to
5 earn meritorious deductions in the same manner as a prisoner
6 confined in a state-run correctional facility. All decisions
7 regarding the award or forfeiture of meritorious deductions at
8 such facilities are subject to final approval by the director
9 of the adult institutions division of the corrections
10 department or the director's designee.

11 L. As used in this section:

12 (1) "active participant" means a prisoner who
13 has begun, and is regularly engaged in, approved programs;

14 (2) "program" means work, vocational,
15 educational, substance abuse and mental health programs,
16 approved by the classification supervisor, that contribute to a
17 prisoner's self-betterment through the development of personal
18 and occupational skills. "Program" does not include
19 recreational activities;

20 (3) "nonviolent offense" means any offense
21 other than a serious violent offense; ~~and~~

22 (4) "serious violent offense" means:

23 (a) second degree murder, as provided in
24 Section 30-2-1 NMSA 1978;

25 (b) voluntary manslaughter, as provided

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1 in Section 30-2-3 NMSA 1978;

2 (c) third degree aggravated battery, as
3 provided in Section 30-3-5 NMSA 1978;

4 (d) third degree aggravated battery
5 against a household member, as provided in Section 30-3-16 NMSA
6 1978;

7 (e) first degree kidnaping, as provided
8 in Section 30-4-1 NMSA 1978;

9 (f) first and second degree criminal
10 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

11 (g) second and third degree criminal
12 sexual contact of a minor, as provided in Section 30-9-13 NMSA
13 1978;

14 (h) first and second degree robbery, as
15 provided in Section 30-16-2 NMSA 1978;

16 (i) second degree aggravated arson, as
17 provided in Section 30-17-6 NMSA 1978;

18 (j) shooting at a dwelling or occupied
19 building, as provided in Section 30-3-8 NMSA 1978;

20 (k) shooting at or from a motor vehicle,
21 as provided in Section 30-3-8 NMSA 1978;

22 (l) aggravated battery upon a peace
23 officer, as provided in Section 30-22-25 NMSA 1978;

24 (m) assault with intent to commit a
25 violent felony upon a peace officer, as provided in Section

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1 30-22-23 NMSA 1978;

2 (n) aggravated assault upon a peace
3 officer, as provided in Section 30-22-22 NMSA 1978; and

4 (o) any of the following offenses, when
5 the nature of the offense and the resulting harm are such that
6 the court judges the crime to be a serious violent offense for
7 the purpose of this section: 1) involuntary manslaughter, as
8 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
9 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
10 third degree assault with intent to commit a violent felony, as
11 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
12 aggravated assault against a household member, as provided in
13 Section 30-3-13 NMSA 1978; 5) third degree assault against a
14 household member with intent to commit a violent felony, as
15 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
16 degree aggravated stalking, as provided in Section 30-3A-3.1
17 NMSA 1978; 7) second degree kidnaping, as provided in Section
18 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
19 provided in Section 30-6-1 NMSA 1978; 9) first, second and
20 third degree abuse of a child, as provided in Section 30-6-1
21 NMSA 1978; 10) third degree dangerous use of explosives, as
22 provided in Section 30-7-5 NMSA 1978; 11) third and fourth
23 degree criminal sexual penetration, as provided in Section
24 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of
25 a minor, as provided in Section 30-9-13 NMSA 1978; 13) third

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1 degree robbery, as provided in Section 30-16-2 NMSA 1978; 14)
2 third degree homicide by vehicle or great bodily injury by
3 vehicle, as provided in Section 66-8-101 NMSA 1978; and 15)
4 battery upon a peace officer, as provided in Section 30-22-24
5 NMSA 1978; and

6 (5) "public corruption offense" means:

7 (a) violating the ethical principles of
8 public service, as provided in Subsection D of Section 10-16-3
9 NMSA 1978;

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

12 (c) paying or receiving public money for
13 services not rendered, as provided in Section 30-23-2 NMSA
14 1978;

15 (d) making or permitting false public
16 voucher, as provided in Section 30-23-3 NMSA 1978;

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

20 (f) committing bribery of public officer
21 or public employee, as provided in Section 30-24-1 NMSA 1978;

22 (g) demanding or receiving bribe by
23 public officer or employee, as provided in Section 30-24-2 NMSA
24 1978;

25 (h) tampering with public records, as

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1 provided in Section 30-26-1 NMSA 1978;

2 (i) soliciting or receiving illegal
3 kickback, as provided in Section 30-41-1 NMSA 1978; and

4 (j) offering or paying illegal kickback,
5 as provided in Section 30-41-2 NMSA 1978.

6 M. Except for sex offenders, as provided in Section
7 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
8 correctional facility designated by the corrections department
9 who has been released from confinement and who is serving a
10 parole term may be awarded earned meritorious deductions of up
11 to thirty days per month upon recommendation of the parole
12 officer supervising the offender, with the final approval of
13 the adult parole board. The offender must be in compliance
14 with all the conditions of the offender's parole to be eligible
15 for earned meritorious deductions. The adult parole board may
16 remove earned meritorious deductions previously awarded if the
17 offender later fails to comply with the conditions of the
18 offender's parole. The corrections department and the adult
19 parole board shall promulgate rules to implement the provisions
20 of this subsection. This subsection applies to offenders who
21 are serving a parole term on or after July 1, 2004."

22 SECTION 12. [NEW MATERIAL] PUBLICATION AND DISSEMINATION
23 OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES AND OTHER
24 CORRUPT PRACTICES.--

25 A. Every state agency shall post in a conspicuous

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1 place a listing of all crimes constituting public corruption
2 offenses and other corrupt practices and the penalties
3 associated with such crimes.

4 B. As used in this section, "public corruption
5 offense" means:

6 (1) violating the ethical principles of public
7 service, as provided in Subsection D of Section 10-16-3 NMSA
8 1978;

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

11 (3) paying or receiving public money for
12 services not rendered, as provided in Section 30-23-2 NMSA
13 1978;

14 (4) making or permitting false public voucher,
15 as provided in Section 30-23-3 NMSA 1978;

16 (5) committing unlawful interest in a public
17 contract, where the value received is more than fifty dollars
18 (\$50.00), as provided in Section 30-23-6 NMSA 1978;

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

21 (7) demanding or receiving bribe by public
22 officer or employee, as provided in Section 30-24-2 NMSA 1978;

23 (8) tampering with public records, as provided
24 in Section 30-26-1 NMSA 1978;

25 (9) soliciting or receiving illegal kickback,

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1 as provided in Section 30-41-1 NMSA 1978; and

2 (10) offering or paying illegal kickback, as
3 provided in Section 30-41-2 NMSA 1978.

4 SECTION 13. [NEW MATERIAL] FORFEITURE OF PENSION FOR
5 PUBLIC CORRUPTION OFFENSES.--

6 A. If, in the adjudication of a public corruption
7 offense in a New Mexico district court, it appears that the
8 defendant is a member or retired member, the district attorney
9 or attorney general shall, in addition to the felony complaint,
10 file for an order of forfeiture of pension. Upon the filing,
11 the forfeiture of pension proceeding shall be brought in the
12 same proceeding as the criminal matter and presented to the
13 same trier of fact; provided that:

- 14 (1) the two issues shall be bifurcated;
- 15 (2) the rules of criminal procedure shall
16 apply in the criminal matter and the rules of civil procedure
17 shall apply in the forfeiture proceeding;
- 18 (3) if the criminal defendant is represented
19 by the public defender department, the chief public defender or
20 the district public defender may authorize department
21 representation of the defendant in the forfeiture proceeding;
22 and
- 23 (4) if the state proves by clear and
24 convincing evidence that the defendant is a member or retired
25 member and has been convicted of a public corruption offense,

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1 after determining issues related to community property and
2 child support obligations and issuing orders to that effect,
3 the court may order the forfeiture of the member's or retired
4 member's right to a pension and other retirement benefits from
5 a state system and serve the order upon the appropriate state
6 system.

7 B. After receipt by a state system of an order
8 issued pursuant to Subsection A of this section, pending a
9 final appeal, the state system shall suspend the forfeited
10 member's service credit and, if the forfeited member is a
11 retired member, shall suspend any pension.

12 C. After notification to a state system that an
13 order issued pursuant to Subsection A of this section was not
14 appealed or, upon final appeal, was upheld:

15 (1) except as provided in Paragraph (5) of
16 this subsection, the state system shall revoke the forfeited
17 member's service credit;

18 (2) if the forfeited member is not currently
19 receiving a pension, except as provided in Paragraph (4) of
20 this subsection, the state system shall refund accumulated
21 member contributions to the forfeited member;

22 (3) if the forfeited member is currently
23 receiving a pension, except as provided in Paragraph (4) or (5)
24 of this subsection, the state system shall cease paying a
25 pension and shall refund any unexpended accumulated member

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1 contributions to the forfeited member;

2 (4) if, prior to the order of forfeiture, a
3 court has issued an order pursuant to Section 10-11-136,
4 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, or as
5 part of the forfeiture order, orders were issued addressing
6 community property interests or child support obligations, then
7 any action by a state system pursuant to Paragraph (2) or (3)
8 of this subsection shall be in compliance with those court
9 orders; and

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

17 D. If, on final appeal, the court finding pursuant
18 to Subsection A of this section or the conviction is
19 overturned, the forfeiture order is voided, the attorney
20 general shall notify the state system and the state system
21 shall reinstate the forfeited service credit and pay in full
22 any suspended pension payments.

23 E. If no appeal is made from a court finding
24 pursuant to Subsection A of this section or if, on final
25 appeal, the court finding is upheld, the district attorney or

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1 the attorney general shall notify the state system and the
2 state system shall comply with the procedures of Subsection C
3 of this section.

4 F. The provisions of this section apply to crimes
5 committed on or after July 1, 2011.

6 G. As used in this section:

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

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

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

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

21 (5) "public corruption offense" means:

22 (a) violating the ethical principles of
23 public service, as provided in Subsection D of Section 10-16-3
24 NMSA 1978;

25 (b) taking an official act for personal

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1 financial interest, as provided in Section 10-16-4 NMSA 1978;

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

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

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

10 (f) committing bribery of a public
11 officer or public employee, as provided in Section 30-24-1 NMSA
12 1978;

13 (g) demanding or receiving a bribe by a
14 public officer or employee, as provided in Section 30-24-2 NMSA
15 1978;

16 (h) tampering with public records, as
17 provided in Section 30-26-1 NMSA 1978;

18 (i) soliciting or receiving an illegal
19 kickback, as provided in Section 30-41-1 NMSA 1978; and

20 (j) offering or paying an illegal
21 kickback, as provided in Section 30-41-2 NMSA 1978;

22 (6) "public employment" means a position held
23 as an elected or appointed official or as an employee of the
24 state or one of its agencies, departments, political
25 subdivisions or institutions;

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

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

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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