

1 SENATE BILL 247

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

3 INTRODUCED BY

4 Sue Wilson Beffort

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10 AN ACT

11 RELATING TO RETIREMENT BENEFITS; PROVIDING FOR THE FORFEITURE
12 OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT
13 SYSTEMS UPON CONVICTION FOR CERTAIN CRIMES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. FORFEITURE OF PENSION FOR CERTAIN PENALTY
17 CONVICTIONS.--

18 A. As used in this section:

19 (1) "conviction" means a judgment of guilty of
20 a felony or acceptance of a plea of nolo contendere to a felony
21 charge by a state or federal court of competent jurisdiction;

22 (2) "felony" means a crime designated by law
23 as a felony or a crime for which the authorized penalty is
24 imprisonment for one year or more;

25 (3) "felony arising out of the misuse of

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1 public money" includes, but is not limited to, a felony arising
2 out of the act of bribery, extortion, theft of public money,
3 embezzlement of public money or forgery;

4 (4) "forfeited member" means an individual
5 who, under a court order issued pursuant to this section, has
6 forfeited pension rights in a state system;

7 (5) "member" means an individual who is
8 classified as a "member" of a state system pursuant to the laws
9 governing that state system;

10 (6) "member contributions" means the amounts
11 deducted from a member's salary and credited to the member's
12 account in a state system, together with interest, if any,
13 credited to that account;

14 (7) "public employment" means a position held
15 as an elected or appointed official or as an employee of the
16 state or one of its agencies, departments, political
17 subdivisions or institutions;

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

20 (9) "state system" means a retirement program
21 provided for in the Educational Retirement Act, the Public
22 Employees Retirement Act, the Magistrate Retirement Act or the
23 Judicial Retirement Act.

24 B. If, in the adjudication of a felony in a New
25 Mexico district court, it appears that the defendant is a

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1 member or retired member and that the felony is one arising
2 from the misuse of public money and is related to the member's
3 or retired member's public employment, the district attorney or
4 attorney general shall, in addition to the felony complaint,
5 file for an order of forfeiture of pension. Upon the filing,
6 the forfeiture of pension proceeding shall be brought in the
7 same proceeding as the criminal matter and presented to the
8 same trier of fact; provided that:

9 (1) the two issues shall be bifurcated;

10 (2) the rules of criminal procedure shall
11 apply in the criminal matter and the rules of civil procedure
12 shall apply in the forfeiture proceeding;

13 (3) if the criminal defendant is represented
14 by the public defender department, the chief public defender or
15 the district public defender may authorize department
16 representation of the defendant in the forfeiture proceeding;
17 and

18 (4) if the state proves by clear and
19 convincing evidence that the defendant is a member or retired
20 member and has been convicted of a felony arising out of the
21 misuse of public money and related to the member's or retired
22 member's public employment, the court may order the forfeiture
23 of the member's or retired member's right to a pension and
24 other retirement benefits from a state system and serve the
25 order upon the appropriate state system.

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1 C. Upon a person's initial conviction in a court of
2 another state or a federal court of a felony that appears to
3 arise out of the misuse of public money and that is related to
4 public employment, the attorney general or a district attorney
5 shall initiate the forfeiture of a state system pension by
6 filing for an order of forfeiture of pension with the district
7 court for the county of Santa Fe or the district court for the
8 county in which the member or retired member resides or in
9 which the member or retired member was engaged in public
10 employment; provided that no action shall be brought pursuant
11 to this subsection after three years from the date of the
12 person's initial conviction. If, after notice and hearing, the
13 state proves, by clear and convincing evidence, that the person
14 is a member or retired member, that the member or retired
15 member was convicted of a felony and that the felony was one
16 arising out of the misuse of public money and related to the
17 member's or retired member's public employment, the court may
18 order the forfeiture of the member's or retired member's right
19 to a pension and other retirement benefits from a state system
20 and notify the appropriate state system of the order.

21 D. After receipt by a state system of an order
22 issued pursuant to Subsection B or C of this section, pending a
23 final appeal, the state system shall suspend the forfeited
24 member's service credit and, if the forfeited member is a
25 retired member, shall suspend any pension; provided that, if

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1 the forfeited member is a retired member, during the period of
2 suspension, the forfeited member shall be deemed to be a
3 "retiree" for purposes of the Retiree Health Care Act.

4 E. If no appeal is made from a court order pursuant
5 to Subsection B or C of this section or from the felony
6 conviction, or if, on final appeal, the court order and the
7 felony conviction are upheld, the district attorney or the
8 attorney general shall notify the state system and the state
9 system shall comply with the procedures of Subsection F of this
10 section.

11 F. After notification to a state system that an
12 order issued pursuant to Subsection B or C of this section or
13 the felony conviction was not appealed or, upon final appeal,
14 the order and the felony conviction were 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. In addition, the state
2 system shall notify the retiree health care authority that the
3 forfeited member is no longer a "retiree" for purposes of the
4 Retiree Health Care Act;

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

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

18 G. If, on final appeal, the court order pursuant to
19 Subsection B or C of this section or the conviction is
20 overturned, the forfeiture order is voided, the attorney
21 general shall notify the state system and the state system
22 shall reinstate the forfeited service credit and pay in full
23 any suspended pension payments with interest at a rate
24 determined by the appropriate state system board.

25 Section 2. APPLICABILITY.--The provisions of this act

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1 apply to crimes committed on or after the effective date of
2 this act.

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