

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE SAFETY AND CIVIL AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 278

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

AN ACT

RELATING TO PUBLIC PENSIONS; CREATING THE PUBLIC PENSION  
FORFEITURE ACT; PROVIDING FOR FORFEITURE OF A PUBLIC PENSION  
FOLLOWING CONVICTION FOR CERTAIN FELONIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Public Pension Forfeiture Act".

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

A. "campaign offense" means a felony offense that  
relates to campaign practices, that is provided for in Chapter  
1, Article 19 NMSA 1978 and that was committed while the person  
served in a public trust position or was seeking election to a  
public trust position;

B. "public corruption offense" means a felony

1 offense:

2 (1) that is provided for in the Governmental  
3 Conduct Act and that was committed while the person served in a  
4 public trust position;

5 (2) that relates to kickbacks, bribes or  
6 rebates, that is provided for in Chapter 30, Article 41 NMSA  
7 1978 and that was committed while the person served in a public  
8 trust position;

9 (3) that requires a finding that a defendant  
10 was a "public employee" or "public officer", as those terms are  
11 defined in the Criminal Code, and that was committed while the  
12 person served in a public trust position;

13 (4) that was committed while the person served  
14 in a public trust position and for which the state or a  
15 political subdivision of the state is the victim of the  
16 offense;

17 (5) that was committed while the person served  
18 in a public trust position and for which the finder of fact  
19 makes a separate finding of fact, beyond a reasonable doubt,  
20 that but for the person's public employment, the person could  
21 not have committed the offense;

22 (6) that is a "serious violent offense" as  
23 provided in Section 33-2-34 NMSA 1978 and for which the finder  
24 of fact makes a separate finding of fact, beyond a reasonable  
25 doubt, that but for the person's public employment, the person

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1 could not have committed the offense;

2 (7) that is a "sex offense" as provided in  
3 Section 29-11A-3 NMSA 1978 and for which the finder of fact  
4 makes a separate finding of fact, beyond a reasonable doubt,  
5 that but for the person's public employment, the person could  
6 not have committed the offense; or

7 (8) that is a first or second degree felony  
8 and for which the finder of fact makes a separate finding of  
9 fact, beyond a reasonable doubt, that but for the person's  
10 public employment, the person could not have committed the  
11 offense;

12 C. "public employment" means a position in which  
13 service credit may be earned pursuant to a retirement act;

14 D. "public trust position" means:

15 (1) an elected position within state  
16 government or within a political subdivision of the state; or

17 (2) an appointed position for which the  
18 consent of the senate is required;

19 E. "retirement act" means the following acts:

20 (1) the Public Employees Retirement Act;

21 (2) the Judicial Retirement Act;

22 (3) the Magistrate Retirement Act; or

23 (4) the Educational Retirement Act; and

24 F. "service credit" means all years of actual  
25 service credit earned pursuant to a retirement act.

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1           SECTION 3.   ~~[NEW MATERIAL]~~ FORFEITURE OF SERVICE CREDIT  
2 UPON CONVICTION.--

3           A.   If a person who has earned service credit  
4 pursuant to a retirement act is convicted of a campaign offense  
5 or a public corruption offense, all service credit earned by  
6 the person shall be forfeited; provided, however, that if the  
7 person retired from and subsequently returned to public  
8 employment, the person's service credit earned prior to  
9 retirement shall not be forfeited unless the person's  
10 conviction relates to a campaign offense or a public corruption  
11 offense that the person committed in connection with the  
12 person's pre-retirement public employment.

13           B.   Upon a person's conviction for a campaign  
14 offense or a public corruption offense, the court shall enter  
15 an order of forfeiture that directs the public employees  
16 retirement association or the educational retirement board to  
17 terminate the person's retirement act pension payments that  
18 relate to forfeited service credit as provided in Subsection A  
19 of this section and, subject to relevant court orders, to  
20 refund any remaining accumulated member contributions in  
21 accordance with the applicable retirement act, to the person.

22           C.   The court shall stay the order of forfeiture  
23 provided for in Subsection B of this section, pending  
24 disposition of:

- 25                   (1) a direct appeal of the conviction; or

1 (2) a dissolution of marriage or a child  
2 support matter that was filed prior to the person's conviction.

3 D. The court shall not stay the order of forfeiture  
4 provided for in Subsection B of this section pending  
5 disposition of a petition for writ of habeas corpus or for  
6 other post-conviction relief.

7 E. If the convicted person whose service credit was  
8 forfeited pursuant to this section is subsequently pardoned,  
9 the forfeiture and the refund of the person's accumulated  
10 member contributions shall be regarded as a voluntary  
11 withdrawal by the person of that person's accumulated member  
12 contributions.

13 SECTION 4. APPLICABILITY.--The provisions of this act  
14 apply to a campaign offense or a public corruption offense that  
15 is committed on or after July 1, 2016.

16 SECTION 5. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2016.