

HOUSE BILL 109

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Matthew McQueen and Mark Moores

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

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

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

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

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

.209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight↔

delete = →bold, red, highlight, strikethrough↔

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

B. "public corruption offense" means any of the following offenses committed while campaigning for or serving a term as a public official on or after July 1, 2018:

(1) a violation with a first, second or third degree felony penalty for any of the following offenses:

(a) fraud, as provided in Section 30-16-6 NMSA 1978;

(b) embezzlement, as provided in Section 30-16-8 NMSA 1978;

(c) extortion, as provided in Section 30-16-9 NMSA 1978;

(d) forgery, as provided in Section 30-16-10 NMSA 1978;

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

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

(g) bribery or intimidation of a witness or retaliation against a witness, as provided in Section 30-24-3 NMSA 1978;

.209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

(h) racketeering, as provided in the Racketeering Act;

(i) a computer crime, as provided in the Computer Crimes Act; and

(j) money laundering, as provided in the Money Laundering Act;

(2) any of the following offenses:

(a) perjury, as provided in Section 30-25-1 NMSA 1978;

(b) soliciting or receiving a kickback, bribe or rebate, as provided in Section 30-41-1 NMSA 1978; and

(c) offering or paying a kickback, bribe or rebate, as provided in Section 30-41-2 NMSA 1978; and

(3) conspiracy to commit any of the offenses set forth in this subsection, as provided in Section 30-28-2 NMSA 1978; and

C. "public official" means 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.

SECTION 3. [NEW MATERIAL] PUBLIC CORRUPTION--PENALTIES.--

A. HJC→~~A public official who is convicted of or pleads guilty or nolo contendere to a public corruption offense shall,~~ After final conviction of a public official of a public

.209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

corruption offense, the public official shall, ←HJC in addition to the penalties for the underlying offense prescribed in the Criminal Sentencing Act, forfeit service credit accrued pursuant to the Public Employees Retirement Act during all periods of service as a public official; provided that:

(1) only service credit accrued during time served as a public official shall be forfeited as provided in this section;

(2) service credit accrued, if any, by the public official during employment by an affiliated public employer in a capacity other than as a public official shall not be forfeited;

(3) service credit forfeited pursuant to this section shall not be reinstated;

(4) if the public official has retired and the pension is based solely on service credit accrued during service as a public official, the pension shall be permanently terminated effective on the first day of the month following the receipt by the public employees retirement association of the written notice from the prosecutor as provided in Subsection B of this section and:

(a) if the retired public official has not been paid an aggregate amount of pension payments equal to the amount of the retired public official's accumulated member contributions, the difference between the amount of accumulated

.209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

member contributions and the aggregate amount of pension paid shall be refunded, subject to the provisions of Paragraph (8) of this subsection; or

(b) if the retired public official has been paid an amount in pension payments equal to or greater than the amount of accumulated member contributions paid, no accumulated member contributions shall be refunded;

(5) if the public official has retired and the pension is based in part on service credit accrued during employment by an affiliated public employer in a capacity other than as a public official, the pension shall be recalculated without the forfeited service credit effective on the first day of the month following the receipt by the public employees retirement association of the written notice from the prosecutor as provided in Subsection B of this section and:

(a) if the retired public official has not been paid an aggregate amount of pension payments equal to the amount of the retired public official's accumulated member contributions paid during time served as a public official, the difference between the amount of accumulated member contributions paid during time served as a public official and the aggregate amount of pension paid shall be refunded, subject to the provisions of Paragraph (8) of this subsection; or

(b) if the retired public official has been paid an amount in pension payments equal to or greater

.209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

than the amount of accumulated member contributions paid during time served as a public official, no accumulated member contributions shall be refunded;

(6) if the HJC→~~elected~~ public←HJC official has retired and the pension is based on a final average salary that includes concurrent salaries from public employment and elected office, the pension shall be recalculated without the salary from elected office;

(7) the retired public official shall not be required to pay back any pension payments received; and

(8) any portion of a pension that is subject to court-ordered child support or satisfaction of the community interest in the pension incident to a decree of dissolution of marriage that was entered before the public corruption offense was committed shall not be affected by forfeiture of service credit pursuant to this section.

B. HJC→~~Within thirty days after a public official is convicted of, or pleads guilty or nolo contendere to, a public corruption offense, the prosecutor shall notify the public employees retirement association in writing of the conviction or plea.~~ Within thirty days after final conviction of a public official of a public corruption offense, the prosecutor shall notify the public employees retirement association in writing of the final conviction.←HJC

SECTION 4. Section 31-18-15.4 NMSA 1978 (being Laws 2012, .209001.7

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

Chapter 3, Section 1) is amended to read:

"31-18-15.4. FELONIES--PUBLIC OFFICIALS--ENHANCEMENT OF SENTENCES.--

A. When a separate finding of fact by the trier of fact shows beyond a reasonable doubt that an offender is a public official and that the felony conviction relates to, arises out of or is in connection with the offender's holding of an elected office, the basic sentence may be increased by an additional fine not to exceed the value of the salary and fringe benefits paid to the offender, by virtue of holding an elected public office, after the commission of the first act that was a basis for the felony conviction.

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

C. The provisions of this 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 office that is committed on or after July 1, 2018."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.

underscoring material = new

~~[bracketed material]~~ = delete

Amendments: **new** = →bold, blue, highlight←

~~delete~~ = →bold, red, highlight, strikethrough←

.209001.7