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FISCAL IMPACT REPORT

SPONSOR McQueen/Moores ORIGINAL DATE 01/27/18
LAST UPDATED _____ HB 111

SHORT TITLE Elected Official Pension Forfeiture SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

New Mexico Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 111 (HB 111) adds a new section to the Public Employees Retirement Act that requires the forfeiture of retirement service credit earned while serving in an elected office if the elected official is found guilty of, pleads guilty to, or agrees to a plea but does not admit guilt to a corruption offense committed while campaigning for an office or serving as an elected official.

The bill contains exceptions for judicial, municipal, school board or special district elections.

The bill does not affect service credit earned while the elected official was working as a public employee and allows the convicted official's member contributions to PERA to be returned.

As used in the bill, a "corruption offense" is defined as:

1. a felony conviction for fraud, embezzlement, extortion, forgery, bribery or demanding or receiving a bribe by a public officer or employee, bribery or intimidation of a witness or retaliation against a witness, racketeering, a computer crime or money laundering; and
2. any conviction for perjury, soliciting or receiving a kickback, bribe or rebate, offering or paying a kickback, bribe or rebate and conspiracy to commit any of these offenses.

The bill provides for continued court-ordered child support or dissolution of marriage orders that were in place before the elected official was convicted of committing a corruption offense.

FISCAL IMPLICATIONS

The AGO noted resources would have to be devoted to address legal challenges if raised.

SIGNIFICANT ISSUES

The bill applies to certain corruption offenses committed on or after July 1, 2018.

The bill applies not only to corrupt acts while in office but also to activities while campaigning.

For retired convicted officials with pensions based on public employment and elected office salaries, the bill requires PERA to recalculate the pension without the public employee salary.

PERA noted elected officials may have multiple terms of office in various elected positions. The bill would require forfeiture of all service credit earned in the capacity of an elected official, regardless of the term of office or elected position during which the corruption offense occurred.

Both the AGO and PERA suggested the bill may be vulnerable to constitutional challenge as it permits the forfeiture of already vested pension rights. Also, challenged on due process grounds, if the prosecutor orders a forfeiture without opportunity for the official to contest the decision.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 109, the Public Corruption Act, also provides for PERA service credit forfeiture.

TECHNICAL ISSUES

The AGO suggested there were several technical issues with bill drafting that could create unintended ambiguity and consequences. These included provisions related to court-ordered child support payments and imprecise definitions for “elected official” and “corruption offense”.

OTHER SUBSTANTIVE ISSUES

PERA reports that the Judicial and Magistrate Retirement Acts provide for the forfeiture of earned pension benefits if a member is removed from office; the only entitlement from the PERA fund is a refund of the member’s own contributions. However, this only pertains to active members and cannot be exercised against a retired member already receiving pension benefits.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Elected officials convicted of a corruption offense committed while campaigning for or during a term of office will be eligible to receive PERA retirement benefits related to their elected office.