

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 111

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; SPECIFYING THE CRIMINAL ACTS
THAT QUALIFY AS PUBLIC CORRUPTION OFFENSES; MANDATING POSTING
OF INFORMATION RELATING TO PUBLIC CORRUPTION OFFENSES;
PROVIDING FOR ENHANCEMENT OF A SENTENCE FOR CONVICTION OF A
CRIME DEALING WITH PUBLIC CORRUPTION; BARRING PERSONS CONVICTED
OF PUBLIC CORRUPTION OFFENSES FROM LOBBYING OR ENTERING INTO
CONTRACTS WITH THE STATE; PROVIDING FOR THE FORFEITURE OF
CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT SYSTEMS
UPON CONVICTION OF PUBLIC CORRUPTION OFFENSES; PROVIDING
PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 10-11-135 NMSA 1978 (being Laws 1987,
Chapter 253, Section 135, as amended) is amended to read:

"10-11-135. FUNDS NOT SUBJECT TO PROCESS.--Except as
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1 provided in Sections 10-11-136 and 10-11-136.1 NMSA 1978 and
2 Section 14 of this 2012 act, none of the money, pensions or
3 other benefits mentioned in the Public Employees Retirement Act
4 shall be assignable either in law or in equity or be subject to
5 execution, levy, attachment, garnishment or other legal
6 process."

7 SECTION 2. Section 10-12B-7 NMSA 1978 (being Laws 1992,
8 Chapter 111, Section 7, as amended) is amended to read:

9 "10-12B-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION
10 OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD-
11 SUPPORT OBLIGATIONS.--

12 A. Except as provided in Subsections B and C of
13 this section and Section 14 of this 2012 act, none of the
14 money, pensions or other benefits provided pursuant to the
15 provisions of the Judicial Retirement Act shall be assignable
16 either in law or in equity or be subject to execution, levy,
17 attachment, garnishment or other legal process.

18 B. A court of competent jurisdiction, solely for
19 the purposes of effecting a division of community property in a
20 divorce or legal separation proceeding, may provide by
21 appropriate order for a determination and division of a
22 community interest in the pensions or other benefits provided
23 for in the Judicial Retirement Act. The court shall fix the
24 manner in which warrants are issued, may order direct payments
25 to a person with a community interest in the pensions or other

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1 benefits, may require the election of a specific form of
2 payment and designation of a specific survivor beneficiary or
3 refund beneficiary and may restrain the refund of accumulated
4 member contributions. Payments made pursuant to such orders
5 shall only be made when member contributions are refunded or a
6 pension is payable in accordance with the provisions of the
7 Judicial Retirement Act. The court shall not alter the manner
8 in which the amount of pensions or other benefits are
9 calculated by the association or cause any increase in the
10 actuarial present value of the pensions or other benefits to be
11 paid by the association.

12 C. A court of competent jurisdiction, solely for
13 the purposes of enforcing current or delinquent child-support
14 obligations, may provide by appropriate order for withholding
15 amounts due in satisfaction of current or delinquent
16 child-support obligations from the pensions or other benefits
17 provided for in the Judicial Retirement Act and for payment of
18 such amounts to third parties. The court shall not alter the
19 manner in which the amount of pensions or other benefits are
20 calculated by the association. The court shall not cause any
21 increase in the actuarial present value of the pensions or
22 other benefits to be paid from the fund. Payments made
23 pursuant to such orders shall only be made when member
24 contributions are refunded or when a pension is payable in
25 accordance with the provisions of the Judicial Retirement Act.

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1 In no case shall more money be paid out, either in a lump sum
2 or in monthly pension payments, of the fund in enforcement of
3 current or delinquent child-support obligations than would
4 otherwise be payable at that time."

5 SECTION 3. Section 10-12C-7 NMSA 1978 (being Laws 1992,
6 Chapter 118, Section 7, as amended) is amended to read:

7 "10-12C-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION
8 OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD-
9 SUPPORT OBLIGATIONS.--

10 A. Except as provided in Subsections B and C of
11 this section and Section 14 of this 2012 act, none of the
12 money, pensions or other benefits provided pursuant to the
13 provisions of the Magistrate Retirement Act shall be assignable
14 either in law or in equity or be subject to execution, levy,
15 attachment, garnishment or other legal process.

16 B. A court of competent jurisdiction, solely for
17 the purposes of effecting a division of community property in a
18 divorce or legal separation proceeding, may provide by
19 appropriate order for a determination and division of a
20 community interest in the pensions or other benefits provided
21 for in the Magistrate Retirement Act. The court shall fix the
22 manner in which warrants are issued, may order direct payments
23 to a person with a community interest in the pensions or other
24 benefits, may require the election of a specific form of
25 payment and designation of a specific survivor beneficiary or

1 refund beneficiary and may restrain the refund of accumulated
2 member contributions. Payments made pursuant to such orders
3 shall only be made when member contributions are refunded or a
4 pension is payable in accordance with the provisions of the
5 Magistrate Retirement Act. The court shall not alter the
6 manner in which the amount of pensions or other benefits is
7 calculated by the association or cause any increase in the
8 actuarial present value of the pensions or other benefits to be
9 paid by the association.

10 C. A court of competent jurisdiction, solely for
11 the purposes of enforcing current or delinquent child-support
12 obligations, may provide by appropriate order for withholding
13 amounts due in satisfaction of current or delinquent
14 child-support obligations from the pensions or other benefits
15 provided for in the Magistrate Retirement Act and for payment
16 of such amounts to third parties. The court shall not alter
17 the manner in which the amount of pensions or other benefits is
18 calculated by the association. The court shall not cause any
19 increase in the actuarial present value of the pensions or
20 other benefits to be paid from the fund. Payments made
21 pursuant to such orders shall only be made when member
22 contributions are refunded or when a pension is payable in
23 accordance with the provisions of the Magistrate Retirement
24 Act. In no case shall more money be paid out, either in a lump
25 sum or in monthly pension payments, of the fund in enforcement

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1 of current or delinquent child-support obligations than would
2 otherwise be payable at that time."

3 SECTION 4. Section 22-11-42 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 165, as amended) is amended to read:

5 "22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS
6 COMMUNITY PROPERTY--CHILD-SUPPORT OBLIGATIONS.--

7 A. Except as specifically provided in the
8 Educational Retirement Act, [~~and~~] the provisions of
9 Subsections B and C of this section and Section 14 of this 2012
10 act, contributions or benefits mentioned in the Educational
11 Retirement Act shall not be assignable either in law or in
12 equity or be subject to execution, levy, attachment,
13 garnishment, guarantee fund or similar assessment or any other
14 legal process.

15 B. A court of competent jurisdiction, solely for
16 the purposes of effecting a division of community property, may
17 provide by appropriate order for a determination and division
18 of a community interest in the pensions or other benefits
19 provided for in the Educational Retirement Act. In so doing,
20 the court shall fix the manner in which the warrants shall be
21 issued, may order direct payments by the board to a person with
22 a community interest in the pensions or benefits and may
23 restrain the refund of member or participant contributions.
24 The court shall not alter the manner in which the amount of
25 pensions or other benefits is calculated by the board or a

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1 carrier or contractor for the alternative retirement plan, nor
2 shall the court cause any increase in the actuarial present
3 value of the pensions or other benefits to be paid by the board
4 or a carrier or contractor for the alternative retirement plan.
5 A payment, ordered by a court pursuant to this subsection,
6 shall only be made when the member or participant terminates
7 employment and requests a refund or when the member or
8 participant retires or is otherwise entitled to receive
9 benefits pursuant to the Educational Retirement Act. In no
10 case shall a court order pursuant to this subsection result in
11 more money being paid from the fund or from an alternative
12 retirement plan, whether in a lump sum or in monthly benefits,
13 than would otherwise be payable.

14 C. A court of competent jurisdiction, solely for
15 the purposes of enforcing current or delinquent child-support
16 obligations, may provide by appropriate order for withholding
17 amounts due in satisfaction of current or delinquent child-
18 support obligations from the pensions or other benefits
19 provided for in the Educational Retirement Act and for
20 payment of such amounts to third parties. The court shall
21 not alter the manner in which the amount of pensions or other
22 benefits is calculated by the board or a carrier or
23 contractor for the alternative retirement plan. The court
24 shall not cause any increase in the actuarial present value
25 of the pensions or other benefits to be paid by the board or

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1 a carrier or contractor for the alternative retirement plan.
2 Payments made pursuant to such orders shall only be made when
3 the member or participant terminates employment and requests
4 a refund of contributions or when the member or participant
5 retires; in no case shall more money be paid out, either in a
6 lump sum or in monthly benefits, of the fund or alternative
7 retirement plan in enforcement of current or delinquent
8 child-support obligations than would otherwise be payable.
9 In no case shall a court order pursuant to this subsection
10 result in more money being paid from the fund or from an
11 alternative retirement plan, whether in a lump sum or in
12 monthly benefits, than would otherwise be payable."

13 SECTION 5. Section 30-16-8 NMSA 1978 (being Laws 1963,
14 Chapter 303, Section 16-7, as amended) is amended to read:

15 "30-16-8. EMBEZZLEMENT.--

16 A. Embezzlement consists of a person embezzling
17 or converting to the person's own use anything of value, with
18 which the person has been entrusted, with fraudulent intent
19 to deprive the owner thereof.

20 B. Whoever commits embezzlement when the value of
21 the thing embezzled or converted is two hundred fifty dollars
22 (\$250) or less is guilty of a petty misdemeanor.

23 C. Whoever commits embezzlement when the value of
24 the thing embezzled or converted is over two hundred fifty
25 dollars (\$250) but not more than five hundred dollars (\$500)

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1 is guilty of a misdemeanor.

2 D. Whoever commits embezzlement when the value of
3 the thing embezzled or converted is over five hundred dollars
4 (\$500) but not more than two thousand five hundred dollars
5 (\$2,500) is guilty of a fourth degree felony.

6 E. Whoever commits embezzlement when the value of
7 the thing embezzled or converted is over two thousand five
8 hundred dollars (\$2,500) but not more than twenty thousand
9 dollars (\$20,000) is guilty of a third degree felony.

10 F. Whoever commits embezzlement when the value of
11 the thing embezzled or converted exceeds twenty thousand
12 dollars (\$20,000) is guilty of a second degree felony.

13 G. A person elected or appointed to a position
14 with or employed by a public entity who commits embezzlement
15 against the public entity when the value of the thing
16 embezzled or converted is over five hundred dollars (\$500)
17 shall have the basic sentence of imprisonment as provided for
18 in this section increased by one year.

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

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1 guilty of a third degree felony.

2 I. As used in this section, "public entity" means
3 the state or one of its agencies, departments, institutions
4 or political subdivisions."

5 SECTION 6. Section 30-23-2 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 23-2) is amended to read:

7 "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES
8 NOT RENDERED.--

9 A. Paying or receiving public money for services
10 not rendered consists of knowingly making or receiving
11 payment or causing payment to be made from public funds where
12 such payment purports to be for wages, salary or remuneration
13 for personal services [~~which~~] that have not in fact been
14 rendered.

15 B. Nothing in this section shall be construed to
16 prevent the payment of public funds where such payments are
17 intended to cover lawful remuneration to public officers or
18 public employees for vacation periods or absences from
19 employment because of sickness or for other lawfully
20 authorized purposes.

21 C. Whoever commits paying or receiving public
22 money for services not rendered is guilty of a fourth degree
23 felony; provided that, if a person elected to or appointed to
24 a position with or employed by a public entity is convicted
25 of paying or receiving public money for services not

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1 rendered, the basic sentence of imprisonment shall be
 2 increased by one year.

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

11 E. As used in this section, "public entity" means
 12 the state or one of its agencies, departments, institutions
 13 or political subdivisions."

14 SECTION 7. Section 30-23-3 NMSA 1978 (being Laws 1963,
 15 Chapter 303, Section 23-3, as amended) is amended to read:

16 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

17 A. Making or permitting false public voucher
 18 consists of knowingly, intentionally or [~~wilfully~~] willfully
 19 making, causing to be made or permitting to be made a false
 20 material statement or forged signature upon any public
 21 voucher, or invoice supporting a public voucher, with intent
 22 that the voucher or invoice shall be relied upon for the
 23 expenditure of public money.

24 B. Whoever commits making or permitting false
 25 public voucher is guilty of a fourth degree felony; provided

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1 that, if a person elected to or appointed to a position with
2 or employed by a public entity is convicted of making or
3 permitting false public voucher, the basic sentence of
4 imprisonment shall be increased by one year.

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

13 D. As used in this section, "public entity" means
14 the state or one of its agencies, departments, institutions
15 or political subdivisions."

16 SECTION 8. Section 30-23-6 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 23-6) is amended to read:

18 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

19 A. Unlawful interest in a public contract
20 consists of:

21 [~~A. any~~] (1) a public officer or public
22 employee receiving anything of value, directly or indirectly,
23 from either a seller or a seller's agents or a purchaser or a
24 purchaser's agents in connection with the sale or purchase of
25 securities, goods, leases, lands or anything of value by the

1 state or any of its political subdivisions, unless:

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

6 [~~(2)~~] (b) subsequent to the
7 transaction, a statement is filed as a matter of public
8 record in the office of secretary of state by the purchaser
9 or seller giving anything of value to a public officer or
10 public employee and this statement contains the date the
11 services were rendered, the amount of remuneration for the
12 rendered services and the nature of the rendered services;
13 and

14 [~~B. any~~] (2) a seller or [~~his~~] the seller's
15 agents or a purchaser or [~~his~~] the purchaser's agents
16 offering to pay or paying anything of value, directly or
17 indirectly, to a public officer or public employee in
18 connection with the sale or purchase of securities or goods
19 by the state or any of its political subdivisions unless the
20 requirements of [~~Paragraphs (1) and (2)~~] Subparagraphs (a)
21 and (b) of Paragraph (1) of [Subsection A of] this [section]
22 subsection are complied with. [~~Any~~]

23 B. A person violating the provisions of Paragraph
24 (2) of Subsection [B] A of this section, where [~~such~~] the
25 violations [~~forms~~] form the basis for prosecution and

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1 conviction of a public officer or public employee, shall be
2 disqualified from transacting [~~any~~] business with the state
3 or its political subdivisions for a period of five years from
4 the date of [~~such~~] the violation.

5 C. Nothing in this section shall prohibit a
6 public officer or public employee from receiving [~~his~~]
7 regular remuneration for services rendered to the state or
8 its political subdivisions in connection with the
9 aforementioned transactions.

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

13 E. Whoever commits unlawful interest in public
14 contracts where the value received by [~~him~~] the person is
15 more than fifty dollars (\$50.00) is guilty of a fourth degree
16 felony; provided that the basic sentence of imprisonment
17 shall be increased by one year. A public officer or public
18 employee convicted of a felony [~~hereunder~~] under the
19 provisions of this section is forever disqualified from
20 employment by the state or any of its political subdivisions.

21 F. A person convicted under the provisions of
22 Paragraph (1) or (2) of Subsection A of this section, where
23 the value received by the person is more than fifty dollars
24 (\$50.00), shall not, individually or in association with
25 others, submit a bid to or enter into a contract for

1 services, construction or items of tangible personal property
 2 with a public entity or act as a lobbyist, as defined in
 3 Section 2-11-2 NMSA 1978. Any person who knowingly and
 4 willfully violates the provisions of this subsection is
 5 guilty of a third degree felony.

6 G. As used in this section, "public entity" means
 7 the state or one of its agencies, departments, institutions
 8 or political subdivisions."

9 SECTION 9. Section 30-24-1 NMSA 1978 (being Laws 1963,
 10 Chapter 303, Section 24-1) is amended to read:

11 "30-24-1. BRIBERY OF PUBLIC OFFICER OR PUBLIC
 12 EMPLOYEE.--

13 A. Bribery of public officer or public employee
 14 consists of any person giving or offering to give, directly
 15 or indirectly, anything of value to any public officer or
 16 public employee, with intent to induce or influence [~~such~~]
 17 that public officer or public employee to:

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

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

24 [~~C.~~] (3) procure [~~him~~] the person to vote or
 25 withhold [~~his~~] the person's vote on [~~any~~] a question, matter

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1 or proceeding [~~which~~] that is then or may thereafter be
2 pending, and [~~which~~] that may by law come or be brought
3 before [~~him~~] the person in [~~his~~] the person's public
4 capacity;

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

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

11 B. Whoever commits bribery of a public officer or
12 public employee is guilty of a third degree felony; provided
13 that, if a person elected to or appointed to a position with
14 or employed by a public entity is convicted of bribery of a
15 public officer or public employee, the basic sentence of
16 imprisonment shall be increased by one year.

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

25 D. As used in this section, "public entity" means

1 the state or one of its agencies, departments, institutions
 2 or political subdivisions."

3 SECTION 10. Section 30-24-2 NMSA 1978 (being Laws 1963,
 4 Chapter 303, Section 24-2) is amended to read:

5 "30-24-2. DEMANDING OR RECEIVING BRIBE BY PUBLIC
 6 OFFICER OR PUBLIC EMPLOYEE.--

7 A. Demanding or receiving bribe by public officer
 8 or public employee consists of any public officer or public
 9 employee soliciting or accepting, directly or indirectly,
 10 anything of value, with intent to have [~~his~~] the officer's or
 11 employee's decision or action on any question, matter, cause,
 12 proceeding or appointment influenced [~~thereby~~] by the bribe,
 13 and which decision or action, by law, is pending or might be
 14 brought before [~~him~~] the officer or employee in [~~his~~] the
 15 officer's or employee's official capacity.

16 B. Whoever commits demanding or receiving a bribe
 17 by a public officer or public employee is guilty of a third
 18 degree felony [~~and~~]; provided that the basic sentence of
 19 imprisonment prescribed for the offense shall be increased by
 20 one year. Upon conviction, [~~thereof such~~] a public officer
 21 or public employee shall forfeit the office then held by
 22 [~~him~~] the officer or employee.

23 C. A person convicted under the provisions of
 24 this section shall not, individually or in association with
 25 others, submit a bid to or enter into a contract for

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1 services, construction or items of tangible personal property
2 with a public entity or act as a lobbyist, as defined in
3 Section 2-11-2 NMSA 1978. Any person who knowingly and
4 willfully violates the provisions of this subsection is
5 guilty of a third degree felony.

6 D. As used in this section, "public entity" means
7 the state or one of its agencies, departments, institutions
8 or political subdivisions."

9 SECTION 11. Section 30-41-1 NMSA 1978 (being Laws 1979,
10 Chapter 384, Section 1) is amended to read:

11 "30-41-1. SOLICITING OR RECEIVING ILLEGAL KICKBACK.--

12 A. Whoever knowingly solicits or receives, [~~any~~]
13 directly or indirectly, a remuneration in the form of any
14 kickback, bribe or rebate [~~directly or indirectly, overtly or~~
15 ~~evertly~~] in cash or in kind from a person:

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

20 [~~B.~~] (2) in return for purchasing, leasing,
21 ordering or arranging for or recommending purchasing, leasing
22 or ordering any goods, facilities, services or items for
23 which payment may be made in whole or in part with public
24 money, [~~shall be~~] is guilty of a fourth degree felony;
25 provided that, if a person elected or appointed to a position

1 with or employed by a public entity is convicted of
 2 soliciting or receiving illegal kickback, the basic sentence
 3 of imprisonment shall be increased by one year.

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

12 C. As used in this section:

13 (1) "kickback" means a percentage of income
 14 given to a person in a position of influence as payment for
 15 having made the income possible; and

16 (2) "public entity" means the state or one
 17 of its agencies, departments, institutions or political
 18 subdivisions."

19 **SECTION 12.** Section 30-41-2 NMSA 1978 (being Laws 1979,
 20 Chapter 384, Section 2) is amended to read:

21 "30-41-2. OFFERING OR PAYING ILLEGAL KICKBACK.--

22 A. Whoever knowingly offers or pays, [any]
 23 directly or indirectly, a remuneration in the form of any
 24 kickback, bribe or rebate [~~directly or indirectly, overtly or~~
 25 ~~e overtly~~] in cash or in kind to any person to induce such

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1 person:

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

6 ~~[B.]~~ (2) to purchase, lease, order or
7 arrange for or recommend purchasing, leasing or ordering any
8 goods, facilities, services or items for which payment may be
9 made in whole or in part with public money, shall be guilty
10 of a fourth degree felony; provided that, if a person elected
11 to or appointed to a position with or employed by a public
12 entity is convicted of offering or paying illegal kickback,
13 the basic sentence of imprisonment shall be increased by one
14 year.

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

23 C. As used in this section:

24 (1) "kickback" means a percentage of income
25 given to a person in a position of influence as payment for

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1 having made the income possible; and

2 (2) "public entity" means the state or one
3 of its agencies, departments, institutions or political
4 subdivisions."

5 SECTION 13. [NEW MATERIAL] PUBLICATION AND
6 DISSEMINATION OF INFORMATION RELATING TO PUBLIC CORRUPTION
7 OFFENSES AND OTHER CORRUPT PRACTICES.--

8 A. Every state agency, department, political
9 subdivision and institution shall post in a conspicuous place
10 a listing of all crimes constituting public corruption
11 offenses and other corrupt practices and the penalties
12 associated with such crimes.

13 B. As used in this section, "public corruption
14 offense" means:

15 (1) violating the ethical principles of
16 public service, as provided in Subsection D of Section
17 10-16-3 NMSA 1978;

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

20 (3) embezzlement, as provided in Section
21 30-16-8 NMSA 1978; provided that the embezzlement is
22 committed by a person elected to or appointed to a position
23 with or employed by the state or one of its agencies,
24 departments, institutions or political subdivisions and the
25 embezzlement is committed against the state or its agency,

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1 department, institution or political subdivision;

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

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

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

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

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

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

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

19 (11) offering or paying illegal kickback, as
20 provided in Section 30-41-2 NMSA 1978.

21 SECTION 14. [NEW MATERIAL] FORFEITURE OF PENSION FOR
22 PUBLIC CORRUPTION OFFENSES.--

23 A. If, in the adjudication of a public corruption
24 offense in a New Mexico district court, it appears that the
25 defendant is a member or retired member and the alleged

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underscored material = new
[bracketed material] = delete

1 corruption relates to, arises out of or is in connection to
2 the member's public office or public employment, the district
3 attorney or attorney general may, in addition to the felony
4 complaint, file an ancillary claim for forfeiture of pension.
5 Upon the filing, the forfeiture of pension proceeding shall
6 be brought in the same proceeding as the criminal matter and
7 presented to the same trier of fact; provided that:

8 (1) the two issues shall be bifurcated;

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

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

16 (4) if the state proves in the forfeiture
17 proceeding by clear and convincing evidence that the
18 defendant is a member or retired member and has been
19 convicted of a public corruption offense that is directly
20 related to, arises out of or is in connection to the member's
21 public office or employment, after determining issues related
22 to community property and child support obligations and
23 issuing orders to that effect, the court may order the
24 forfeiture of some or all of the member's or retired member's
25 right to a pension and other retirement benefits from a state

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1 system and serve the order upon the appropriate state system;

2 (5) the amount of the pension to be
3 forfeited by the member shall not exceed the greater of:

4 (a) five times the benefit received by
5 the member from the public corruption offense; or

6 (b) five times the quantifiable harm
7 to the state, excluding any costs and fees associated with
8 the criminal matter and forfeiture proceeding;

9 (6) the member may pay in full the amount
10 that would otherwise be deducted from the member's pension;
11 and

12 (7) during the ancillary hearing, claims
13 pertaining to community property or child support may be
14 entertained by the judge.

15 B. If a member has been terminated because of an
16 allegation of a public corruption offense, the state system
17 may hold and not disburse the accumulated member contribution
18 until resolution of a proceeding under Subsection A of this
19 section, or until public corruption charges are no longer
20 pending against the member.

21 C. After receipt by a state system of an order
22 issued pursuant to Subsection A of this section, pending a
23 final appeal, the state system:

24 (1) shall, if the forfeited member is a
25 retired member, suspend any pension; and

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1 (2) shall not permit withdrawal of a
2 member's accumulated contribution.

3 D. After notification to a state system that an
4 order issued pursuant to Subsection A of this section was not
5 appealed or, upon final appeal, was upheld:

6 (1) except as provided in Paragraph (3) of
7 this subsection, the state system shall deduct the amount of
8 the pension to be forfeited from the member's or the retired
9 member's pension, in a manner provided by the board of the
10 state system under which the member is covered;

11 (2) if, prior to the order of forfeiture
12 under this section, a court has issued an order addressing
13 community property interest or child support obligations,
14 whether as a part of a forfeiture under this section,
15 pursuant to Section 10-11-136, 10-11-136.1, 10-12B-7,
16 10-12C-7 or 22-11-42 NMSA 1978 or in any other proceeding,
17 any action taken by a state system pursuant to this
18 subsection shall be in compliance with that court order; and

19 (3) if the forfeited member is currently
20 receiving a pension from a state system due to previous
21 employment but had subsequently returned to public employment
22 while continuing to receive the pension, the order shall not
23 affect the pension related to the previous employment if the
24 public corruption offense did not arise from conduct related
25 to the previous employment.

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1 E. If, on final appeal, the court finding
2 pursuant to Subsection A of this section or the conviction is
3 overturned, the forfeiture order is voided, the attorney
4 general shall notify the state system and the state system
5 shall pay in full any suspended pension payments.

6 F. If no appeal is made from a court finding
7 pursuant to Subsection A of this section or if, on final
8 appeal, the court finding is upheld, the district attorney or
9 the attorney general shall notify the state system and the
10 state system shall comply with the procedures of Subsection C
11 of this section.

12 G. The provisions of this section apply to
13 pensions earned on or after July 1, 2012.

14 H. As used in this section:

15 (1) "conviction" means a judgment of guilty
16 of a felony or acceptance of a plea of nolo contendere to a
17 public corruption offense by a state or federal court of
18 competent jurisdiction;

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

22 (3) "member" means an individual who is
23 classified as a "member" of a state system pursuant to the
24 laws governing that state system;

25 (4) "member contributions" means the amounts

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1 deducted from a member's salary and credited to the member's
2 account in a state system, together with interest, if any,
3 credited to that account;

4 (5) "public corruption offense" means:

5 (a) embezzlement, as provided in
6 Section 30-16-8 NMSA 1978; provided that the embezzlement is
7 committed by a person elected to or appointed to a position
8 with or employed by the state or one of its agencies,
9 departments, institutions or political subdivisions and the
10 embezzlement is committed against the state or its agency,
11 department, institution or political subdivision;

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

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

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

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

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

3 (h) offering or paying an illegal
4 kickback, as provided in Section 30-41-2 NMSA 1978;

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

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

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

16 SECTION 15. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2012.