

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 480

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

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; EXTENDING PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND EMPLOYEES OF POLITICAL SUBDIVISIONS OF THE STATE; EXPANDING THE DEFINITION OF "CONTRACT" IN THE GOVERNMENTAL CONDUCT ACT; LIMITING THE AMOUNT THAT A SENTENCE MAY BE SUSPENDED, DEFERRED OR TAKEN UNDER ADVISEMENT FOR CONVICTION OF A CRIME DEALING WITH PUBLIC CORRUPTION; SPECIFYING THE CRIMINAL ACTS THAT QUALIFY AS PUBLIC CORRUPTION OFFENSES; LIMITING THE MERITORIOUS DEDUCTION AMOUNT FOR PERSONS CONVICTED OF PUBLIC CORRUPTION OFFENSES; PROVIDING FOR THE FORFEITURE OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT SYSTEMS UPON CONVICTION OF PUBLIC CORRUPTION OFFENSES; PROVIDING FOR TREBLE DAMAGES AND ATTORNEY FEES FROM PERSONS CONVICTED OF CERTAIN PUBLIC CORRUPTION OFFENSES; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

.184419.2

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

SECTION 1. Section 10-16-2 NMSA 1978 (being Laws 1967, Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

(1) the rendition of services, including professional services;

(2) the furnishing of any material, supplies or equipment;

(3) the construction, alteration or repair of any public building or public work;

(4) the acquisition, sale or lease of any land or building;

(5) a licensing arrangement;

(6) a loan or loan guarantee; or

(7) the purchase of financial securities or

underscored material = new  
[bracketed material] = delete

1 instruments;

2 [G.] D. "employment" means rendering of services  
3 for compensation in the form of salary as an employee;

4 [D.] E. "family" means an individual's spouse,  
5 parents, children or siblings, by consanguinity or affinity;

6 [E.] F. "financial interest" means an interest held  
7 by an individual or the individual's family that is:

8 (1) an ownership interest in business or  
9 property; or

10 (2) any employment or prospective employment  
11 for which negotiations have already begun;

12 G. "local government agency" means a political  
13 subdivision of the state or an agency of a political  
14 subdivision of the state;

15 [F.] H. "official act" means an official decision,  
16 recommendation, approval, disapproval or other action that  
17 involves the use of discretionary authority;

18 [G.] I. "public officer or employee" means any  
19 ~~[person who has been elected to, appointed to or hired for any~~  
20 ~~state office and]~~ elected or appointed official or employee of  
21 a state agency or local government agency who receives  
22 compensation in the form of salary or is eligible for per diem  
23 or mileage but excludes legislators;

24 [H.] J. "standards" means the conduct required by  
25 the Governmental Conduct Act;

underscored material = new  
[bracketed material] = delete

1           ~~[F.]~~ K. "state agency" means any branch, agency,  
2 instrumentality or institution of the state; and

3           ~~[J.]~~ L. "substantial interest" means an ownership  
4 interest that is greater than twenty percent."

5           SECTION 2. Section 10-16-3 NMSA 1978 (being Laws 1993,  
6 Chapter 46, Section 28, as amended) is amended to read:

7           "10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN  
8 OFFICIAL ACTS PROHIBITED--PENALTY.--

9           A. A legislator or public officer or employee shall  
10 treat the legislator's or public officer's or employee's  
11 government position as a public trust. The legislator or  
12 public officer or employee shall use the powers and resources  
13 of public office only to advance the public interest and not to  
14 obtain personal benefits or pursue private interests  
15 incompatible with the public interest.

16           B. Legislators and public officers and employees  
17 shall conduct themselves in a manner that justifies the  
18 confidence placed in them by the people, at all times  
19 maintaining the integrity and discharging ethically the high  
20 responsibilities of public service.

21           C. Full disclosure of real or potential conflicts  
22 of interest shall be a guiding principle for determining  
23 appropriate conduct. At all times, reasonable efforts shall be  
24 made to avoid undue influence and abuse of office in public  
25 service.

underscored material = new  
[bracketed material] = delete

1           D. No legislator or public officer or employee may  
2 request or receive, and no person may offer a legislator or  
3 public officer or employee, any money, thing of value or  
4 promise thereof that is conditioned upon or given in exchange  
5 for promised performance of an official act. Any person who  
6 knowingly and willfully violates the provisions of this  
7 subsection is guilty of a [~~fourth~~] third degree felony and  
8 shall be sentenced pursuant to the provisions of Section  
9 31-18-15 NMSA 1978, and eighteen months of the sentence shall  
10 not be suspended, deferred or taken under advisement.

11           E. A person convicted under the provisions of  
12 Subsection D of this section shall, in addition to any other  
13 punishment, be liable for three times the amount of money, or  
14 three times the monetary value of the thing of value received,  
15 and reasonable attorney fees, including the fees of the  
16 attorney general or district attorney."

17           **SECTION 3.** Section 10-16-3.1 NMSA 1978 (being Laws 2007,  
18 Chapter 362, Section 9) is amended to read:

19           "10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--~~[Public~~  
20 ~~officers and employees are]~~ A public officer or employee is  
21 prohibited from:

22           A. directly or indirectly coercing or attempting to  
23 coerce [~~a state~~] another public officer or employee to pay,  
24 lend or contribute anything of value to a party, committee,  
25 organization, agency or person for a political purpose;

.184419.2

underscored material = new  
[bracketed material] = delete

1           B. threatening to deny a promotion or pay increase  
2 to an employee who does or does not vote for certain  
3 candidates, requiring an employee to contribute a percentage of  
4 the employee's pay to a political fund, influencing a  
5 subordinate employee to purchase a ticket to a political  
6 fundraising dinner or similar event, advising an employee to  
7 take part in political activity or similar activities; or

8           C. violating the officer's or employee's duty [~~to~~  
9 not to use property [~~state~~] belonging to a state agency or  
10 local government agency, or allow its use, for other than  
11 authorized purposes."

12           SECTION 4. Section 10-16-4 NMSA 1978 (being Laws 1967,  
13 Chapter 306, Section 4, as amended) is amended to read:

14           "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST  
15 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A  
16 PENALTY.--

17           A. It is unlawful for a public officer or employee  
18 to take an official act for the primary purpose of directly  
19 enhancing the public officer's or employee's financial interest  
20 or financial position. Any person who knowingly and willfully  
21 violates the provisions of this subsection is guilty of a  
22 [~~fourth~~] third degree felony and shall be sentenced pursuant to  
23 the provisions of Section 31-18-15 NMSA 1978, and eighteen  
24 months of the sentence shall not be suspended, deferred or  
25 taken under advisement. A person convicted under the

.184419.2

underscored material = new  
[bracketed material] = delete

1 provisions of this section shall, in addition to any other  
2 punishment, be liable for three times the amount of money, or  
3 three times the monetary value of the thing of value received,  
4 and reasonable attorney fees, including the fees of the  
5 attorney general or district attorney.

6 B. A public officer or employee shall be  
7 disqualified from engaging in any official act directly  
8 affecting the public officer's or employee's financial  
9 interest.

10 C. No public officer during the term for which  
11 elected and no public employee during the period of employment  
12 shall acquire a financial interest when the public officer or  
13 employee believes or should have reason to believe that the new  
14 financial interest will be directly affected by the officer's  
15 or employee's official act."

16 SECTION 5. Section 10-16-4.2 NMSA 1978 (being Laws 2007,  
17 Chapter 362, Section 10) is amended to read:

18 "10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public  
19 officer or employee shall disclose in writing to the  
20 [~~supervisor of the officer or employee, or in the event there~~  
21 ~~is no supervisor, to the secretary of state]~~ officer's or  
22 employee's respective office or employer all employment engaged  
23 in by the officer or employee other than the employment with  
24 [~~the]~~ or service to a state agency or local government agency."

25 SECTION 6. Section 10-16-6 NMSA 1978 (being Laws 1967,

.184419.2

underscored material = new  
[bracketed material] = delete

1 Chapter 306, Section 6, as amended) is amended to read:

2 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator or  
3 public officer or employee shall use or disclose confidential  
4 information acquired by virtue of the legislator's or public  
5 officer's or employee's [~~state employment or office~~] position  
6 with a state agency or local government agency for the  
7 legislator's, public officer's or employee's or another's  
8 private gain."

9 SECTION 7. Section 10-16-7 NMSA 1978 (being Laws 1967,  
10 Chapter 306, Section 7, as amended) is amended to read:

11 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
12 EMPLOYEES.--

13 A. A state agency shall not enter into a contract  
14 [~~for services, construction or items of tangible personal~~  
15 ~~property~~] with a public officer or employee of the state, with  
16 the family of the public officer or employee or with a business  
17 in which the public officer or employee or the family of the  
18 public officer or employee has a substantial interest unless  
19 the public officer or employee has disclosed through public  
20 notice the public officer's or employee's substantial interest  
21 and unless the contract is awarded pursuant to [~~the Procurement~~  
22 ~~Code, except that the potential contractor shall not be~~  
23 ~~eligible for a sole source or small purchase contract~~] a  
24 competitive process; provided that this section does not apply  
25 to a contract of official employment with the state [~~or to~~

.184419.2



underscored material = new  
[bracketed material] = delete

1 ~~contracts made pursuant to the provisions of the University~~  
2 ~~Research Park and Economic Development Act or the New Mexico~~  
3 ~~Research Applications Act]~~. A person negotiating or executing  
4 a contract on behalf of a state agency shall exercise due  
5 diligence to ensure compliance with the provisions of this  
6 section.

7 B. Unless a public officer or employee has  
8 disclosed the public officer's or employee's substantial  
9 interest through public notice and unless a contract is awarded  
10 pursuant to a competitive process, a local government agency  
11 shall not enter into a contract with a public officer or  
12 employee of that local government agency, with the family of  
13 the public officer or employee or with a business in which the  
14 public officer or employee or the family of the public officer  
15 or employee has a substantial interest.

16 C. Subsection B of this section does not apply to a  
17 contract of official employment with a political subdivision.  
18 A person negotiating or executing a contract on behalf of a  
19 local government agency shall exercise due diligence to ensure  
20 compliance with the provisions of this section."

21 SECTION 8. Section 10-16-8 NMSA 1978 (being Laws 1967,  
22 Chapter 306, Section 8, as amended) is amended to read:

23 "10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR  
24 EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT  
25 SERVICE.--

.184419.2

underscored material = new  
[bracketed material] = delete

1           A. A state agency shall not enter into a contract  
2 with, or take any action favorably affecting, any person or  
3 business that is:

4                   (1) represented personally in the matter by a  
5 person who has been a public officer or employee of the state  
6 within the preceding year if the value of the contract or  
7 action is in excess of one thousand dollars (\$1,000) and the  
8 contract is a direct result of an official act by the public  
9 officer or employee; or

10                   (2) assisted in the transaction by a former  
11 public officer or employee of the state whose official act,  
12 while in state employment, directly resulted in the agency's  
13 making that contract or taking that action.

14           B. A former public officer or employee shall not  
15 represent a person in [~~his~~] the person's dealings with the  
16 government on a matter in which the former public officer or  
17 employee participated personally and substantially while a  
18 public officer or employee.

19           C. A local government agency shall not enter into a  
20 contract with, or take any action favorably affecting, any  
21 person or business that is:

22                   (1) represented personally in the matter by a  
23 person who has been a public officer or employee of that local  
24 government agency within the preceding year if the value of the  
25 contract or action is in excess of one thousand dollars

underscored material = new  
[bracketed material] = delete

1 (\$1,000) and the contract is a direct result of an official act  
2 by the public officer or employee; or

3 (2) assisted in the transaction by a former  
4 public officer or employee of that political subdivision of the  
5 state whose official act, while in employment with that  
6 political subdivision of the state, directly resulted in the  
7 agency's making that contract or taking that action.

8 [G.] D. For a period of one year after leaving  
9 government service or employment, a former public officer or  
10 employee shall not represent for pay a person before the state  
11 agency or local government agency at which the former public  
12 officer or employee served or worked."

13 SECTION 9. Section 10-16-13 NMSA 1978 (being Laws 1967,  
14 Chapter 306, Section 13, as amended) is amended to read:

15 "10-16-13. PROHIBITED BIDDING.--No state agency or  
16 [~~political subdivision of the state~~] local government agency  
17 shall accept a bid or proposal from a person who directly  
18 participated in the preparation of specifications,  
19 qualifications or evaluation criteria on which the specific  
20 competitive bid or proposal was based. A person accepting a  
21 bid or proposal on behalf of a state agency or [~~political~~  
22 ~~subdivision of this state~~] local government agency shall  
23 exercise due diligence to ensure compliance with this section."

24 SECTION 10. Section 10-16-13.2 NMSA 1978 (being Laws  
25 2007, Chapter 362, Section 8) is amended to read:

.184419.2

underscored material = new  
[bracketed material] = delete

1           "10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF  
2 STATE AGENCIES [~~AND THEIR EMPLOYEES~~] AND LOCAL GOVERNMENT  
3 AGENCIES PROHIBITED.--

4           ~~[A. A public officer or employee shall not sell or~~  
5 ~~be a party to a transaction to sell goods, services,~~  
6 ~~construction or items of tangible personal property directly or~~  
7 ~~indirectly, through the public officer's or employee's family~~  
8 ~~or a business in which the public officer or employee has a~~  
9 ~~substantial interest, to the state agency with which the public~~  
10 ~~officer or employee is employed. It is not a violation of this~~  
11 ~~subsection if the public officer or employee employed by the~~  
12 ~~state agency in good faith is not aware of:~~

13                     ~~(1) the substantial interest held by the~~  
14 ~~public officer or employee or the public officer's or~~  
15 ~~employee's family in the business that is selling or engaged in~~  
16 ~~a transaction to sell goods, services, construction or items of~~  
17 ~~tangible personal property to the state agency by which the~~  
18 ~~public officer or employee is employed; or~~

19                     ~~(2) the sale of or the transaction to sell~~  
20 ~~goods, services, construction or items of tangible personal~~  
21 ~~property by the public officer's or employee's family or by a~~  
22 ~~business in which the public officer or employee or the public~~  
23 ~~officer's or employee's family has a substantial interest to~~  
24 ~~the state agency by which the public officer or employee is~~  
25 ~~employed.~~

underscored material = new  
[bracketed material] = delete

1           ~~B.]~~ A. A public officer or employee shall not sell,  
2 offer to sell, coerce the sale of or be a party to a  
3 transaction to sell goods, services, construction or items of  
4 tangible personal property directly or indirectly through the  
5 public officer's or employee's family or a business in which  
6 the public officer or employee has a substantial interest, to  
7 an employee supervised by the public officer or employee. A  
8 public officer or employee shall not receive a commission or  
9 shall not profit from the sale or a transaction to sell goods,  
10 services, construction or items of tangible personal property  
11 to an employee supervised by the public officer or employee.  
12 The provisions of this subsection shall not apply if the  
13 supervised employee initiates the sale. It is not a violation  
14 of this subsection if a public officer or employee, in good  
15 faith, is not aware that the employee to whom the goods,  
16 services, construction or items of tangible personal property  
17 are being sold is under the supervision of the public officer  
18 or employee.

19           ~~[G.]~~ B. A public officer or employee shall not  
20 sell, offer to sell, coerce the sale of or be a party to a  
21 transaction to sell goods, services, construction or items of  
22 tangible personal property, directly or indirectly through the  
23 public officer's or employee's family or a business in which  
24 the public officer or employee has a substantial interest, to a  
25 person over whom the public officer or employee has regulatory

.184419.2

underscored material = new  
[bracketed material] = delete

1 authority.

2 [D-] C. A public officer or employee shall not  
3 receive a commission [~~or shall not~~] or profit from the sale or  
4 a transaction to sell goods, services, construction or items of  
5 tangible personal property to a person over whom the public  
6 officer or employee has regulatory authority.

7 [E-] D. A public officer or employee shall not  
8 accept from a person over whom the public officer or employee  
9 has regulatory authority an offer of employment or an offer of  
10 a contract in which the public officer or employee provides  
11 goods, services, construction, items of tangible personal  
12 property or other things of value to the person over whom the  
13 public officer or employee has regulatory authority."

14 SECTION 11. Section 10-16-13.3 NMSA 1978 (being Laws  
15 2007, Chapter 362, Section 11) is amended to read:

16 "10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE  
17 CONTRACTORS.--

18 A. A business that contracts with a state agency or  
19 local government agency to provide financial services involving  
20 the investment of public money or issuance of bonds for public  
21 projects shall not knowingly contribute anything of value to a  
22 public officer or employee of that state agency or local  
23 government agency who has authority over the investment of  
24 public money or issuance of bonds, the revenue of which is used  
25 for public projects in the state.

.184419.2

underscored material = new  
[bracketed material] = delete

1           B. A public officer or employee of a state agency  
2 or local government agency that has authority over the  
3 investment of public money or issuance of bonds, the revenue of  
4 which is used for public projects in the state, shall not  
5 knowingly accept a contribution of anything of value from a  
6 business that contracts with that state agency or local  
7 government agency to provide financial services involving the  
8 investment of public money or issuance of bonds for public  
9 projects.

10           C. For the purposes of this section:

11                   (1) "anything of value" means any money,  
12 property, service, loan or promise, but does not include food  
13 and refreshments with a value of less than one hundred dollars  
14 (\$100) consumed in a day; and

15                   (2) "contribution" means a donation or  
16 transfer to a recipient for the personal use of the recipient,  
17 without commensurate consideration."

18           **SECTION 12.** A new section of the Governmental Conduct Act  
19 is enacted to read:

20           "[NEW MATERIAL] STATE AGENCY OR LOCAL GOVERNMENT AGENCY  
21 AUTHORITY.--Nothing in the Governmental Conduct Act shall be  
22 construed to preclude a state agency or local government agency  
23 from adopting and publishing ordinances, rules or standards  
24 that are more stringent than those required by the Governmental  
25 Conduct Act."

underscored material = new  
[bracketed material] = delete

1           SECTION 13. Section 30-23-2 NMSA 1978 (being Laws 1963,  
2 Chapter 303, Section 23-2) is amended to read:

3           "30-23-2. PAYING OR RECEIVING PUBLIC MONEY FOR SERVICES  
4 NOT RENDERED.--

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

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

16           C. Whoever commits paying or receiving public money  
17 for services not rendered is guilty of a [~~fourth~~] third degree  
18 felony, and eighteen months of the sentence shall not be  
19 suspended, deferred or taken under advisement. A person  
20 convicted under the provisions of this section shall, in  
21 addition to any other punishment, be liable for three times the  
22 amount of money received for services not rendered and  
23 reasonable attorney fees, including the fees of the attorney  
24 general or district attorney."

25           SECTION 14. Section 30-23-3 NMSA 1978 (being Laws 1963,

.184419.2



underscored material = new  
[bracketed material] = delete

1 Chapter 303, Section 23-3, as amended) is amended to read:

2 "30-23-3. MAKING OR PERMITTING FALSE PUBLIC VOUCHER.--

3 A. Making or permitting false public voucher  
4 consists of knowingly, intentionally or [~~wilfully~~] willfully  
5 making, causing to be made or permitting to be made a false  
6 material statement or forged signature upon any public voucher,  
7 or invoice supporting a public voucher, with intent that the  
8 voucher or invoice shall be relied upon for the expenditure of  
9 public money.

10 B. Whoever commits making or permitting false  
11 public voucher is guilty of a [~~fourth~~] third degree felony, and  
12 eighteen months of the sentence shall not be suspended,  
13 deferred or taken under advisement. A person convicted under  
14 the provisions of this section shall, in addition to any other  
15 punishment, be liable for three times the amount of the  
16 monetary value of the false public voucher and reasonable  
17 attorney fees, including the fees of the attorney general or  
18 district attorney."

19 **SECTION 15.** Section 30-23-6 NMSA 1978 (being Laws 1963,  
20 Chapter 303, Section 23-6) is amended to read:

21 "30-23-6. UNLAWFUL INTEREST IN A PUBLIC CONTRACT.--

22 A. Unlawful interest in a public contract consists  
23 of:

24 [~~A. any~~] (1) a public officer or public  
25 employee receiving anything of value, directly or indirectly,

underscored material = new  
[bracketed material] = delete

1 from either a seller or a seller's agents or a purchaser or a  
2 purchaser's agents in connection with the sale or purchase of  
3 securities, goods, leases, lands or anything of value by the  
4 state or any of its political subdivisions, unless:

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

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

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

25 B. A person violating the provisions of Paragraph

underscored material = new  
[bracketed material] = delete

1     (2) of Subsection [B] A of this section, where [~~such~~] the  
2     violations [~~forms~~] form the basis for prosecution and  
3     conviction of a public officer or public employee, shall be  
4     disqualified from transacting [~~any~~] business with the state or  
5     its political subdivisions for a period of five years from the  
6     date of [~~such~~] the violation.

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

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

15            E. Whoever commits unlawful interest in public  
16    contracts where the value received by [~~him~~] the person is more  
17    than fifty dollars (\$50.00) is guilty of a [~~fourth~~] third  
18    degree felony, [~~Any~~] and eighteen months of the sentence shall  
19    not be suspended, deferred or taken under advisement. A public  
20    officer or public employee convicted of a felony [~~hereunder~~]  
21    under the provisions of this section is forever disqualified  
22    from employment by the state or any of its political  
23    subdivisions.

24            F. Notwithstanding the provisions of Section  
25    30-23-7 NMSA 1978, a person convicted under the provisions of

.184419.2

underscored material = new  
[bracketed material] = delete

1 this section shall, in addition to any other punishment, be  
2 liable for three times the amount of money received, or three  
3 times the monetary value of the unlawful contract, and  
4 reasonable attorney fees, including the fees of the attorney  
5 general or district attorney."

6 SECTION 16. Section 30-24-1 NMSA 1978 (being Laws 1963,  
7 Chapter 303, Section 24-1) is amended to read:

8 "30-24-1. BRIBERY OF PUBLIC OFFICER OR PUBLIC EMPLOYEE--  
9 FAILURE TO REPORT.--

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

15 [A.] (1) give or render any official opinion,  
16 judgment or decree;

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

21 [C.] (3) procure [~~him~~] the person to vote or  
22 withhold [~~his~~] the person's vote on [~~any~~] a question, matter or  
23 proceeding [~~which~~] that is then or may thereafter be pending,  
24 and [~~which~~] that may by law come or be brought before [~~him~~] the  
25 person in [~~his~~] the person's public capacity;

underscored material = new  
[bracketed material] = delete

1                   [~~D-~~] (4) execute any of the powers [~~in him~~]  
2 vested in the person; or

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

6                   B. Whoever commits bribery of a public officer or  
7 public employee is guilty of a third degree felony, and  
8 eighteen months of the sentence shall not be suspended,  
9 deferred or taken under advisement.

10                   C. It is unlawful for a public officer or public  
11 employee who has direct knowledge of bribery of a public  
12 officer or public employee to fail to report the bribery to a  
13 law enforcement officer or the supervisor of the reporting  
14 officer or employee. If the bribery is reported to the  
15 supervisor of the officer or employee reporting the bribery,  
16 the supervisor shall report the bribery to a law enforcement  
17 officer. Any person who knowingly and willfully violates the  
18 provisions of this subsection is guilty of a fourth degree  
19 felony."

20                   SECTION 17. Section 30-24-2 NMSA 1978 (being Laws 1963,  
21 Chapter 303, Section 24-2) is amended to read:

22                   "30-24-2. DEMANDING OR RECEIVING BRIBE BY PUBLIC OFFICER  
23 OR PUBLIC EMPLOYEE--FAILURE TO REPORT.--

24                   A. Demanding or receiving bribe by public officer  
25 or public employee consists of any public officer or public

.184419.2

underscored material = new  
[bracketed material] = delete

1 employee soliciting or accepting, directly or indirectly,  
2 anything of value, with intent to have [~~his~~] the officer's or  
3 employee's decision or action on any question, matter, cause,  
4 proceeding or appointment influenced [~~thereby~~] by the bribe,  
5 and which decision or action, by law, is pending or might be  
6 brought before [~~him~~] the officer or employee in [~~his~~] the  
7 officer's or employee's official capacity.

8 B. Whoever commits demanding or receiving a bribe  
9 by a public officer or public employee is guilty of a third  
10 degree felony, and eighteen months of the sentence shall not be  
11 suspended, deferred or taken under advisement. A person  
12 convicted under the provisions of this section shall, in  
13 addition to any other punishment, be liable for three times the  
14 amount of money, or three times the monetary value of the  
15 bribe, and reasonable attorney fees, including the fees of the  
16 attorney general or district attorney. Upon conviction,  
17 [~~thereof such~~] a public officer or public employee shall  
18 forfeit the office then held by [~~him~~] the officer or employee.

19 C. It is unlawful for a public officer or public  
20 employee who has direct knowledge of demanding or receiving a  
21 bribe by a public officer or public employee to fail to report  
22 the bribery to a law enforcement officer or the supervisor of  
23 the reporting officer or employee. If the demanding of or  
24 receiving of a bribe is reported to the supervisor of the  
25 officer or employee reporting the incident, the supervisor

1 shall report the demanding of or receiving of a bribe to a law  
2 enforcement officer. Any person who knowingly and willfully  
3 violates the provisions of this subsection is guilty of a  
4 fourth degree felony."

5 SECTION 18. Section 30-26-1 NMSA 1978 (being Laws 1963,  
6 Chapter 303, Section 26-1) is amended to read:

7 "30-26-1. TAMPERING WITH PUBLIC RECORDS.--

8 A. Tampering with public records consists of:

9 [A.] (1) knowingly altering any public record  
10 without lawful authority;

11 [B.] (2) any public officer or public employee  
12 knowingly filing or recording any written instrument, judicial  
13 order, judgment or decree in a form other than as the original  
14 thereof in fact appeared;

15 [C.] (3) any public officer or public employee  
16 knowingly falsifying or falsely making any record or file,  
17 authorized or required by law to be kept;

18 [D.] (4) any public officer or public employee  
19 knowingly issuing or causing to be issued any false or untrue  
20 certified copy of a public record; or

21 [E.] (5) knowingly destroying, concealing,  
22 mutilating or removing without lawful authority [~~and~~] any  
23 public record or public document belonging to or received or  
24 kept by any public authority for information or record or  
25 pursuant to law.

.184419.2

underscored material = new  
[bracketed material] = delete

1           B. Whoever commits tampering with public records is  
2 guilty of a [~~fourth~~] third degree felony, and eighteen months  
3 of the sentence shall not be suspended, deferred or taken under  
4 advisement."

5           SECTION 19. Section 30-41-1 NMSA 1978 (being Laws 1979,  
6 Chapter 384, Section 1) is amended to read:

7           "30-41-1. SOLICITING OR RECEIVING ILLEGAL KICKBACK.--

8           A. Whoever knowingly solicits or receives, [~~any~~]  
9 directly or indirectly, a remuneration in the form of any  
10 kickback, bribe or rebate [~~directly or indirectly, overtly or~~  
11 ~~evertly~~] in cash or in kind from a person:

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

16                   [~~B.~~] (2) in return for purchasing, leasing,  
17 ordering or arranging for or recommending purchasing, leasing  
18 or ordering any goods, facilities, services or items for which  
19 payment may be made in whole or in part with public money,  
20 [~~shall be~~] is guilty of a [~~fourth~~] third degree felony, and  
21 eighteen months of the sentence shall not be suspended,  
22 deferred or taken under advisement. A person convicted  
23 pursuant to the provisions of this subsection shall, in  
24 addition to any other punishment, be liable for three times the  
25 amount of money received, or three times the monetary value of



underscored material = new  
[bracketed material] = delete

1 the illegal kickback, and reasonable attorney fees, including  
2 the fees of the attorney general or district attorney.

3 B. It is unlawful for a public officer or public  
4 employee who has direct knowledge of a person soliciting or  
5 receiving an illegal kickback to fail to report the  
6 solicitation or receipt of the illegal kickback to a law  
7 enforcement officer or the supervisor of the reporting officer  
8 or employee. If the solicitation or receipt of the illegal  
9 kickback is reported to the supervisor of the officer or  
10 employee reporting the solicitation or receipt of the illegal  
11 kickback, the supervisor shall report the solicitation or  
12 receipt of the illegal kickback to a law enforcement officer.  
13 Any person who knowingly and willfully violates the provisions  
14 of this subsection is guilty of a fourth degree felony."

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

17 "30-41-2. OFFERING OR PAYING ILLEGAL KICKBACK.--

18 A. Whoever knowingly offers or pays, [any] directly  
19 or indirectly, a remuneration in the form of any kickback,  
20 bribe or rebate [directly or indirectly, overtly or covertly]  
21 in cash or in kind to any person to induce such person:

22 [A.] (1) to refer an individual to a person  
23 for the furnishing or arranging for the furnishing of [any] an  
24 item or service for which payment may be made in whole or in  
25 part with public money; or

.184419.2

underscored material = new  
[bracketed material] = delete

1                   [~~B-~~] (2) to purchase, lease, order or arrange  
2 for or recommend purchasing, leasing or ordering any goods,  
3 facilities, services or items for which payment may be made in  
4 whole or in part with public money, shall be guilty of a  
5 [~~fourth~~] ~~third~~ degree felony, and ~~eighteen months of the~~  
6 sentence shall not be suspended, deferred or taken under  
7 advisement. A person convicted under the provisions of this  
8 subsection shall, in addition to any other punishment, be  
9 liable for three times the monetary value of anything received  
10 through violation of this subsection and reasonable attorney  
11 fees, including the fees of the attorney general or district  
12 attorney.

13                   B. It is unlawful for a public officer or public  
14 employee who has direct knowledge of a person offering or  
15 paying an illegal kickback to fail to report the offer or  
16 payment of the illegal kickback to a law enforcement officer or  
17 the supervisor of the reporting officer or employee. If the  
18 offer or payment of the illegal kickback is reported to the  
19 supervisor of the officer or employee reporting the offer or  
20 payment of the illegal kickback, the supervisor shall report  
21 the offer or payment of the illegal kickback to a law  
22 enforcement officer. Any person who knowingly and willfully  
23 violates the provisions of this subsection is guilty of a  
24 fourth degree felony."

25                   SECTION 21. Section 33-2-34 NMSA 1978 (being Laws 1999,

.184419.2

underscored material = new  
[bracketed material] = delete

1 Chapter 238, Section 1, as amended) is amended to read:

2 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS  
3 DEDUCTIONS.--

4 A. To earn meritorious deductions, a prisoner  
5 confined in a correctional facility designated by the  
6 corrections department must be an active participant in programs  
7 recommended for the prisoner by the classification supervisor  
8 and approved by the warden or the warden's designee.

9 Meritorious deductions shall not exceed the following amounts:

10 (1) for a prisoner confined for committing a  
11 serious violent offense or a public corruption offense, up to a  
12 maximum of four days per month of time served;

13 (2) for a prisoner confined for committing a  
14 nonviolent offense, up to a maximum of thirty days per month of  
15 time served;

16 (3) for a prisoner confined following  
17 revocation of parole for the alleged commission of a new felony  
18 offense or for absconding from parole, up to a maximum of four  
19 days per month of time served during the parole term following  
20 revocation; and

21 (4) for a prisoner confined following  
22 revocation of parole for a reason other than the alleged  
23 commission of a new felony offense or absconding from parole:

24 (a) up to a maximum of eight days per  
25 month of time served during the parole term following

.184419.2

underscoring material = new  
~~[bracketed material] = delete~~

1 revocation, if the prisoner was convicted of a serious violent  
2 offense or failed to pass a drug test administered as a  
3 condition of parole; or

4 (b) up to a maximum of thirty days per  
5 month of time served during the parole term following  
6 revocation, if the prisoner was convicted of a nonviolent  
7 offense.

8 B. A prisoner may earn meritorious deductions upon  
9 recommendation by the classification supervisor, based upon the  
10 prisoner's active participation in approved programs and the  
11 quality of the prisoner's participation in those approved  
12 programs. A prisoner may not earn meritorious deductions unless  
13 the recommendation of the classification supervisor is approved  
14 by the warden or the warden's designee.

15 C. If a prisoner's active participation in approved  
16 programs is interrupted by a lockdown at a correctional  
17 facility, the prisoner may continue to be awarded meritorious  
18 deductions at the rate the prisoner was earning meritorious  
19 deductions prior to the lockdown, unless the warden or the  
20 warden's designee determines that the prisoner's conduct  
21 contributed to the initiation or continuance of the lockdown.

22 D. A prisoner confined in a correctional facility  
23 designated by the corrections department is eligible for lump-  
24 sum meritorious deductions as follows:

25 (1) for successfully completing an approved

.184419.2

underscored material = new  
[bracketed material] = delete

1 vocational, substance abuse or mental health program, one month;  
2 except when the prisoner has a demonstrable physical, mental  
3 health or developmental disability that prevents the prisoner  
4 from successfully earning a general education diploma, in which  
5 case, the prisoner shall be awarded three months;

6 (2) for earning a general education diploma,  
7 three months;

8 (3) for earning an associate's degree, four  
9 months;

10 (4) for earning a bachelor's degree, five  
11 months;

12 (5) for earning a graduate qualification, five  
13 months; and

14 (6) for engaging in a heroic act of saving  
15 life or property, engaging in extraordinary conduct for the  
16 benefit of the state or the public that is at great expense or  
17 risk to or involves great effort on [~~behalf~~] the part of the  
18 prisoner or engaging in extraordinary conduct far in excess of  
19 normal program assignments that demonstrates the prisoner's  
20 commitment to self-rehabilitation. The classification  
21 supervisor and the warden or the warden's designee may recommend  
22 the number of days to be awarded in each case based upon the  
23 particular merits, but any award shall be determined by the  
24 director of the adult institutions division of the corrections  
25 department or the director's designee.

.184419.2

underscoring material = new  
~~[bracketed material] = delete~~

1           E. Lump-sum meritorious deductions, provided in  
2 Paragraphs (1) through (6) of Subsection D of this section, may  
3 be awarded in addition to the meritorious deductions provided in  
4 Subsections A and B of this section. Lump-sum meritorious  
5 deductions shall not exceed one year per award and shall not  
6 exceed a total of one year for all lump-sum meritorious  
7 deductions awarded in any consecutive twelve-month period.

8           F. A prisoner is not eligible to earn meritorious  
9 deductions if the prisoner:

10                   (1) disobeys an order to perform labor,  
11 pursuant to Section 33-8-4 NMSA 1978;

12                   (2) is in disciplinary segregation;

13                   (3) is confined for committing a serious  
14 violent offense and is within the first sixty days of receipt by  
15 the corrections department; or

16                   (4) is not an active participant in programs  
17 recommended and approved for the prisoner by the classification  
18 supervisor.

19           G. The provisions of this section shall not be  
20 interpreted as providing eligibility to earn meritorious  
21 deductions from a sentence of life imprisonment or a sentence of  
22 death.

23           H. The corrections department shall promulgate rules  
24 to implement the provisions of this section, and the rules shall  
25 be matters of public record. A concise summary of the rules

underscoring material = new  
~~[bracketed material] = delete~~

1 shall be provided to each prisoner, and each prisoner shall  
2 receive a quarterly statement of the meritorious deductions  
3 earned.

4 I. A New Mexico prisoner confined in a federal or  
5 out-of-state correctional facility is eligible to earn  
6 meritorious deductions for active participation in programs on  
7 the basis of the prisoner's conduct and program reports  
8 furnished by that facility to the corrections department. All  
9 decisions regarding the award and forfeiture of meritorious  
10 deductions at such facility are subject to final approval by the  
11 director of the adult institutions division of the corrections  
12 department or the director's designee.

13 J. In order to be eligible for meritorious  
14 deductions, a prisoner confined in a federal or out-of-state  
15 correctional facility designated by the corrections department  
16 must actively participate in programs that are available. If a  
17 federal or out-of-state correctional facility does not have  
18 programs available for a prisoner, the prisoner may be awarded  
19 meritorious deductions at the rate the prisoner could have  
20 earned meritorious deductions if the prisoner had actively  
21 participated in programs.

22 K. A prisoner confined in a correctional facility in  
23 New Mexico that is operated by a private company, pursuant to a  
24 contract with the corrections department, is eligible to earn  
25 meritorious deductions in the same manner as a prisoner confined

underscoring material = new  
[bracketed material] = delete

1 in a state-run correctional facility. All decisions regarding  
2 the award or forfeiture of meritorious deductions at such  
3 facilities are subject to final approval by the director of the  
4 adult institutions division of the corrections department or the  
5 director's designee.

6 L. As used in this section:

7 (1) "active participant" means a prisoner who  
8 has begun, and is regularly engaged in, approved programs;

9 (2) "program" means work, vocational,  
10 educational, substance abuse and mental health programs,  
11 approved by the classification supervisor, that contribute to a  
12 prisoner's self-betterment through the development of personal  
13 and occupational skills. "Program" does not include  
14 recreational activities;

15 (3) "nonviolent offense" means any offense  
16 other than a serious violent offense; ~~and~~

17 (4) "serious violent offense" means:

18 (a) second degree murder, as provided in  
19 Section 30-2-1 NMSA 1978;

20 (b) voluntary manslaughter, as provided  
21 in Section 30-2-3 NMSA 1978;

22 (c) third degree aggravated battery, as  
23 provided in Section 30-3-5 NMSA 1978;

24 (d) third degree aggravated battery  
25 against a household member, as provided in Section 30-3-16 NMSA

.184419.2



1 1978;

2 (e) first degree kidnaping, as provided  
3 in Section 30-4-1 NMSA 1978;

4 (f) first and second degree criminal  
5 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

6 (g) second and third degree criminal  
7 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
8 1978;

9 (h) first and second degree robbery, as  
10 provided in Section 30-16-2 NMSA 1978;

11 (i) second degree aggravated arson, as  
12 provided in Section 30-17-6 NMSA 1978;

13 (j) shooting at a dwelling or occupied  
14 building, as provided in Section 30-3-8 NMSA 1978;

15 (k) shooting at or from a motor vehicle,  
16 as provided in Section 30-3-8 NMSA 1978;

17 (l) aggravated battery upon a peace  
18 officer, as provided in Section 30-22-25 NMSA 1978;

19 (m) assault with intent to commit a  
20 violent felony upon a peace officer, as provided in Section  
21 30-22-23 NMSA 1978;

22 (n) aggravated assault upon a peace  
23 officer, as provided in Section 30-22-22 NMSA 1978; and

24 (o) any of the following offenses, when  
25 the nature of the offense and the resulting harm are such that

.184419.2

underscored material = new  
~~[bracketed material] = delete~~

1 the court judges the crime to be a serious violent offense for  
2 the purpose of this section: 1) involuntary manslaughter, as  
3 provided in Section 30-2-3 NMSA 1978; 2) fourth degree  
4 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)  
5 third degree assault with intent to commit a violent felony, as  
6 provided in Section 30-3-3 NMSA 1978; 4) fourth degree  
7 aggravated assault against a household member, as provided in  
8 Section 30-3-13 NMSA 1978; 5) third degree assault against a  
9 household member with intent to commit a violent felony, as  
10 provided in Section 30-3-14 NMSA 1978; 6) third and fourth  
11 degree aggravated stalking, as provided in Section 30-3A-3.1  
12 NMSA 1978; 7) second degree kidnaping, as provided in Section  
13 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as  
14 provided in Section 30-6-1 NMSA 1978; 9) first, second and third  
15 degree abuse of a child, as provided in Section 30-6-1 NMSA  
16 1978; 10) third degree dangerous use of explosives, as provided  
17 in Section 30-7-5 NMSA 1978; 11) third and fourth degree  
18 criminal sexual penetration, as provided in Section 30-9-11 NMSA  
19 1978; 12) fourth degree criminal sexual contact of a minor, as  
20 provided in Section 30-9-13 NMSA 1978; 13) third degree robbery,  
21 as provided in Section 30-16-2 NMSA 1978; 14) third degree  
22 homicide by vehicle or great bodily injury by vehicle, as  
23 provided in Section 66-8-101 NMSA 1978; and 15) battery upon a  
24 peace officer, as provided in Section 30-22-24 NMSA 1978; and

25 (5) "public corruption offense" means:

.184419.2

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

15                   (g) demanding or receiving bribe by  
16 public officer or employee, as provided in Section 30-24-2 NMSA  
17 1978;

18                   (h) tampering with public records, as  
19 provided in Section 30-26-1 NMSA 1978;

20                   (i) soliciting or receiving illegal  
21 kickback, as provided in Section 30-41-1 NMSA 1978; and

22                   (j) offering or paying illegal kickback,  
23 as provided in Section 30-41-2 NMSA 1978.

24                   M. Except for sex offenders, as provided in Section  
25 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a

.184419.2

underscored material = new  
[bracketed material] = delete

1 correctional facility designated by the corrections department  
2 who has been released from confinement and who is serving a  
3 parole term may be awarded earned meritorious deductions of up  
4 to thirty days per month upon recommendation of the parole  
5 officer supervising the offender, with the final approval of the  
6 adult parole board. The offender must be in compliance with all  
7 the conditions of the offender's parole to be eligible for  
8 earned meritorious deductions. The adult parole board may  
9 remove earned meritorious deductions previously awarded if the  
10 offender later fails to comply with the conditions of the  
11 offender's parole. The corrections department and the adult  
12 parole board shall promulgate rules to implement the provisions  
13 of this subsection. This subsection applies to offenders who  
14 are serving a parole term on or after July 1, 2004."

15 SECTION 22. [NEW MATERIAL] FORFEITURE OF PENSION FOR  
16 PUBLIC CORRUPTION OFFENSES.--

17 A. If, in the adjudication of a public corruption  
18 offense in a New Mexico district court, it appears that the  
19 defendant is a member or retired member, the district attorney  
20 or attorney general shall, in addition to the felony complaint,  
21 file for an order of forfeiture of pension. Upon the filing,  
22 the forfeiture of pension proceeding shall be brought in the  
23 same proceeding as the criminal matter and presented to the same  
24 trier of fact; provided that:

- 25 (1) the two issues shall be bifurcated;

underscored material = new  
[bracketed material] = delete

1                   (2) the rules of criminal procedure shall  
2 apply in the criminal matter and the rules of civil procedure  
3 shall apply in the forfeiture proceeding;

4                   (3) if the criminal defendant is represented  
5 by the public defender department, the chief public defender or  
6 the district public defender may authorize department  
7 representation of the defendant in the forfeiture proceeding;  
8 and

9                   (4) if the state proves by clear and  
10 convincing evidence that the defendant is a member or retired  
11 member and has been convicted of a public corruption offense,  
12 after determining issues related to community property and child  
13 support obligations and issuing orders to that effect, the court  
14 may order the forfeiture of the member's or retired member's  
15 right to a pension and other retirement benefits from a state  
16 system and serve the order upon the appropriate state system.

17                   B. After receipt by a state system of an order  
18 issued pursuant to Subsection A of this section, pending a final  
19 appeal, the state system shall suspend the forfeited member's  
20 service credit and, if the forfeited member is a retired member,  
21 shall suspend any pension.

22                   C. After notification to a state system that an  
23 order issued pursuant to Subsection A of this section was not  
24 appealed or, upon final appeal, was upheld:

25                   (1) except as provided in Paragraph (5) of

underscored material = new  
~~[bracketed material] = delete~~

1 this subsection, the state system shall revoke the forfeited  
2 member's service credit;

3 (2) if the forfeited member is not currently  
4 receiving a pension, except as provided in Paragraph (4) of this  
5 subsection, the state system shall refund accumulated member  
6 contributions to the forfeited member;

7 (3) if the forfeited member is currently  
8 receiving a pension, except as provided in Paragraph (4) or (5)  
9 of this subsection, the state system shall cease paying a  
10 pension and shall refund any unexpended accumulated member  
11 contributions to the forfeited member;

12 (4) if, prior to the order of forfeiture, a  
13 court has issued an order pursuant to Section 10-11-136,  
14 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, or as  
15 part of the forfeiture order, orders were issued addressing  
16 community property interests or child support obligations, then  
17 any action by a state system pursuant to Paragraph (2) or (3) of  
18 this subsection shall be in compliance with those court orders;  
19 and

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

.184419.2

underscoring material = new  
~~[bracketed material] = delete~~

1 the previous employment.

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

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

14 F. The provisions of this section apply to crimes  
15 committed on or after July 1, 2011.

16 G. As used in this section:

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

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

24 (3) "member" means an individual who is  
25 classified as a "member" of a state system pursuant to the laws

.184419.2

underscoring material = new  
~~[bracketed material] = delete~~

1 governing that state system;

2 (4) "member contributions" means the amounts  
3 deducted from a member's salary and credited to the member's  
4 account in a state system, together with interest, if any,  
5 credited to that account;

6 (5) "public corruption offense" means:

7 (a) violating the ethical principles of  
8 public service, as provided in Subsection D of Section 10-16-3  
9 NMSA 1978;

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

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

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

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

19 (f) committing bribery of a public  
20 officer or public employee, as provided in Section 30-24-1 NMSA  
21 1978;

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

25 (h) tampering with public records, as



underscoring material = new  
[bracketed material] = delete

1 provided in Section 30-26-1 NMSA 1978;

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

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

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

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

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

16 SECTION 23. REPEAL.--Sections 3-10-4, 3-10-5 and 4-44-22  
17 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter 78, Section  
18 1, Laws 1965, Chapter 300, Section 14-9-5 and Laws 1969, Chapter  
19 244, Sections 1 through 6) are repealed.

20 SECTION 24. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2011.