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SENATE BILL 259

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

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO PUBLIC OFFICIALS; ENHANCING SENTENCES FOR FELONIES;
PROVIDING FOR THE FORFEITURE OF CERTAIN RIGHTS AND BENEFITS
UNDER THE STATE RETIREMENT SYSTEMS UPON CONVICTION.

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

SECTION 1. A new section of the Criminal Sentencing Act
is enacted to read:

"~~[NEW MATERIAL]~~ FELONIES--PUBLIC OFFICIALS--ENHANCEMENT OF
SENTENCES.--

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

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1 fringe benefits paid to the offender, by virtue of holding an
2 elected office, after the commission of the first act that was
3 a basis for the felony conviction.

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

8 SECTION 2. [NEW MATERIAL] FORFEITURE OF PENSION FOR
9 PUBLIC OFFICIALS.--

10 A. If, in the adjudication of a public official for
11 a felony offense that relates to, arises out of or is in
12 connection with the offender's holding of an elected office, it
13 appears that the defendant is a member or retired member, the
14 district attorney or attorney general shall, in addition to the
15 felony complaint, file for an order of forfeiture of pension.
16 Upon the filing, the forfeiture of pension proceeding shall be
17 brought in the same proceeding as the criminal matter and
18 presented to the same trier of fact; provided that:

- 19 (1) the two issues shall be bifurcated;
20 (2) the rules of criminal procedure shall
21 apply in the criminal matter and the rules of civil procedure
22 shall apply in the forfeiture proceeding;
23 (3) if the criminal defendant is represented
24 by the public defender department, the chief public defender or
25 the district public defender may authorize department

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1 representation of the defendant in the forfeiture proceeding;
2 and

3 (4) if the state proves by clear and
4 convincing evidence that the defendant is a member or retired
5 member and has been convicted of a felony offense that relates
6 to, arises out of or is in connection with the offender's
7 holding of an elected office, after determining issues related
8 to community property and child support obligations and issuing
9 orders to that effect, the court may order the forfeiture of
10 the member's or retired member's right to a pension and other
11 retirement benefits from a state system and serve the order
12 upon the appropriate state system.

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

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

21 (1) except as provided in Paragraph (5) of
22 this subsection, the state system shall revoke the forfeited
23 member's service credit;

24 (2) if the forfeited member is not currently
25 receiving a pension, except as provided in Paragraph (4) of

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1 this subsection, the state system shall refund accumulated
2 member contributions to the forfeited member;

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

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

15 (5) if the forfeited member is currently
16 receiving a pension from a state system due to previous
17 employment but had subsequently returned to public employment
18 while continuing to receive the pension, the order shall not
19 affect the pension related to the previous employment if the
20 offense did not arise from conduct related to the previous
21 employment.

22 D. If, on final appeal, the court finding pursuant
23 to Subsection A of this section or the conviction is
24 overturned, the forfeiture order is voided, the attorney
25 general shall notify the state system and the state system

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1 shall reinstate the forfeited service credit and pay in full
2 any suspended pension payments.

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

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

11 G. As used in this section:

12 (1) "conviction" means a judgment of guilty of
13 a felony or acceptance of a plea of nolo contendere by a state
14 or federal court of competent jurisdiction to an offense that
15 relates to, arises out of or is in connection with the
16 offender's holding of an elected office;

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

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

23 (4) "member contributions" means the amounts
24 deducted from a member's salary and credited to the member's
25 account in a state system, together with interest, if any,

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1 credited to that account;

2 (5) "public official" means a person elected
3 to an office in an election covered by the Campaign Reporting
4 Act or a person appointed to an office that is subject to an
5 election covered by that act;

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

8 (7) "state system" means a retirement program
9 provided for in the Educational Retirement Act, the Public
10 Employees Retirement Act, the Magistrate Retirement Act or the
11 Judicial Retirement Act.

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2011.

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