

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date Prepared:	<u>2-19-17</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB501</u>

Sponsor:	<u>Matthew McQueen</u>	Agency Code:	<u>264</u>
Short Title:	<u>Public Corruption Act</u>	Person Writing	<u>Gail MacQuesten</u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	minimal	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB502
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB501 creates the “Public Corruption Act.” It provides all service credit associated with service as an elected official shall be forfeited if the elected official is convicted of or pleads guilty or nolo contendere to a corruption offense committed during his or her term of office. A “public official” is a person campaigning for or elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act.

A “corruption offense” is a first, second or third degree felony conviction for

- Fraud;
- Embezzlement;
- Extortion;
- Forgery;
- Bribery of public officer or public employee;
- Demanding or receiving bribe by public officer or public employee;
- Bribery or intimidation of a witness or retaliation against a witness;
- Racketeering;
- A computer crime; or
- Money laundering.

A “corruption offense” is also any conviction for

- Perjury;
- Soliciting or receiving a kickback, bribe or rebate;
- Offering or paying a kickback, bribe or rebate; and
- Conspiracy to commit any of the crimes set forth in the subsection.

Only service credits accrued during time served as an elected official pursuant to the provisions of the Public Employees Retirement Act shall be forfeited. If a public official has been receiving a pension based in part on service credit accrued during employment by an affiliated public employer, that pension shall be recalculated without the forfeited service credit. HB501 provides that member contributions shall be refunded, and explains how the refund is to be calculated if the public official has already retired and started to receive pension payments.

HB501 repeals NMSA 1978, Section 31-18-15.4, which provides for enhanced fines when a felony offender is a public official and the felony relates to, arises out of or in connection

with holding public office. The fine is not to exceed the value of the salary and fringe benefits paid to the offender after commission of the first criminal act.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB501 adds significant consequences for “corruption offenses” committed by elected officials. This may make it more difficult to prosecute such crimes, with more such offenses going to trial. If there are more trials, there will be more costs for the district attorneys.

SIGNIFICANT ISSUES

HB501 is a stand-alone act. It is not placed within the sentencing statutes or within the Public Employees Retirement Act. It is not clear how it is to be administered. Will criminal courts factor in HB501 during sentencing proceedings, determine that the offender is a “public official” as defined by the act, and order the Public Employees Retirement Association to forfeit the service credits according to the act’s provisions? Or is the administration entirely by the Public Employees Retirement Association? It is not clear.

The bill may be challenged as an ex post facto law, prohibited under both the United States and New Mexico constitutions. U.S. Const. art. 1, § 10, cl. 1; N.M. Const. art. 2, § 19. Penal laws cannot be applied retroactively to increase the penalty of crimes that have already been committed. The bill appears to have retroactive effect. The bill looks at the date of conviction; not the date of the offense. A person who committed a “corruption offense” prior to the effective date of the bill would still be subject to the forfeiture if the conviction occurred after the effective date of the bill. It could be argued that the bill isn’t “penal,” but a civil or remedial bill. But given that the loss of benefits would be a direct result of a criminal conviction, it is possible that the courts would view the bill as punishing corrupt public officials. To avoid the ex post facto issue, the bill should be changed to make clear that it applies only to crimes committed after its effective date.

HB501 defines “corruption offense” as one of the listed offenses committed by a public official during that public official’s time in office. Note that it does not require that the listed offense have any relationship to the elected official’s duties. That makes HB501 easy to administer because its provisions are automatic, and does away with the need for special findings linking the crime to the public office. However, if the intent is to punish malfeasance in office, HB501 may go beyond that and punish behavior unrelated to the elected official’s duties.

Note that the impact of HB501 on an offender can be severe, and some elected officials will feel the impact of HB501 more than others. Its application is automatic: if an elected official is convicted of a corruption offense, his or her service credit as an elected official is forfeit. For a person whose career has been in elected office, taking away the service credit can be the equivalent of taking away that person’s entire pension. For a person who held an elected position for a short time, the financial impact may not be so significant.

PERFORMANCE IMPLICATIONS

As discussed above, the collateral consequences of HB501 can be severe, and may result in more cases on “corruption offenses” going to trial and appeal. And, as discussed above, it is not clear how HB501 is to be administered.

ADMINISTRATIVE IMPLICATIONS

District attorneys, and courts, would be wise to insist that defense counsel advise their elected official clients charged with “corruption offenses” about the consequences of HB501 before accepting a plea agreement. The collateral consequences of HB501 are severe, and appellate courts may conclude that a plea agreement was involuntary if the defendant was not fully informed of the consequences of that plea.

It is likely that PERA will administer the forfeiture provisions of HB501. There is nothing in the bill that provides notice of a conviction to PERA. Possibly the assumption is that a criminal conviction of an elected official would be news-worthy enough that a notice provision is not necessary. Or, perhaps the assumption is that HB501 will be invoked by the sentencing judge, and the sentence will be forwarded to PERA.

HB501 also leaves other unanswered questions about its administration:

- Are service credits or pension payments halted while a conviction is being appealed? If so, what happens if the conviction is overturned?
- What impact does HB501 have on the rights of an innocent spouse? If the offender’s pension has vested, and is subject to a divorce settlement, does HB501 void the rights of the spouse?

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB502, Forfeiture of SVC Credit for Public Officials, contains similar provisions, but makes those provisions part of the Public Employees Retirement Act. HB502 applies only to elected officials, and not to a person campaigning for an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act. HB502 leaves in place Section 31-18-15.4 (the provision allowing for increased fines as part of the sentence imposed on a public official convicted of a felony connected to his or her public office).

TECHNICAL ISSUES

Note the issue regarding retroactive application of the law, discussed above.

OTHER SUBSTANTIVE ISSUES

None found.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Public officials who commit felonies related to their public office may lose salaries and fringe benefits under Section 31-18.15.4, but will not automatically lose service credits.

AMENDMENTS

Add:

“H. The provisions of this section apply to corruption offenses committed after its effective date.”