

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>HB502</u>

Sponsor: <u>Matthew McQueen</u>	Agency Code: <u>264</u>	
Short Title: <u>Forfeiture of SVC Credit for Public Officials</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: HB501
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB502 adds a new section to the Public Employees Retirement Act providing that 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 “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. The Act does not apply to the Judicial Retirement Act or the Magistrate Retirement Act. 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. HB502 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.

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.

HB502 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

Because this provision is placed in the Public Employees Retirement Act, it will be administered by the Public Employees’ Retirement Administration. It is not an issue that is addressed by the district attorneys in criminal sentencing.

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.

An existing criminal sentencing statute, NMSA 1978, Section 31-18-15.4, provides that when a separate finding of fact by the trier of fact finds beyond a reasonable doubt that a felony offender is a public official and that the felony relates to, arises out of or is in connection with holding elected office, the basic sentence may be increased by a fine not to exceed the value of the salary and fringe benefits paid to the offender after commission of the first act that was the basis for the felony conviction. Note that Section 31-18-15.4 does not expressly address service credits or retirement benefits.

HB502 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 HB502 easy to administer, 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, HB502 may go beyond that and punish behavior unrelated to the elected official’s duties.

Note that the impact of HB502 on an offender can be severe, and some elected officials will feel the impact of HB502 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 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 HB502 are severe, and may result in more cases on “corruption offenses” going to trial and appeal. Most of the performance implications will fall on the PERA, however, because the PERA is the agency that will be administering HB502.

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 HB502 before accepting a plea agreement. The collateral consequences of HB502 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.

PERA will have to administer the provisions of HB502. 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. HB502 also leaves some 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 HB502 have on the rights of an innocent spouse? If the offender’s pension has vested, and is subject to a divorce settlement, does HB502 void the rights of the spouse?

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB501, Public Corruption Act, contains similar provisions. It creates a new act, the “Public Corruption Act,” that is not part of the criminal sentencing statutes or part of the Public Employees Retirement Act. It applies not only to elected officials, but also 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. HB501 repeals Section 31-18-15.4.

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.”