

LFC Requester:	Julia Downs
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**AGENCY BILL ANALYSIS
2016 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: Date 01/18/2016
Original **Amendment** **Bill No:** HB260
Correction **Substitute**

Sponsor: Nate Gentry, Stephanie Garcia Richard **Agency Code:** 264 (AODA)
Short Title: Public Corruption Offenses and Penalties **Person Writing:** Mary Lynne Newell
Phone: 575-313-6890 **Email:** starlight@gilanet.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 96 No Pension for Convicted Public Officials

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The bill amends the criminal statutes pertaining to embezzlement, paying or receiving public money for services not rendered, making or permitting public voucher, unlawful interest in public contract, bribery of a public officer or public employee, soliciting or receiving an illegal kickback, paying or offering an illegal kickback to provide for a sentence enhancement of one (1) additional year beyond the basic penalty when those crimes are committed by elected or appointed public officials or an employee of a public agency.

It further bars persons convicted of public corruption offenses within these statutes from lobbying or entering into contracts with the state, and provides that a knowing and willful violation will constitute a separate third degree felony.

It includes a process for forfeiture of certain rights and benefits under the state retirement systems when these convictions relate to or arose out of the member's public office or public employment, which would be prosecuted by the District Attorney offices or the Attorney General's Office in a bifurcated proceeding.

Finally, it mandates posting, in all public agencies, information delineating what constitutes public corruption offenses and their penalties.

FISCAL IMPLICATIONS

The addition of the forfeiture proceedings would add a significant burden to District Attorneys' Offices prosecution staff, as it potentially at least doubles the work load in a particular case, and may add considerably more time for the Offices. These hearings will follow civil rules of procedure, not criminal rules, and for criminal prosecutors, legal support staff, and secretaries, this would involve adjusting to an entire new reparatory of forms, time limits, and enforcement procedures.

SIGNIFICANT ISSUES

Added time and cost to the District Attorneys' Offices in having to handle forfeiture matters, and added time and cost to the Retirement entities, which are based out of Albuquerque

and Santa Fe, who would have to attend and testify in Court proceedings in every District Court. Under current law as required by the United States Supreme Court, a defendant can demand their right to personally confront all witnesses. This testimony cannot be taken remotely or by video deposition, etc. unless the defendant agrees to it, and no defendant will agree if there is a chance this requirement can derail the case against them.

PERFORMANCE IMPLICATIONS

Diversion of resources from criminal cases may complicate meeting time limits in other criminal matters.

ADMINISTRATIVE IMPLICATIONS

Necessity to fund training for prosecutors and involved staff in civil law. Time and cost in including civil forms and bifurcated forfeiture proceedings into databases. Time and cost to the Retirement entities, per above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Pension forfeiture is the subject of HB 96, which provides total forfeiture of pension for a wider variety of criminal offenses.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

Require the Attorney General's Office to handle any pension forfeiture proceedings. This would allow them to be held where witnesses for PERA, etc. would not have to travel unduly.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Require the Attorney General's Office to handle any pension forfeiture proceedings.