

ASSEMBLY, No. 4659

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED OCTOBER 22, 2018

Sponsored by:

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

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District 11 (Monmouth)

SYNOPSIS

Requires forfeiture of all retirement benefits of public employees convicted of crimes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/30/2018)

1 AN ACT concerning the forfeiture of the retirement benefits of
2 public employees convicted of crimes and amending P.L.1995,
3 c.408 and P.L.2007, 49.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read
9 as follows:

10 1. a. The receipt of a public pension or retirement benefit is
11 hereby expressly conditioned upon the rendering of honorable
12 service by a public officer or employee.

13 b. The board of trustees of any State or locally-administered
14 pension fund or retirement system created under the laws of this
15 State **[is authorized to]** shall order the forfeiture of all **[or part of**
16 **the]** earned service credit or pension or retirement benefit of any
17 member of the fund or system for a conviction of any crime under
18 the laws of this State, or of an offense under the laws of another
19 state or the United States which would have been such a crime
20 under the laws of this State, or for misconduct occurring during the
21 member's public service which renders the member's service or part
22 thereof dishonorable, and **[to]** shall implement any pension
23 forfeiture ordered by a court pursuant to section 2 of P.L.2007, c.49
24 (C.43:1-3.1).

25 c. In evaluating a member's misconduct to determine whether it
26 constitutes a breach of the condition that public service be
27 honorable and whether forfeiture **[or partial forfeiture]** of earned
28 service credit or earned pension or retirement benefits is
29 appropriate, the board of trustees shall consider and balance the
30 following factors in view of the goals to be achieved under the
31 pension laws:

- 32 (1) the member's length of service;
33 (2) the basis for retirement;
34 (3) the extent to which the member's pension has vested;
35 (4) the duties of the particular member;
36 (5) the member's public employment history and record covered
37 under the retirement system;
38 (6) any other public employment or service;
39 (7) the nature of the misconduct **[or crime]**, including the
40 gravity or substantiality of the offense, whether it was a single or
41 multiple offense and whether it was continuing or isolated;
42 (8) the relationship between the misconduct and the member's
43 public duties;
44 (9) the quality of moral turpitude or the degree of guilt or
45 culpability, including the member's motives and reasons, personal
46 gain and similar considerations;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (10) the availability and adequacy of other **【penal】** sanctions;
2 and

3 (11) other personal circumstances relating to the member which
4 bear upon the justness of forfeiture.

5 **【d.** Whenever a board of trustees determines, pursuant to this
6 section, that a partial forfeiture of earned service credit or earned
7 pension or retirement benefits is warranted, it shall order that
8 benefits be calculated as if the accrual of pension rights terminated
9 as of the date the misconduct first occurred or, if termination as of
10 that date would in light of the nature and extent of the misconduct
11 result in an excessive pension or retirement benefit or in an
12 excessive forfeiture, a date reasonably calculated to impose a
13 forfeiture that reflects the nature and extent of the misconduct and
14 the years of honorable service.**】**

15 (cf: P.L.2007, c.49, s.1)

16

17 2. Section 2 of P.L.2007, c.49, (C.43:1-3.1) is amended to read
18 as follows:

19 2. a. A person who holds or has held any public office,
20 position, or employment, elective or appointive, under the
21 government of this State or any agency or political subdivision
22 thereof, who is convicted of any crime set forth in subsection b. of
23 this section, or of a substantially similar offense under the laws of
24 another state or the United States which would have been such a
25 crime under the laws of this State, which crime or offense involves
26 or touches such office, position or employment, shall forfeit all of
27 the pension or retirement benefit earned as a member of any State
28 or locally-administered pension fund or retirement system in which
29 he participated at the time of the commission of the offense **【and**
30 **which covered the office, position or employment involved in the**
31 **offense】**. As used in this section, a crime or offense that "involves
32 or touches such office, position or employment" means that the
33 crime or offense was related directly to the person's performance in,
34 or circumstances flowing from, the specific public office or
35 employment held by the person.

36 b. Subsection a. of this section applies to a conviction of any of
37 the following crimes:

38 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal
39 coercion;

40 (2) N.J.S.2C:20-4, theft by deception, if the amount involved
41 exceeds \$10,000;

42 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

43 (4) N.J.S.2C:20-9, theft by failure to make required disposition
44 of property received, if the amount involved exceeds \$10,000;

45 (5) N.J.S.2C:21-10, commercial bribery;

46 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money
47 laundering;

48 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
49 payment claims;

- 1 (8) N.J.S.2C:27-2, bribery in official matters;
 - 2 (9) N.J.S.2C:27-3, threats and other improper influence in
3 official and political matters;
 - 4 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
5 official business transaction where interest is involved;
 - 6 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
7 receipt of unlawful benefit by public servant for official behavior;
 - 8 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of
9 unlawful benefit to public servant for official behavior;
 - 10 (13) N.J.S.2C:28-1, perjury;
 - 11 (14) N.J.S.2C:28-5, tampering with witnesses;
 - 12 (15) N.J.S.2C:28-7, tampering with public records or
13 information;
 - 14 (16) N.J.S.2C:29-4, compounding;
 - 15 (17) N.J.S.2C:30-2, official misconduct;
 - 16 (18) N.J.S.2C:30-3, speculating or wagering on official action
17 or information; or
 - 18 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
19 misconduct.
- 20 c. A court of this State shall enter an order of pension
21 forfeiture pursuant to this section:
- 22 (1) Immediately upon a finding of guilt by the trier of fact or a
23 plea of guilty entered in any court of this State unless the court, for
24 good cause shown, orders a stay of the pension forfeiture pending a
25 hearing on the merits at the time of sentencing; or
 - 26 (2) Upon application of the county prosecutor or the Attorney
27 General, when the pension forfeiture is based upon a conviction of
28 an offense under the laws of another state or of the United States.
29 An order of pension forfeiture pursuant to this paragraph shall be
30 deemed to have taken effect on the date the person was found guilty
31 by the trier of fact or pled guilty to the offense.
- 32 d. No court shall grant a stay of an order of pension forfeiture
33 pending appeal of a conviction or pension forfeiture order unless
34 the court is clearly convinced that there is a substantial likelihood of
35 success on the merits. If the conviction be reversed or the order of
36 pension forfeiture be overturned, his pension rights and benefits
37 shall be restored from the date of pension forfeiture.
- 38 e. Nothing in this section shall be deemed to preclude the
39 authority of the board of trustees of any State or locally-
40 administered pension fund or retirement system created under the
41 laws of this State from ordering the forfeiture of all **【or part】** of the
42 earned service credit or pension or retirement benefit of any
43 member of the fund or system for misconduct occurring during the
44 member's public service pursuant to the provisions of P.L.1995,
45 c.408 (C.43:1-3 et seq.), including in a case where the court does
46 not enter an order of forfeiture pursuant to this section.
- 47 (cf: P.L.2007, c.49, s.2)

1 3. Section 4 of P.L.2007, c.49 (C.43:1-3.3) is amended to read
2 as follows:

3 4. A State, county or local employer participating in a State or
4 locally-administered pension fund or retirement system shall be
5 responsible for reimbursement to the pension fund or retirement
6 system of all pension costs incurred by a State or locally-
7 administered pension fund or retirement system following any
8 settlement agreement between the employer and an employee that
9 provides for the employer not to pursue any civil or criminal
10 charges or an action for misconduct against the employee in
11 exchange for the employee's resignation in good standing when the
12 employer has failed to fully disclose the settlement to the board of
13 trustees of the pension fund or retirement system so that it can
14 determine whether to order the forfeiture of all **【or part】** of the
15 earned service credit or pension or retirement benefit of any
16 member of the fund or system for misconduct occurring during the
17 member's public service which renders the member's service or part
18 thereof dishonorable.

19 (cf: P.L.2007, c.49, s.4)

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21 4. This act shall take effect immediately.

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STATEMENT

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26 This bill would require the board of trustees of any State or
27 locally-administered pension fund or retirement system created
28 under the laws of this State to order the forfeiture of all earned
29 service credit or pension or retirement benefit of any member of the
30 fund or system for a conviction of any crime under the laws of this
31 State, or of an offense under the laws of another state or the United
32 States which would have been such a crime under the laws of this
33 State.

34 Under current law, a board may order the forfeiture of all, or
35 only a part, of the earned service credit or retirement benefit if the
36 board finds that misconduct during public service rendered that
37 service or part thereof dishonorable. This provision would continue
38 to apply.

39 In addition, under current law, a court must order the forfeiture if
40 a public employee is convicted of any of the crimes specified in the
41 law, or of a substantially similar offense under the laws of another
42 state or the United States which would have been such a crime
43 under the laws of this State, which crime or offense involves or
44 touches such office, position or employment. A court is required to
45 order the forfeiture of all the pension or retirement benefit earned
46 by the convicted person as a member of any State or locally-
47 administered pension fund or retirement system in which the person
48 participated at the time of the commission of the offense and which
49 covered the office, position or employment involved in the offense.

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- 1 The bill removes this last condition, specifically “which covered the
- 2 office, position or employment involved in the offense,” so that all
- 3 pension credit and benefit would be forfeit.