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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning the forfeiture of the retirement benefits of
public employees convicted of crimes and amending P.L.1995,
c.408 and P.L.2007, 49.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. Section 1 of P.L.1995, c.408 (C.43:1-3) is amended to read
as follows:
   1. a. The receipt of a public pension or retirement benefit is
      hereby expressly conditioned upon the rendering of honorable
      service by a public officer or employee.
   b. The board of trustees of any State or locally-administered
      pension fund or retirement system created under the laws of this
      State [is authorized to] shall order the forfeiture of all [or part of
      the] earned service credit or pension or retirement benefit of any
      member of the fund or system for a conviction of any crime under
      the laws of this State, or of an offense under the laws of another
      state or the United States which would have been such a crime
      under the laws of this State, or for misconduct occurring during the
      member's public service which renders the member's service or part
      thereof dishonorable, and [to] shall implement any pension
      forfeiture ordered by a court pursuant to section 2 of P.L.2007, c.49
      (C.43:1-3.1).
   c. In evaluating a member's misconduct to determine whether it
      constitutes a breach of the condition that public service be
      honorable and whether forfeiture [or partial forfeiture] of earned
      service credit or earned pension or retirement benefits is
      appropriate, the board of trustees shall consider and balance the
      following factors in view of the goals to be achieved under the
      pension laws:
         (1) the member's length of service;
         (2) the basis for retirement;
         (3) the extent to which the member's pension has vested;
         (4) the duties of the particular member;
         (5) the member's public employment history and record covered
             under the retirement system;
         (6) any other public employment or service;
         (7) the nature of the misconduct [or crime], including the
             gravity or substantiality of the offense, whether it was a single or
             multiple offense and whether it was continuing or isolated;
         (8) the relationship between the misconduct and the member's
             public duties;
         (9) the quality of moral turpitude or the degree of guilt or
             culpability, including the member's motives and reasons, personal
             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.
the availability and adequacy of other [penal] sanctions; and
other personal circumstances relating to the member which bear upon the justness of forfeiture.

Whenever a board of trustees determines, pursuant to this section, that a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

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

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

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

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

(1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal coercion;
(2) N.J.S.2C:20-4, theft by deception, if the amount involved exceeds $10,000;
(3) Subsection d. of N.J.S.2C:20-5, theft by extortion;
(4) N.J.S.2C:20-9, theft by failure to make required disposition of property received, if the amount involved exceeds $10,000;
(5) N.J.S.2C:21-10, commercial bribery;
(6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money laundering;
(7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract payment claims;
(8) N.J.S.2C:27-2, bribery in official matters;
(9) N.J.S.2C:27-3, threats and other improper influence in official and political matters;
(10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful official business transaction where interest is involved;
(11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or receipt of unlawful benefit by public servant for official behavior;
(12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of unlawful benefit to public servant for official behavior;
(13) N.J.S.2C:28-1, perjury;
(14) N.J.S.2C:28-5, tampering with witnesses;
(15) N.J.S.2C:28-7, tampering with public records or information;
(16) N.J.S.2C:29-4, compounding;
(17) N.J.S.2C:30-2, official misconduct;
(18) N.J.S.2C:30-3, speculating or wagering on official action or information; or
(19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official misconduct.

C. A court of this State shall enter an order of pension forfeiture pursuant to this section:
(1) Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing; or
(2) Upon application of the county prosecutor or the Attorney General, when the pension forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. An order of pension forfeiture pursuant to this paragraph shall be deemed to have taken effect on the date the person was found guilty by the trier of fact or pled guilty to the offense.

D. No court shall grant a stay of an order of pension forfeiture pending appeal of a conviction or pension forfeiture order unless the court is clearly convinced that there is a substantial likelihood of success on the merits. If the conviction be reversed or the order of pension forfeiture be overturned, his pension rights and benefits shall be restored from the date of pension forfeiture.

E. Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all [or part] of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service pursuant to the provisions of P.L.1995, c.408 (C.43:1-3 et seq.), including in a case where the court does not enter an order of forfeiture pursuant to this section.

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

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

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

4. This act shall take effect immediately.

STATEMENT

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

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

In addition, under current law, a court must order the forfeiture if a public employee is convicted of any of the crimes specified in the law, or of a substantially similar offense under the laws of another state or the United States which would have been such a crime under the laws of this State, which crime or offense involves or touches such office, position or employment. A court is required to order the forfeiture of all the pension or retirement benefit earned by the convicted person as a member of any State or locally-administered pension fund or retirement system in which the person participated at the time of the commission of the offense and which covered the office, position or employment involved in the offense.
The bill removes this last condition, specifically “which covered the office, position or employment involved in the offense,” so that all pension credit and benefit would be forfeit.