

ASSEMBLY, No. 123

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman JONES

1 **AN ACT** concerning the forfeiture of retirement benefits by public
2 officers and employees, supplementing Title 43 of the Revised
3 Statutes and amending P.L.1938, c.221.

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

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8 1. (New section) The receipt of a public pension or retirement
9 benefit is expressly conditioned upon the rendering of honorable
10 service by a public officer or employee during the entire period of time
11 that the officer or employee is enrolled as an active member of a State-
12 or locally-administered pension fund or retirement system.

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14 2. (New section) a. The board of trustees of any State- or
15 locally-administered pension fund or retirement system created under
16 the laws of this State shall order the forfeiture of the entire pension or
17 retirement benefit of any person otherwise entitled to receive a benefit
18 who, while an active member of the pension fund or retirement system,
19 breaches the condition of rendering honorable service by committing
20 an act which results in the person's conviction:

21 (1) under the laws of this State of an offense involving dishonesty,
22 other than a disorderly person's offense or a petty disorderly person's
23 offense, or of a crime of the third degree or above;

24 (2) under the laws of another State or of the United States of an
25 offense or crime which, if committed in this State, would be an offense
26 or crime included in paragraph (1) of this subsection; or

27 (3) of an offense involving or touching upon the person's public
28 office, position or employment.

29 b. A board of trustees may order the forfeiture of all or part of the
30 pension or retirement benefit of any person entitled to receive a benefit
31 who, while an active member of the pension fund or retirement system,
32 engages in misconduct which breaches the condition of rendering

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

Matter underlined thus is new matter.

1 honorable service, other than misconduct which is the basis of a
2 conviction mandating total forfeiture pursuant to subsection a. of this
3 section. In evaluating such an act of misconduct to determine whether
4 it constitutes a breach of the condition that public service be honorable
5 and whether forfeiture or partial forfeiture of earned pension or
6 retirement benefits is appropriate, the board of trustees shall consider
7 and balance the following factors in view of the goals to be achieved
8 under the pension laws:

9 (1) the member's length of service;

10 (2) the basis for retirement;

11 (3) the extent to which the member's pension has vested;

12 (4) the duties of the particular member;

13 (5) the member's public employment history and record covered
14 under the retirement system;

15 (6) any other public employment or service;

16 (7) the nature of the misconduct or crime, including the gravity or
17 substantiality of the offense, whether it was a single or multiple offense
18 and whether it was continuing or isolate;

19 (8) the relationship between the misconduct and the member's
20 public duties;

21 (9) the quality of moral turpitude or the degree of guilt or
22 culpability, including the member's motives and reasons, personal gain
23 and similar considerations;

24 (10) the availability and adequacy of other penal sanctions; and

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

27 c. Whenever a board of trustees determines, pursuant to subsection
28 b. of this section, that a partial forfeiture of earned pension or
29 retirement benefits is warranted, it shall order that benefits be
30 calculated as if the accrual of pension rights terminated as of the date
31 the misconduct began.

32 d. A survivor of any person who forfeits all or part of a pension or
33 retirement benefit pursuant to this section shall similarly forfeit the
34 right to all or part of the benefit.

35 e. A person who forfeits all or part of a pension or retirement
36 benefit shall be repaid all of the person's contributions to the fund or
37 system in the case of complete forfeiture and contributions from the
38 date on which the misconduct began in the case of a partial forfeiture,
39 without interest.

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41 3. (New section) A county or municipal prosecutor shall inform
42 the Director of the Division of Criminal Justice in the Department of
43 Law and Public Safety in writing whenever a prosecution is
44 commenced, or a conviction entered, against any person who the
45 prosecutor knows, or has reason to believe, is a member of a State- or
46 locally-administered pension fund or retirement system of any crime or

1 offense. The director shall compile this information and similar
2 information from the records of the division and transmit it to the
3 Director of the Division of Pensions and Benefits. The Director of the
4 Division of Pensions and Benefits shall determine whether a particular
5 officer or employee is a member of a State- or locally-administered
6 pension fund or retirement system and, if so, shall forward the
7 information to the board of trustees of that fund or system for the
8 board's consideration pursuant to the provisions of section 1 of this
9 act.

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11 4. (New section) Whenever any State or local public employer
12 takes formal disciplinary action against an officer or employee who is
13 a member of any State or locally-administered pension fund or
14 retirement system, it shall inform the board of trustees of the fund or
15 system of its action in writing so that the board may consider the
16 member's conduct pursuant to the provisions of section 2 of this act.

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18 5. Section 1 of P.L.1938, c.221 (C.43:1-2) is amended to read as
19 follows:

20 1. No pension or subsidy shall be paid by this State or by any
21 municipality or school district of this State to any person for the
22 period during which he is confined in a penal institution as a result of
23 conviction of a crime involving moral turpitude which did not result in
a complete forfeiture of benefits pursuant to section 2 of P.L.,
24 c. (C.) (now pending before the Legislature as this bill), and such
25 person shall lose all right to so much pension or subsidy as he would
26 receive or be entitled to receive had he not been so confined; provided,
27 that nothing herein contained shall prevent the payment of the pension
28 for the sole benefit of the mother, father, wife or minor children of the
29 person so confined in a penal institution if the board or commission
30 administering the pension fund shall determine that such pension is
31 necessary for their maintenance and, thereupon, the board or
32 commission shall provide for the payment to the aforesaid person or
33 persons so determined to be entitled to the benefit of the pension.
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35 (cf: P.L.1938, c.221, s.1)

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37 6. This act shall take effect immediately.

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40 STATEMENT

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42 This bill establishes criteria for the complete or partial forfeiture of
43 pension benefits by a State or local government officer or employee
44 because of misconduct while an active member of a State- or
45 locally-administered pension fund or retirement system. The bill
46 provides that the receipt of a public pension or retirement benefit is

1 expressly conditioned upon the rendering of honorable service by a
2 public officer or employee. It provides for mandatory forfeiture of all
3 benefits for conviction of an offense involving dishonesty, a crime of
4 the third degree or above or an offense touching upon the person's
5 public office, position or employment. It also provides that the board
6 of trustees of a public pension fund or retirement system may order a
7 complete or partial forfeiture for other offenses or misconduct based
8 upon an assessment of 11 factors which the board is required to
9 consider and balance in view of the goals of the pension statutes. The
10 11 criteria were established by the New Jersey Supreme Court in
11 Uricoli v. Police and Firemen's Retirement System, 91 N.J. 62 (1982)
12 and are currently the basis for determining when complete or partial
13 forfeiture is appropriate. The bill also provides that when a board of
14 trustees determines that partial forfeiture is appropriate, it shall order
15 that benefits be calculated as if the accrual of pension rights terminated
16 as of the date the misconduct began.

17 The bill also establishes a procedure whereby the Director of the
18 Division of Criminal Justice would collect and transmit, through the
19 Division of Pensions and Benefits, to the appropriate board of trustees
20 information concerning the prosecution or conviction of a State or
21 local government employee who is a member of a public pension fund
22 or retirement system. In addition, the bill would require State and
23 local public employers to inform the board of trustees of a public
24 pension fund or retirement system whenever formal disciplinary
25 proceedings are brought against an employee who is member of the
26 fund or system. The information received would be reviewed by the
27 board of trustees to determine whether a forfeiture is triggered.

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32 Concerns forfeiture of retirement benefits by certain members of public
33 retirement systems; establishes system for reporting criminal charges
34 and disciplinary actions against members to retirement systems.