

SENATE, No. 222

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator ADLER

1 AN ACT concerning the forfeiture of retirement benefits by members
2 of public pension funds or retirement systems and supplementing
3 Title 43 of the Revised Statutes.

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

11 b. The board of trustees of any State or locally-administered
12 pension fund or retirement system created under the laws of this State
13 is authorized to order the forfeiture of all or part of the pension or
14 retirement benefit of any member of the fund or system for misconduct
15 occurring during the member's public service which renders the
16 member's service or part thereof dishonorable.

17 c. In evaluating a member's misconduct to determine whether it
18 constitutes a breach of the condition that public service be honorable
19 and whether forfeiture or partial forfeiture of earned pension or
20 retirement benefits is appropriate, the board of trustees shall consider
21 and balance the following factors in view of the goals to be achieved
22 under the pension laws:

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

24 (2) the basis for retirement;

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

26 (4) the duties of the particular member;

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

29 (6) any other public employment or service;

30 (7) the nature of the misconduct or crime, including the gravity or
31 substantiality of the offense, whether it was a single or multiple offense
32 and whether it was continuing or isolated;

33 (8) the relationship between the misconduct and the member's
34 public duties;

35 (9) the quality of moral turpitude or the degree of guilt or

1 culpability, including the member's motives and reasons, personal gain
2 and similar considerations;

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

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

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

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16 2. A county or municipal prosecutor shall inform the Director of
17 the Division of Criminal Justice in the Department of Law and Public
18 Safety in writing whenever a prosecution is commenced, or a
19 conviction entered, against any person who the prosecutor knows, or
20 has reason to believe, is a member of a State or locally-administered
21 pension fund or retirement system for any crime or offense. The
22 director shall compile this information and similar information from the
23 records of the division and the records of any other jurisdiction or law
24 enforcement agency which may be available to the division and
25 transmit it to the Director of the Division of Pensions and Benefits.
26 The Director of the Division of Pensions and Benefits shall determine
27 whether a particular officer or employee is a member of a State or
28 locally-administered pension fund or retirement system and, if so, shall
29 forward the information to the board of trustees of that fund or system
30 for the board's consideration pursuant to the provisions of section 1 of
31 this act.

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33 3. Whenever any State or local public employer takes formal
34 disciplinary action against an officer or employee who is a member of
35 any State or locally-administered pension fund or retirement system it
36 shall inform the board of trustees of the fund or system of its action in
37 writing so that the board may consider the member's conduct pursuant
38 to the provisions of section 1 of this act.

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40 4. This act shall take effect immediately.

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STATEMENT

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45 This bill would codify in the statutes the essence of the New Jersey
46 Supreme Court's decision in Uricoli v. Police and Firemen's Retirement

1 System, 91 N.J. 62 (1982). It provides that the receipt of a public
2 pension is expressly predicated upon the rendering of honorable
3 service by a public officer or employee. The bill authorizes the board
4 of trustees of any public pension fund or retirement system to order
5 the forfeiture of all or part of the pension or retirement benefit of a
6 member for misconduct occurring during public service which renders
7 the service or part thereof dishonorable.

8 The bill establishes 11 factors which a board of trustees is to
9 consider and balance in view of the goals of the pension statutes when
10 determining whether forfeiture or partial forfeiture is appropriate,
11 taking account of the goals to be achieved under the pension laws.
12 These factors are:

- 13 (1) the member's length of service;
- 14 (2) the basis for retirement;
- 15 (3) the extent to which the member's pension has vested;
- 16 (4) the duties of the particular member;
- 17 (5) the member's public employment history and record covered
18 under the retirement system;
- 19 (6) any other public employment or service;
- 20 (7) the nature of the misconduct or crime, including the gravity or
21 substantiality of the offense, whether it was a single or multiple offense
22 and whether it was continuing or isolated;
- 23 (8) the relationship between the misconduct and the member's
24 public duties;
- 25 (9) the quality of moral turpitude or the degree of guilt or
26 culpability, including the member's motives and reasons, personal gain
27 and similar considerations;
- 28 (10) the availability and adequacy of other penal sanctions; and
29 (11) other personal circumstances relating to the member which
30 bear upon the justness of forfeiture.

31 The bill also provides that when a board of trustees determines that
32 partial-forfeiture is appropriate, it shall order that benefits be
33 calculated as if the accrual of pension rights terminated as of the date
34 the misconduct first occurred, or such other date as required to
35 effectuate a forfeiture that fairly reflects both the nature and extent of
36 the employee's misconduct and the honorable service rendered by the
37 employee.

38 Finally, the bill establishes a procedure whereby the Director of the
39 Division of Criminal Justice would collect and transmit, through the
40 Division of Pensions and Benefits, to the appropriate board of trustees
41 information concerning the prosecution or conviction of a State or
42 local government employee who is a member of a public pension fund
43 or retirement system. State and local public employers would be
44 required to inform the board of trustees of a public pension fund or

1 retirement system whenever an officer or employee who is a member
2 of the fund or system is removed from office or employment. The
3 information received would be reviewed by the board of trustees to
4 determine whether a forfeiture should be imposed.

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9 Provides for the forfeiture of retirement benefits by members of public
10 retirement systems under certain circumstances; establishes procedure
11 for informing retirement systems of criminal charges and disciplinary
12 actions against members.

WITHDRAWN