

9730

I N A S S E M B L Y

January 20, 2010

Introduced by M. of A. QUINN -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to forfeiture of pension rights or retirement benefits upon conviction of certain crimes related to public employment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding  
2 a new article 3-B to read as follows:

3 ARTICLE 3-B

4 PENSION FORFEITURE FOR PUBLIC MISCONDUCT ACT

5 SECTION 156. SHORT TITLE.

6 157. DEFINITIONS.

7 158. PENSION FORFEITURE.

8 159. MISCELLANEOUS.

9 S 156. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS  
10 THE "PENSION FORFEITURE FOR PUBLIC MISCONDUCT ACT".

11 S 157. DEFINITIONS. THE FOLLOWING WORDS AND PHRASES, AS USED IN THIS  
12 ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS A DIFFERENT MEANING  
13 IS PLAINLY REQUIRED BY THE CONTEXT:

14 1. "DEFENDANT" SHALL MEAN A PERSON AGAINST WHOM A FORFEITURE ACTION IS  
15 COMMENCED.

16 2. "COVERED CRIME" SHALL MEAN ANY OF THE FOLLOWING:

17 (A) ANY FELONY OFFENSE SET FORTH IN THE PENAL LAW;

18 (B) ANY CRIME DEFINED IN TITLE L OF THE PENAL LAW;

19 (C) AN ATTEMPT, CONSPIRACY, OR SOLICITATION OF ANOTHER TO COMMIT ANY  
20 FELONY OFFENSE SET FORTH IN THE PENAL LAW;

21 (D) AN ATTEMPT, CONSPIRACY, OR SOLICITATION OF ANOTHER TO COMMIT ANY  
22 CRIME DEFINED IN TITLE L OF THE PENAL LAW;

23 (E) ANY OTHER CRIME DEFINED BY THE LAWS OF THIS STATE, A NECESSARY  
24 ELEMENT OF WHICH, AS DETERMINED BY STATUTORY OR COMMON LAW DEFINITION OF  
25 SUCH CRIME, INCLUDES INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE,  
26 FALSE SWEARING, MISREPRESENTATION, FRAUD, DECEIT, BRIBERY, EXTORTION,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 MISAPPROPRIATION, THEFT, PROHIBITED ACTION OR FAILURE TO ACT BY A PUBLIC  
2 OFFICER OR EMPLOYEE;

3 (F) ANY CRIME DEFINED BY THE LAWS OF THIS STATE FOR WHICH THE VACATING  
4 OR FORFEITURE OF THE PUBLIC OFFICE OR EMPLOYMENT HELD BY SUCH INDIVIDUAL  
5 IS REQUIRED BY LAW;

6 (G) ANY CRIMINAL OFFENSE COMMITTED IN ANY OTHER STATE, DISTRICT OR  
7 TERRITORY OF THE UNITED STATES, WHICH IF COMMITTED WITHIN THIS STATE,  
8 WOULD CONSTITUTE AN OFFENSE DESIGNATED IN PARAGRAPH (A), (B), (C), (D),  
9 (E), OR (F) OF THIS SUBDIVISION.

10 3. "CHIEF ADMINISTRATOR OF THE RETIREMENT SYSTEM" SHALL MEAN THE COMP-  
11 TROLLER OF THE STATE OF NEW YORK WITH RESPECT TO THE NEW YORK STATE AND  
12 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL  
13 POLICE AND FIRE RETIREMENT SYSTEM AND THE BOARDS OF TRUSTEES WITH  
14 RESPECT TO THE OTHER PUBLIC RETIREMENT SYSTEMS AND PENSION FUNDS OF THE  
15 STATE AND THE CITY OF NEW YORK.

16 4. "MEMBER" SHALL MEAN A MEMBER OF THE NEW YORK STATE AND LOCAL  
17 EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND  
18 FIRE RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM,  
19 THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK CITY TEACH-  
20 ERS' RETIREMENT SYSTEM, THE NEW YORK CITY POLICE PENSION FUND, THE NEW  
21 YORK CITY FIRE DEPARTMENT PENSION FUND AND THE NEW YORK CITY BOARD OF  
22 EDUCATION RETIREMENT SYSTEM WHO JOINED SUCH SYSTEM ON OR AFTER THE  
23 EFFECTIVE DATE OF THIS ARTICLE.

24 5. "RETIRED MEMBER" SHALL MEAN A PERSON WHO IS RETIRED FROM AND WHO IS  
25 RECEIVING A RETIREMENT ALLOWANCE FROM A RETIREMENT SYSTEM AND WHO HAD  
26 JOINED SUCH SYSTEM ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

27 6. "RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOY-  
28 EES' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND FIRE  
29 RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, THE  
30 NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK CITY TEACHERS'  
31 RETIREMENT SYSTEM, THE NEW YORK CITY POLICE PENSION FUND, THE NEW YORK  
32 CITY FIRE DEPARTMENT PENSION FUND AND THE NEW YORK CITY BOARD OF EDUCA-  
33 TION RETIREMENT SYSTEM.

34 7. "DEPENDENT CHILDREN" SHALL INCLUDE:

35 (A) ANY CHILD OF AN OFFICER OR EMPLOYEE, WHERE SUCH CHILD IS UNDER AGE  
36 NINETEEN;

37 (B) ANY UNMARRIED DEPENDENT CHILD OF AN OFFICER OR EMPLOYEE, REGARD-  
38 LESS OF SUCH CHILD'S AGE, WHERE SUCH CHILD IS INCAPABLE OF SELF-SUSTAIN-  
39 ING EMPLOYMENT BY REASON OF MENTAL OR PHYSICAL DISABILITY AND BECAME SO  
40 INCAPABLE PRIOR TO ATTAINING THE AGE OF NINETEEN; AND

41 (C) ANY UNMARRIED CHILD OF AN OFFICER OR EMPLOYEE, WHERE SUCH CHILD IS  
42 AT AN ACCREDITED INSTITUTION OF HIGHER LEARNING AND IS UNDER AGE TWEN-  
43 TY-THREE.

44 S 158. PENSION FORFEITURE. NOTWITHSTANDING ANY OTHER PROVISION OF  
45 GENERAL, SPECIAL OR LOCAL LAW, RULE OR REGULATION TO THE CONTRARY:

46 1. IN THE CASE OF A MEMBER OR RETIRED MEMBER WHO IS CONVICTED OF,  
47 PLEADS GUILTY TO, PLEADS NOLO CONTENDERE TO, OR PLEADS GUILTY TO PURSU-  
48 ANT TO SUBDIVISION TWO OF SECTION 220.10 OF THE CRIMINAL PROCEDURE LAW  
49 ANY COVERED CRIME SET FORTH IN PARAGRAPH (A), (B), (C), (D), (E), OR (F)  
50 OF SUBDIVISION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS ARTICLE,  
51 THE COMMISSION OF WHICH IS RELATED TO THE PERFORMANCE OF OR FAILURE TO  
52 PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND RESPONSIBIL-  
53 ITIES, AN ACTION MAY BE COMMENCED IN SUPREME COURT BY THE DISTRICT  
54 ATTORNEY HAVING JURISDICTION OVER THE OFFENSE, OR BY THE ATTORNEY GENER-  
55 AL IF THE ATTORNEY GENERAL BROUGHT THE UNDERLYING CRIMINAL CHARGE, FOR  
56 THE FORFEITURE OF ALL OR A PORTION OF THOSE RIGHTS AND BENEFITS TO WHICH

1 SUCH PERSON IS OR WILL BE ENTITLED AS A MEMBER OR RETIRED MEMBER. SUCH  
2 ACTION SHALL BE COMMENCED WITHIN SIX MONTHS OF SUCH CONVICTION. FOR  
3 PURPOSES OF THIS ARTICLE, A COVERED CRIME IS RELATED TO THE PERFORMANCE  
4 OF OR FAILURE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES  
5 AND RESPONSIBILITIES IF IT:

6 (A) CONSTITUTED A MATERIAL VIOLATION OF SUCH MEMBER'S OR RETIRED  
7 MEMBER'S DUTIES AND RESPONSIBILITIES AS A PUBLIC SERVANT; OR

8 (B) WAS COMMITTED IN THE COURSE OF AN INDIVIDUAL'S PUBLIC EMPLOYMENT;  
9 OR

10 (C) INVOLVED THE USE OF PUBLIC PERSONNEL OR RESOURCES; OR

11 (D) INVOLVED AN INDIVIDUAL'S MISREPRESENTATION OF HIS OR HER ACTUAL  
12 OFFICIAL POWERS, DUTIES AND RESPONSIBILITIES; OR

13 (E) EVEN THOUGH COMMITTED OUTSIDE THE SCOPE OF SUCH MEMBER'S OFFICIAL  
14 DUTIES OR RESPONSIBILITIES, INVOLVED ACTIONS OR CONDUCT BY WHICH SUCH  
15 MEMBER OR RETIRED MEMBER INDICATED OR CONVEYED THAT HE OR SHE WAS ACTING  
16 WITH THE AUTHORITY OF, OR UNDER COLOR OF THE AUTHORITY OF, ANY GOVERN-  
17 MENTAL ENTITY.

18 2. WHERE THE ATTORNEY GENERAL, OR THE DISTRICT ATTORNEY OF THE COUNTY  
19 IN WHICH THE MEMBER OR RETIRED MEMBER RESIDES IN THIS STATE, FINDS THAT  
20 A MEMBER OR A RETIRED MEMBER HAS BEEN CONVICTED OF A COVERED CRIME AS  
21 DEFINED IN PARAGRAPH (G) OF SUBDIVISION TWO OF SECTION ONE HUNDRED  
22 FIFTY-SEVEN OF THIS ARTICLE, THE COMMISSION OF WHICH IS RELATED TO THE  
23 PERFORMANCE OR FAILURE TO PERFORM SUCH MEMBER'S OR RETIRED MEMBER'S  
24 OFFICIAL DUTIES AND RESPONSIBILITIES, AN ACTION MAY BE COMMENCED IN  
25 SUPREME COURT BY THE ATTORNEY GENERAL, OR BY THE DISTRICT ATTORNEY OF  
26 THE COUNTY IN WHICH THE MEMBER OR RETIRED MEMBER RESIDES IN THIS STATE,  
27 FOR THE FORFEITURE OF ALL OR A PORTION OF THOSE RIGHTS AND BENEFITS TO  
28 WHICH SUCH PERSON IS OR WILL BE ENTITLED AS A MEMBER OR RETIRED MEMBER.  
29 SUCH ACTION SHALL BE COMMENCED WITHIN ONE YEAR OF SUCH CONVICTION.

30 3. PRIOR TO COMMENCEMENT OF SUCH ACTION DESCRIBED IN SUBDIVISION ONE  
31 OR TWO OF THIS SECTION, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL,  
32 AS THE CASE MAY BE, SHALL PROVIDE NOTICE TO THE CHIEF ADMINISTRATOR OF  
33 THE DEFENDANT'S RETIREMENT SYSTEM STATING THAT HE OR SHE HAS REASON TO  
34 BELIEVE THAT THE PERSON CONVICTED COMMITTED THE COVERED CRIME RELATED TO  
35 HIS OR HER OFFICIAL DUTIES AND RESPONSIBILITIES. WITHIN TWENTY DAYS OF  
36 RECEIPT OF SUCH NOTICE, THE CHIEF ADMINISTRATOR OF THE DEFENDANT'S  
37 RETIREMENT SYSTEM SHALL SUBMIT A NOTICE OF APPLICABILITY TO THE DISTRICT  
38 ATTORNEY OR THE ATTORNEY GENERAL AS THE CASE MAY BE. THE NOTICE OF  
39 APPLICABILITY SHALL CONTAIN A STATEMENT SPECIFYING WHETHER THE PERSON  
40 CONVICTED IS OR HAS BEEN A MEMBER OR RETIRED MEMBER OF THE NEW YORK  
41 STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE AND  
42 LOCAL POLICE AND FIRE RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS'  
43 RETIREMENT SYSTEM, THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE  
44 NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, THE NEW YORK CITY POLICE  
45 PENSION FUND, THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND AND THE NEW  
46 YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM AND SHALL DESCRIBE THE  
47 RIGHTS AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED TO FROM  
48 SUCH PUBLIC RETIREMENT SYSTEM.

49 4. NO FORFEITURE ACTION MAY BE COMMENCED BY THE DISTRICT ATTORNEY OR  
50 THE ATTORNEY GENERAL UNTIL RECEIPT OF THE NOTICE OF APPLICABILITY AS SET  
51 FORTH IN SUBDIVISION THREE OF THIS SECTION. IN DETERMINING WHETHER TO  
52 SEEK FORFEITURE OF A PORTION, RATHER THAN ALL, OF SUCH RETIREMENT BENE-  
53 FITS, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY CONSIDER MITI-  
54 GATING FACTORS INCLUDING, BUT NOT LIMITED TO: THE NATURE AND SERIOUSNESS  
55 OF THE OFFENSE COMMITTED IN RELATION TO THE AMOUNT OF THE FORFEITURE  
56 PENALTY; WHETHER THE DEFENDANT'S CONDUCT IN COMMITTING THE OFFENSE WAS

1 WILLFUL OR MALICIOUS; WHETHER THE DEFENDANT MADE ANY SUBSTANTIAL GOOD  
2 FAITH EFFORTS TO PREVENT OR MITIGATE THE HARM CAUSED BY THE OFFENSE;  
3 WHETHER THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS UNDER DURESS,  
4 COERCION OR INDUCED BY OTHERS; THE IMPACT OF THE CRIME ON THE STATE OR  
5 LOCAL GOVERNMENT AND THE NUMBER OF YEARS OF THE DEFENDANT'S PUBLIC  
6 SERVICE PERFORMED WITHOUT CRIMINAL CONDUCT; THE PECUNIARY BENEFIT TO THE  
7 DEFENDANT FROM THE CRIME; AND WHETHER AND TO WHAT EXTENT THE DEFENDANT'S  
8 FAMILY IS DEPENDENT UPON THE DEFENDANT'S PRESENT AND FUTURE RETIREMENT  
9 BENEFITS. THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY SEEK AN  
10 ORDER FROM THE COURT THAT SOME OR ALL OF THE FORFEITED PENSION BE PAID  
11 FOR THE BENEFIT OF ANY DEPENDENT CHILDREN AS JUSTICE MAY REQUIRE, AFTER  
12 TAKING INTO CONSIDERATION THE FINANCIAL NEEDS AND RESOURCES AVAILABLE  
13 FOR SUPPORT OF SUCH CHILDREN. FURTHER, IN THE EVENT OF ANY FORFEITURE,  
14 SUCH MEMBER OR RETIRED MEMBER SHALL BE ENTITLED TO A PRO RATA RETURN OF  
15 HIS OR HER CONTRIBUTION PAID INTO THE RELEVANT RETIREMENT SYSTEMS, IN  
16 ANY AMOUNT PROPORTIONATE TO THE AMOUNT OF ANY FORFEITURE, WITHOUT INTER-  
17 EST.

18 5. UPON MOTION BY THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, AS  
19 THE CASE MAY BE, MADE UPON COMMENCEMENT OF OR AT ANY TIME DURING THE  
20 PENDENCY OF A FORFEITURE ACTION, PURSUANT TO THE PROCEDURE SET FORTH IN  
21 SUBDIVISION ONE OF SECTION SIX THOUSAND THREE HUNDRED ELEVEN OR SECTION  
22 SIX THOUSAND THREE HUNDRED THIRTEEN OF THE CIVIL PRACTICE LAW AND RULES,  
23 THE COURT MAY ISSUE A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY  
24 INJUNCTION PROHIBITING THE DEFENDANT FROM RECEIVING ANY RIGHTS OR BENE-  
25 FITS FROM THE APPROPRIATE RETIREMENT SYSTEM. A PRELIMINARY INJUNCTION  
26 MAY BE GRANTED WHERE THE COURT FINDS THAT THERE IS A SUBSTANTIAL PROBA-  
27 BILITY THAT THE DISTRICT ATTORNEY OR ATTORNEY GENERAL WILL PREVAIL ON  
28 THE ISSUE OF FORFEITURE. NO SHOWING OF IRREPARABLE HARM SHALL BE  
29 REQUIRED. THE COURT MAY NOT CONSIDER ON SUCH MOTION ANY ISSUES PRESENTED  
30 TO THE COURT WHICH HEARD THE CRIMINAL ACTION IN WHICH THE DEFENDANT WAS  
31 CONVICTED OR WHICH ARISE OUT OF SUCH CRIMINAL ACTION AND MAY BE  
32 PRESENTED ON APPEAL.

33 6. ALL DEFENDANTS IN A FORFEITURE ACTION BROUGHT PURSUANT TO THIS  
34 ARTICLE SHALL HAVE THE RIGHT TO A HEARING.

35 7. THE BURDEN OF PROOF SHALL BE UPON THE DISTRICT ATTORNEY OR THE  
36 ATTORNEY GENERAL, AS THE CASE MAY BE, TO PROVE BY A PREPONDERANCE OF THE  
37 EVIDENCE THE FACTS NECESSARY TO ESTABLISH A CLAIM OF PENSION FORFEITURE.

38 8. AT ANY TIME DURING THE PENDENCY OF A FORFEITURE ACTION, THE COURT  
39 MAY DISMISS THE ACTION IF IT FINDS THAT SUCH RELIEF IS WARRANTED BY THE  
40 EXISTENCE OF SOME COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE  
41 INCLUDING, BUT NOT LIMITED TO, ONE OR MORE OF THE MITIGATING FACTORS SET  
42 FORTH IN SUBDIVISION FOUR OF THIS SECTION, OR OTHER INFORMATION OR  
43 EVIDENCE WHICH DEMONSTRATES THAT SUCH FORFEITURE WOULD NOT SERVE THE  
44 ENDS OF JUSTICE. THE COURT MAY ORDER THAT SOME OR ALL OF THE FORFEITED  
45 PENSION BE PAID FOR THE BENEFIT OF ANY DEPENDENT CHILDREN AS JUSTICE MAY  
46 REQUIRE, AFTER TAKING INTO CONSIDERATION THE FINANCIAL NEEDS AND  
47 RESOURCES AVAILABLE FOR SUPPORT OF SUCH CHILDREN. THE COURT SHALL ISSUE  
48 A WRITTEN DECISION STATING THE BASIS FOR AN ORDER ISSUED PURSUANT TO  
49 THIS SUBDIVISION.

50 9. UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A  
51 COVERED CRIME THAT IS RELATED TO THE PERFORMANCE OF OR FAILURE TO  
52 PERFORM SUCH DEFENDANT'S OFFICIAL DUTIES AND RESPONSIBILITIES, THE COURT  
53 SHALL ISSUE AN ORDER TO THE APPROPRIATE RETIREMENT SYSTEM FOR THE  
54 FORFEITURE OR RECOUPMENT OF ALL OR A PORTION OF THE DEFENDANT'S RIGHTS  
55 AND BENEFITS AS A MEMBER OR RETIRED MEMBER OF SUCH SYSTEM AND FOR THE  
56 RECOUPMENT OF ALL OR A PORTION OF THE RETIREMENT BENEFITS PAID TO THE

1 DEFENDANT. IN DETERMINING THE EXTENT OF THE FORFEITURE OR RECOUPMENT  
2 THAT IS WARRANTED, THE COURT MAY CONSIDER ONE OR MORE OF THE MITIGATING  
3 FACTORS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. ALL ORDERS AND  
4 FINDINGS MADE BY THE COURT PURSUANT TO THIS SECTION SHALL BE SERVED UPON  
5 THE CHIEF ADMINISTRATOR OF THE DEFENDANT'S RETIREMENT SYSTEM.

6 10. UPON A FINAL DETERMINATION THAT REVERSES OR VACATES THE CONVICTION  
7 OR CONVICTIONS OF A DESIGNATED OFFENSE OR OFFENSES, THE MEMBER OR  
8 RETIRED MEMBER WHO HAS FORFEITED RETIREMENT RIGHTS AND BENEFITS PURSUANT  
9 TO THIS SECTION SHALL HAVE SUCH RIGHTS AND BENEFITS RETROACTIVELY  
10 RESTORED UPON APPLICATION TO THE COURT WITH JURISDICTION OVER THE  
11 FORFEITURE ACTION, REGARDLESS OF ANY TEMPORARY RESTRAINING ORDER OR  
12 PRELIMINARY INJUNCTION WHICH MAY BE OUTSTANDING OR ORDER WHICH MAY HAVE  
13 BEEN ISSUED. SUCH COURT, UPON FINDING THAT SUCH A FINAL DETERMINATION  
14 HAS OCCURRED, SHALL ISSUE AN ORDER RETROACTIVELY RESTORING SUCH RIGHTS  
15 AND BENEFITS, TOGETHER WITH SUCH OTHER RELIEF DEEMED APPROPRIATE.

16 11. EXCEPT AS OTHERWISE PROVIDED BY THIS ARTICLE, THE CIVIL PRACTICE  
17 LAW AND RULES SHALL GOVERN THE PROCEDURE IN ACTIONS COMMENCED UNDER THIS  
18 ARTICLE, EXCEPT WHERE THE ACTION IS REGULATED BY ANY INCONSISTENT  
19 PROVISIONS HEREIN.

20 S 159. MISCELLANEOUS. THE REMEDIES PROVIDED FOR IN THIS ARTICLE ARE  
21 NOT INTENDED TO SUBSTITUTE FOR, LIMIT OR SUPERSEDE THE LAWFUL AUTHORITY  
22 OF ANY PUBLIC OFFICER, AGENCY OR OTHER PERSON TO ENFORCE ANY OTHER RIGHT  
23 OR REMEDY PROVIDED FOR BY LAW.

24 S 2. This act shall take effect on the thirtieth day after it shall  
25 have become a law.