

3176

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. BRADLEY, FIELDS, GALEF, HOYT, PAULIN, SCHIMMING-
ER, BACALLES -- Multi-Sponsored by -- M. of A. BING, BOYLAND, CLARK,
COLTON, DelMONTE, HYER-SPENCER, JOHN, MAISEL, PHEFFER, ROSENTHAL,
STIRPE, SWEENEY -- read once and referred to the Committee on Govern-
mental 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 ASSEM-
BLY, 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 ELECTED OFFICIALS

5 SECTION 156. DEFINITIONS.

6 157. PENSION FORFEITURE.

7 158. MISCELLANEOUS.

8 S 156. DEFINITIONS. THE FOLLOWING WORDS AND PHRASES, AS USED IN THIS
9 ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS A DIFFERENT MEANING
10 IS PLAINLY REQUIRED BY THE CONTEXT:

11 1. "DEFENDANT" SHALL MEAN AN ELECTED OFFICIAL AGAINST WHOM A FORFEI-
12 TURE ACTION IS COMMENCED.

13 2. "COVERED CRIME" SHALL MEAN ANY FELONY OFFENSE, OTHER THAN MAIL
14 FRAUD, COMMITTED BY A DEFENDANT DURING HIS OR HER TENURE AS AN ELECTED
15 OFFICIAL AND WHERE THERE WAS KNOWLEDGE AND INTENT ON THE PART OF THE
16 DEFENDANT TO COMMIT SUCH CRIME.

17 3. "CHIEF ADMINISTRATOR OF THE RETIREMENT SYSTEM" SHALL MEAN THE COMP-
18 TROLLER OF THE STATE OF NEW YORK WITH RESPECT TO THE NEW YORK STATE AND
19 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL
20 POLICE AND FIRE RETIREMENT SYSTEM AND THE BOARDS OF TRUSTEES WITH

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

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1 RESPECT TO THE OTHER PUBLIC RETIREMENT SYSTEMS AND PENSION FUNDS OF THE
2 STATE AND THE CITY OF NEW YORK.

3 4. "MEMBER" SHALL MEAN ANY ELECTED OFFICIAL WHO BELONGS TO ANY STATE
4 OR CITY RETIREMENT SYSTEM.

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

8 6. "RETIREMENT SYSTEM" SHALL MEAN ANY RETIREMENT SYSTEM OF THE STATE
9 OF NEW YORK OR OF THE CITY OF NEW YORK.

10 7. "DEPENDENT CHILDREN" SHALL INCLUDE:

11 (A) ANY CHILD OF AN ELECTED OFFICIAL, WHERE SUCH CHILD IS UNDER AGE
12 NINETEEN;

13 (B) ANY UNMARRIED DEPENDENT CHILD OF AN ELECTED OFFICIAL, REGARDLESS
14 OF SUCH CHILD'S AGE, WHERE SUCH CHILD IS INCAPABLE OF SELF-SUSTAINING
15 EMPLOYMENT BY REASON OF MENTAL OR PHYSICAL DISABILITY AND BECAME SO
16 INCAPABLE PRIOR TO ATTAINING THE AGE OF NINETEEN; AND

17 (C) ANY UNMARRIED CHILD OF AN ELECTED OFFICIAL, WHERE SUCH CHILD IS AT
18 AN ACCREDITED INSTITUTION OF HIGHER LEARNING AND IS UNDER AGE
19 TWENTY-THREE.

20 S 157. PENSION FORFEITURE. NOTWITHSTANDING ANY OTHER PROVISION OF
21 GENERAL, SPECIAL OR LOCAL LAW, RULE OR REGULATION TO THE CONTRARY:

22 1. IN THE CASE OF A MEMBER OR RETIRED MEMBER WHO IS CONVICTED OF,
23 PLEADS GUILTY TO, PLEADS NOLO CONTENDERE TO, OR PLEADS GUILTY TO PURSU-
24 ANT TO SUBDIVISION TWO OF SECTION 220.10 OF THE CRIMINAL PROCEDURE LAW
25 ANY COVERED CRIME SET FORTH IN SUBDIVISION TWO OF SECTION ONE HUNDRED
26 FIFTY-SIX OF THIS ARTICLE, THE COMMISSION OF WHICH IS RELATED TO THE
27 PERFORMANCE OF OR FAILURE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S
28 OFFICIAL DUTIES AND RESPONSIBILITIES AS AN ELECTED OFFICIAL, AN ACTION
29 SHALL BE COMMENCED IN SUPREME COURT BY THE DISTRICT ATTORNEY HAVING
30 JURISDICTION OVER THE OFFENSE, OR BY THE ATTORNEY GENERAL IF THE ATTOR-
31 NEY GENERAL BROUGHT THE UNDERLYING CRIMINAL CHARGE, FOR THE FORFEITURE
32 OF THOSE RIGHTS AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED
33 AS A MEMBER OR RETIRED MEMBER. SUCH FORFEITURE SHALL ONLY APPLY TO THAT
34 PORTION OF THE DEFENDANT'S RIGHTS AND BENEFITS DERIVED FROM HIS OR HER
35 EMPLOYMENT AS AN ELECTED OFFICIAL. SUCH ACTION SHALL BE COMMENCED WITH-
36 IN SIX MONTHS OF SUCH CONVICTION. FOR PURPOSES OF THIS ARTICLE, A
37 COVERED CRIME IS RELATED TO THE PERFORMANCE OF OR FAILURE TO PERFORM
38 SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND RESPONSIBILITIES IF
39 IT:

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

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

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

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

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

52 2. PRIOR TO COMMENCEMENT OF SUCH ACTION DESCRIBED IN SUBDIVISION ONE
53 OF THIS SECTION, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, AS THE
54 CASE MAY BE, SHALL PROVIDE NOTICE TO THE CHIEF ADMINISTRATOR OF THE
55 DEFENDANT'S RETIREMENT SYSTEM STATING THAT HE OR SHE HAS REASON TO
56 BELIEVE THAT THE PERSON CONVICTED COMMITTED THE COVERED CRIME RELATED TO

1 HIS OR HER OFFICIAL DUTIES AND RESPONSIBILITIES. WITHIN TWENTY DAYS OF
2 RECEIPT OF SUCH NOTICE, THE CHIEF ADMINISTRATOR OF THE DEFENDANT'S
3 RETIREMENT SYSTEM SHALL SUBMIT A NOTICE OF APPLICABILITY TO THE DISTRICT
4 ATTORNEY OR THE ATTORNEY GENERAL AS THE CASE MAY BE. THE NOTICE OF
5 APPLICABILITY SHALL CONTAIN A STATEMENT SPECIFYING WHETHER THE PERSON
6 CONVICTED IS OR HAS BEEN A MEMBER OR RETIRED MEMBER OF THE NEW YORK
7 STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE AND
8 LOCAL POLICE AND FIRE RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS'
9 RETIREMENT SYSTEM, THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE
10 NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, THE NEW YORK CITY POLICE
11 PENSION FUND, THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND AND THE NEW
12 YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM AND SHALL DESCRIBE THE
13 PORTION OF SUCH RIGHTS AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE
14 ENTITLED TO FROM SUCH PUBLIC RETIREMENT SYSTEM THAT RESULTED FROM SUCH
15 PERSON'S EMPLOYMENT AS AN ELECTED OFFICIAL.

16 3. NO FORFEITURE ACTION MAY BE COMMENCED BY THE DISTRICT ATTORNEY OR
17 THE ATTORNEY GENERAL UNTIL RECEIPT OF THE NOTICE OF APPLICABILITY AS SET
18 FORTH IN SUBDIVISION TWO OF THIS SECTION. THE DISTRICT ATTORNEY OR THE
19 ATTORNEY GENERAL MAY SEEK AN ORDER FROM THE COURT THAT SOME OR ALL OF
20 THE FORFEITED PENSION BE PAID FOR THE BENEFIT OF ANY DEPENDENT CHILDREN
21 AS JUSTICE MAY REQUIRE, AFTER TAKING INTO CONSIDERATION THE FINANCIAL
22 NEEDS AND RESOURCES AVAILABLE FOR SUPPORT OF SUCH CHILDREN.

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

38 5. ALL DEFENDANTS IN A FORFEITURE ACTION BROUGHT PURSUANT TO THIS
39 ARTICLE SHALL HAVE THE RIGHT TO A HEARING.

40 6. THE BURDEN OF PROOF SHALL BE UPON THE DISTRICT ATTORNEY OR THE
41 ATTORNEY GENERAL, AS THE CASE MAY BE, TO PROVE BY CLEAR AND CONVINCING
42 EVIDENCE THE FACTS NECESSARY TO ESTABLISH A CLAIM OF PENSION FORFEITURE.
43 THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MUST, AT THE TIME OF THE
44 HEARING, PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT KNOW-
45 INGLY AND INTENTIONALLY COMMITTED THE COVERED CRIME.

46 7. AT ANY TIME DURING THE PENDENCY OF A FORFEITURE ACTION, THE COURT
47 MAY DISMISS THE ACTION IF IT FINDS THAT SUCH RELIEF IS WARRANTED BY THE
48 EXISTENCE OF SOME COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE OR
49 OTHER INFORMATION OR EVIDENCE WHICH DEMONSTRATES THAT SUCH FORFEITURE
50 WOULD NOT SERVE THE ENDS OF JUSTICE. THE COURT MAY ORDER THAT SOME OR
51 ALL OF THE FORFEITED PENSION BE PAID FOR THE BENEFIT OF ANY DEPENDENT
52 CHILDREN AS JUSTICE MAY REQUIRE, AFTER TAKING INTO CONSIDERATION THE
53 FINANCIAL NEEDS AND RESOURCES AVAILABLE FOR SUPPORT OF SUCH CHILDREN.
54 THE COURT SHALL ISSUE A WRITTEN DECISION STATING THE BASIS FOR AN ORDER
55 ISSUED PURSUANT TO THIS SUBDIVISION.

1 8. UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A
2 COVERED CRIME THAT IS RELATED TO THE PERFORMANCE OF OR FAILURE TO
3 PERFORM SUCH DEFENDANT'S OFFICIAL DUTIES AND RESPONSIBILITIES AS AN
4 ELECTED OFFICIAL, AND A FINDING THAT THERE WAS CLEAR AND CONVINCING
5 EVIDENCE THAT THE DEFENDANT - ELECTED OFFICIAL KNOWINGLY AND INTEN-
6 TIONALLY COMMITTED THE COVERED FELONY CRIME, THE COURT SHALL ISSUE AN
7 ORDER TO THE APPROPRIATE RETIREMENT SYSTEM FOR THE FORFEITURE OF THE
8 DEFENDANT'S RIGHTS AND BENEFITS AS A MEMBER OR RETIRED MEMBER OF SUCH
9 SYSTEM AND FOR THE RECOUPMENT OF ALL THE RETIREMENT BENEFITS PAID TO THE
10 DEFENDANT. ALL ORDERS AND FINDINGS MADE BY THE COURT PURSUANT TO THIS
11 SECTION SHALL BE SERVED UPON THE CHIEF ADMINISTRATOR OF THE DEFENDANT'S
12 RETIREMENT SYSTEM.

13 9. UPON A FINAL DETERMINATION THAT REVERSES OR VACATES THE CONVICTION
14 OR CONVICTIONS OF A COVERED CRIME, THE MEMBER OR RETIRED MEMBER WHO HAS
15 FORFEITED RETIREMENT RIGHTS AND BENEFITS PURSUANT TO THIS SECTION SHALL
16 HAVE SUCH RIGHTS AND BENEFITS RETROACTIVELY RESTORED UPON APPLICATION TO
17 THE COURT WITH JURISDICTION OVER THE FORFEITURE ACTION, REGARDLESS OF
18 ANY TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION WHICH MAY BE
19 OUTSTANDING OR ORDER WHICH MAY HAVE BEEN ISSUED. SUCH COURT, UPON FIND-
20 ING THAT SUCH A FINAL DETERMINATION HAS OCCURRED, SHALL ISSUE AN ORDER
21 RETROACTIVELY RESTORING SUCH RIGHTS AND BENEFITS, TOGETHER WITH SUCH
22 OTHER RELIEF DEEMED APPROPRIATE.

23 10. EXCEPT AS OTHERWISE PROVIDED BY THIS ARTICLE, THE CIVIL PRACTICE
24 LAW AND RULES SHALL GOVERN THE PROCEDURE IN ACTIONS COMMENCED UNDER THIS
25 ARTICLE, EXCEPT WHERE THE ACTION IS REGULATED BY ANY INCONSISTENT
26 PROVISIONS HEREIN.

27 S 158. MISCELLANEOUS. THE REMEDIES PROVIDED FOR IN THIS ARTICLE ARE
28 NOT INTENDED TO SUBSTITUTE FOR, LIMIT OR SUPERSEDE THE LAWFUL AUTHORITY
29 OF ANY PUBLIC OFFICER, AGENCY OR OTHER PERSON TO ENFORCE ANY OTHER RIGHT
30 OR REMEDY PROVIDED FOR BY LAW.

31 S 2. This act shall take effect on the ninetieth day after it shall
32 have become a law and shall only apply to acts committed by elected
33 officials on or after such date.