

3030

2011-2012 Regular Sessions

I N S E N A T E

February 7, 2011

Introduced by Sens. OPPENHEIMER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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

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

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

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

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

8 7. "DEPENDENT CHILDREN" SHALL INCLUDE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 8. UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A
55 COVERED CRIME THAT IS RELATED TO THE PERFORMANCE OF OR FAILURE TO
56 PERFORM SUCH DEFENDANT'S OFFICIAL DUTIES AND RESPONSIBILITIES AS AN

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

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

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

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

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