

1328

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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

AN ACT to amend the public officers law and the legislative law, in relation to disclosure of all income from employment (Part A); to amend the legislative law, in relation to the terms of legislative committee chairs (Part B); to amend the legislative law, in relation to term limits for state legislators (Part C); to amend the election law, in relation to the time for filing statements of campaign receipts and expenditures (Part D); and 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 (Part E)

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

1 Section 1. This act enacts into law major components of legislation
2 which are necessary to enact ethics reform. Each component is wholly
3 contained within a Part identified as Parts A through E. The effective
4 date of each particular provision contained within such Part is set
5 forth in the last section of such Part. Any provision in any section
6 contained within a Part, including the effective date of the Part, which
7 makes reference to a section "of this act", when used in connection with
8 that particular component, shall be deemed to mean and refer to the
9 corresponding section of the Part in which it is found. Section three of
10 this act sets forth the general effective date of this act.

11 PART A

12 Section 1. Paragraph 5 of subdivision 3 of section 73-a of the public
13 officers law is amended by adding a new subparagraph (c) to read as
14 follows:

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

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1 (C) IF YOU ARE A MEMBER OF THE LEGISLATURE OR A CANDIDATE FOR MEMBER
 2 OF THE LEGISLATURE, LIST EACH SOURCE AND THE AMOUNT OF INCOME THEREFROM,
 3 IN EXCESS OF \$1,000, (OTHER THAN FROM THE EMPLOYMENT LISTED UNDER PARA-
 4 GRAPH 2 ABOVE) RECEIVED DURING THE REPORTING PERIOD FOR WHICH THIS
 5 STATEMENT IS FILED BY THE REPORTING INDIVIDUAL FROM THE PRACTICE OF
 6 EVERY OCCUPATION, EMPLOYMENT, TRADE, BUSINESS AND PROFESSION ENGAGED IN
 7 BY THE REPORTING INDIVIDUAL AND REPORTED IN SUBPARAGRAPH (A) OF THIS
 8 PARAGRAPH. INCLUDE, NOTWITHSTANDING THE EXISTENCE OF ANY PROFESSIONAL
 9 EXEMPTION, THE NAME AND ADDRESS OF EACH SUCH SOURCE OF INCOME, THE WORK
 10 PERFORMED TO EARN SUCH INCOME AND THE AMOUNT OF SUCH INCOME.

11 NAME OF SOURCE	ADDRESS	WORK	AMOUNT OF
12 OF INCOME		PERFORMED	INCOME
13			
14			
15			

16 S 2. Paragraphs i, p and q of subdivision 7 of section 80 of the
 17 legislative law, as amended by chapter 14 of the laws of 2007, are
 18 amended and a new paragraph r is added to read as follows:

19 i. Permit any person required to file a financial disclosure statement
 20 to request the commission to delete from the copy thereof made available
 21 for public inspection and copying one or more items of information,
 22 which may be deleted by the commission upon a finding that the informa-
 23 tion which would otherwise be required to be disclosed will have no
 24 material bearing on the discharge of the reporting person's official
 25 duties; PROVIDED, HOWEVER, THAT, IF SUCH PERSON IS A MEMBER OF THE
 26 LEGISLATURE OR A CANDIDATE FOR MEMBER OF THE LEGISLATURE, UNDER NO
 27 CIRCUMSTANCES SHALL THE COMMISSION DELETE FROM THE COPY THEREOF MADE
 28 AVAILABLE FOR PUBLIC INSPECTION AND COPYING ANY OF THE INFORMATION
 29 INCLUDED IN SUBPARAGRAPH (C) OF PARAGRAPH FIVE OF SUCH FINANCIAL DISCLO-
 30 SURE STATEMENT;

31 p. Develop educational materials and training with regard to legisla-
 32 tive ethics for members of the legislature and legislative employees;
 33 [and]

34 q. Prepare an annual report to the governor and legislature summariz-
 35 ing the activities of the commission during the previous year and recom-
 36 mending any changes in the laws governing the conduct of persons subject
 37 to the jurisdiction of the commission, or the rules, regulations and
 38 procedures governing the commission's conduct. Such report shall
 39 include: (i) a listing by assigned number of each complaint and referral
 40 received which alleged a possible violation within its jurisdiction,
 41 including the current status of each complaint, and (ii) where a matter
 42 has been resolved, the date and nature of the disposition and any sanc-
 43 tion imposed, subject to the confidentiality requirements of this
 44 section. Such annual report shall not contain any information for which
 45 disclosure is not permitted pursuant to subdivision fourteen of this
 46 section[.]; AND

47 R. COMPILE AND POST ON THE INTERNET WEBSITES OF THE SENATE AND ASSEM-
 48 BLY THE MOST CURRENT FINANCIAL DISCLOSURE STATEMENTS OF MEMBERS OF THE
 49 LEGISLATURE AND CANDIDATES FOR MEMBER OF THE LEGISLATURE.

50 S 3. Subparagraph 1 of paragraph a of subdivision 14 of section 80 of
 51 the legislative law, as amended by chapter 14 of the laws of 2007, is
 52 amended to read as follows:

53 (1) [the] ALL information set forth in an annual statement of finan-
 54 cial disclosure filed pursuant to section seventy-three-a of the public

1 officers law except [the categories of value or amount which shall be
 2 confidential, and any other item] THOSE ITEMS of information deleted
 3 pursuant to paragraph i of subdivision seven of this section;
 4 S 4. This act shall take effect January 1, 2012.

5 PART B

6 Section 1. Section 5-a of the legislative law is amended by adding a
 7 new subdivision 4 to read as follows:

8 4. ANY MEMBER OF EITHER HOUSE OF THE LEGISLATURE SERVING AS A COMMIT-
 9 TEE CHAIR OF ANY COMMITTEE AS ENUMERATED IN THE SCHEDULE SET FORTH IN
 10 SUBDIVISION ONE OF THIS SECTION SHALL NOT SERVE IN SUCH CAPACITY AS THE
 11 CHAIR FOR A TERM LONGER THAN FOUR CONSECUTIVE YEARS.

12 S 2. This act shall take effect on the first of January next succeed-
 13 ing the date on which it shall have become a law.

14 PART C

15 Section 1. The legislative law is amended by adding a new section 2-a
 16 to read as follows:

17 S 2-A. LEGISLATIVE TERM LIMITS. MEMBERS OF THE LEGISLATURE SHALL NOT
 18 SERVE MORE THAN FIVE TWO YEAR TERMS IN EITHER THE SENATE OR THE ASSEM-
 19 BLY. IN NO EVENT MAY A LEGISLATOR SERVE MORE THAN TEN YEARS IN EITHER
 20 THE SENATE OR ASSEMBLY.

21 S 2. This act shall take effect January 1, 2012.

22 PART D

23 Section 1. Subdivision 3 of section 14-108 of the election law, as
 24 redesignated by chapter 9 of the laws of 1978, is amended to read as
 25 follows:

26 3. Each statement shall be preserved by the officer with whom or the
 27 board with which it is required to be filed for a period of [five]
 28 FIFTEEN years from the date of filing thereof.

29 S 2. This act shall take effect immediately.

30 PART E

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

33 ARTICLE 3-B

34 PENSION FORFEITURE FOR PUBLIC MISCONDUCT ACT

- 35 SECTION 156. SHORT TITLE.
- 36 157. DEFINITIONS.
- 37 158. PENSION FORFEITURE.
- 38 159. MISCELLANEOUS.

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

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

- 44 1. "DEFENDANT" SHALL MEAN A PERSON AGAINST WHOM A FORFEITURE ACTION IS
 45 COMMENCED.
- 46 2. "COVERED CRIME" SHALL MEAN ANY OF THE FOLLOWING:
 47 (A) ANY FELONY OFFENSE SET FORTH IN THE PENAL LAW;
 48 (B) ANY CRIME DEFINED IN TITLE L OF THE PENAL LAW;

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

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

5 (E) ANY OTHER CRIME DEFINED BY THE LAWS OF THIS STATE, A NECESSARY
6 ELEMENT OF WHICH, AS DETERMINED BY STATUTORY OR COMMON LAW DEFINITION OF
7 SUCH CRIME, INCLUDES INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE,
8 FALSE SWEARING, MISREPRESENTATION, FRAUD, DECEIT, BRIBERY, EXTORTION,
9 MISAPPROPRIATION, THEFT, PROHIBITED ACTION OR FAILURE TO ACT BY A PUBLIC
10 OFFICER OR EMPLOYEE;

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

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

18 3. "CHIEF ADMINISTRATOR OF THE RETIREMENT SYSTEM" SHALL MEAN THE COMP-
19 TROLLER OF THE STATE OF NEW YORK WITH RESPECT TO THE NEW YORK STATE AND
20 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL
21 POLICE AND FIRE RETIREMENT SYSTEM AND THE BOARDS OF TRUSTEES WITH
22 RESPECT TO THE OTHER PUBLIC RETIREMENT SYSTEMS AND PENSION FUNDS OF THE
23 STATE AND THE CITY OF NEW YORK.

24 4. "MEMBER" SHALL MEAN A MEMBER OF THE NEW YORK STATE AND LOCAL
25 EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND
26 FIRE RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM,
27 THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK CITY TEACH-
28 ERS' RETIREMENT SYSTEM, THE NEW YORK CITY POLICE PENSION FUND, THE NEW
29 YORK CITY FIRE DEPARTMENT PENSION FUND AND THE NEW YORK CITY BOARD OF
30 EDUCATION RETIREMENT SYSTEM WHO JOINED SUCH SYSTEM ON OR AFTER THE
31 EFFECTIVE DATE OF THIS ARTICLE.

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

35 6. "RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOY-
36 EES' RETIREMENT SYSTEM, THE NEW YORK STATE AND LOCAL POLICE AND FIRE
37 RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, THE
38 NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK CITY TEACHERS'
39 RETIREMENT SYSTEM, THE NEW YORK CITY POLICE PENSION FUND, THE NEW YORK
40 CITY FIRE DEPARTMENT PENSION FUND AND THE NEW YORK CITY BOARD OF EDUCA-
41 TION RETIREMENT SYSTEM.

42 7. "DEPENDENT CHILDREN" SHALL INCLUDE:

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

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

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

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

54 1. IN THE CASE OF A MEMBER OR RETIRED MEMBER WHO IS CONVICTED OF,
55 PLEADS GUILTY TO, PLEADS NOLO CONTENDERE TO, OR PLEADS GUILTY TO PURSU-
56 ANT TO SUBDIVISION TWO OF SECTION 220.10 OF THE CRIMINAL PROCEDURE LAW

1 ANY COVERED CRIME SET FORTH IN PARAGRAPH (A), (B), (C), (D), (E), OR (F)
2 OF SUBDIVISION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS ARTICLE,
3 THE COMMISSION OF WHICH IS RELATED TO THE PERFORMANCE OF OR FAILURE TO
4 PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND RESPONSIBIL-
5 ITIES, AN ACTION MAY BE COMMENCED IN SUPREME COURT BY THE DISTRICT
6 ATTORNEY HAVING JURISDICTION OVER THE OFFENSE, OR BY THE ATTORNEY GENER-
7 AL IF THE ATTORNEY GENERAL BROUGHT THE UNDERLYING CRIMINAL CHARGE, FOR
8 THE FORFEITURE OF ALL OR A PORTION OF THOSE RIGHTS AND BENEFITS TO WHICH
9 SUCH PERSON IS OR WILL BE ENTITLED AS A MEMBER OR RETIRED MEMBER. SUCH
10 ACTION SHALL BE COMMENCED WITHIN SIX MONTHS OF SUCH CONVICTION. FOR
11 PURPOSES OF THIS ARTICLE, A COVERED CRIME IS RELATED TO THE PERFORMANCE
12 OF OR FAILURE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES
13 AND RESPONSIBILITIES IF IT:

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

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

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

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

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

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

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

1 4. NO FORFEITURE ACTION MAY BE COMMENCED BY THE DISTRICT ATTORNEY OR
2 THE ATTORNEY GENERAL UNTIL RECEIPT OF THE NOTICE OF APPLICABILITY AS SET
3 FORTH IN SUBDIVISION THREE OF THIS SECTION. IN DETERMINING WHETHER TO
4 SEEK FORFEITURE OF A PORTION, RATHER THAN ALL, OF SUCH RETIREMENT BENE-
5 FITS, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY CONSIDER MITI-
6 GATING FACTORS INCLUDING, BUT NOT LIMITED TO: THE NATURE AND SERIOUSNESS
7 OF THE OFFENSE COMMITTED IN RELATION TO THE AMOUNT OF THE FORFEITURE
8 PENALTY; WHETHER THE DEFENDANT'S CONDUCT IN COMMITTING THE OFFENSE WAS
9 WILLFUL OR MALICIOUS; WHETHER THE DEFENDANT MADE ANY SUBSTANTIAL GOOD
10 FAITH EFFORTS TO PREVENT OR MITIGATE THE HARM CAUSED BY THE OFFENSE;
11 WHETHER THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS UNDER DURESS,
12 COERCION OR INDUCED BY OTHERS; THE IMPACT OF THE CRIME ON THE STATE OR
13 LOCAL GOVERNMENT AND THE NUMBER OF YEARS OF THE DEFENDANT'S PUBLIC
14 SERVICE PERFORMED WITHOUT CRIMINAL CONDUCT; THE PECUNIARY BENEFIT TO THE
15 DEFENDANT FROM THE CRIME; AND WHETHER AND TO WHAT EXTENT THE DEFENDANT'S
16 FAMILY IS DEPENDENT UPON THE DEFENDANT'S PRESENT AND FUTURE RETIREMENT
17 BENEFITS. THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY SEEK AN
18 ORDER FROM THE COURT THAT SOME OR ALL OF THE FORFEITED PENSION BE PAID
19 FOR THE BENEFIT OF ANY DEPENDENT CHILDREN AS JUSTICE MAY REQUIRE, AFTER
20 TAKING INTO CONSIDERATION THE FINANCIAL NEEDS AND RESOURCES AVAILABLE
21 FOR SUPPORT OF SUCH CHILDREN. FURTHER, IN THE EVENT OF ANY FORFEITURE,
22 SUCH MEMBER OR RETIRED MEMBER SHALL BE ENTITLED TO A PRO RATA RETURN OF
23 HIS OR HER CONTRIBUTION PAID INTO THE RELEVANT RETIREMENT SYSTEMS, IN
24 ANY AMOUNT PROPORTIONATE TO THE AMOUNT OF ANY FORFEITURE, WITHOUT INTER-
25 EST.

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

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

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

46 8. 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
49 INCLUDING, BUT NOT LIMITED TO, ONE OR MORE OF THE MITIGATING FACTORS SET
50 FORTH IN SUBDIVISION FOUR OF THIS SECTION, OR OTHER INFORMATION OR
51 EVIDENCE WHICH DEMONSTRATES THAT SUCH FORFEITURE WOULD NOT SERVE THE
52 ENDS OF JUSTICE. THE COURT MAY ORDER THAT SOME OR ALL OF THE FORFEITED
53 PENSION BE PAID FOR THE BENEFIT OF ANY DEPENDENT CHILDREN AS JUSTICE MAY
54 REQUIRE, AFTER TAKING INTO CONSIDERATION THE FINANCIAL NEEDS AND
55 RESOURCES AVAILABLE FOR SUPPORT OF SUCH CHILDREN. THE COURT SHALL ISSUE

1 A WRITTEN DECISION STATING THE BASIS FOR AN ORDER ISSUED PURSUANT TO
2 THIS SUBDIVISION.

3 9. UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A
4 COVERED CRIME THAT IS RELATED TO THE PERFORMANCE OF OR FAILURE TO
5 PERFORM SUCH DEFENDANT'S OFFICIAL DUTIES AND RESPONSIBILITIES, THE COURT
6 SHALL ISSUE AN ORDER TO THE APPROPRIATE RETIREMENT SYSTEM FOR THE
7 FORFEITURE OR RECOUPMENT OF ALL OR A PORTION OF THE DEFENDANT'S RIGHTS
8 AND BENEFITS AS A MEMBER OR RETIRED MEMBER OF SUCH SYSTEM AND FOR THE
9 RECOUPMENT OF ALL OR A PORTION OF THE RETIREMENT BENEFITS PAID TO THE
10 DEFENDANT. IN DETERMINING THE EXTENT OF THE FORFEITURE OR RECOUPMENT
11 THAT IS WARRANTED, THE COURT MAY CONSIDER ONE OR MORE OF THE MITIGATING
12 FACTORS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. ALL ORDERS AND
13 FINDINGS MADE BY THE COURT PURSUANT TO THIS SECTION SHALL BE SERVED UPON
14 THE CHIEF ADMINISTRATOR OF THE DEFENDANT'S RETIREMENT SYSTEM.

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

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

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

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

35 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
36 sion, section or part of this act shall be adjudged by any court of
37 competent jurisdiction to be invalid, such judgment shall not affect,
38 impair or invalidate the remainder thereof, but shall be confined in its
39 operation to the clause, sentence, paragraph, subdivision, section or
40 part thereof directly involved in the controversy in which such judgment
41 shall have been rendered. It is hereby declared to be the intent of the
42 legislature that this act would have been enacted even if such invalid
43 provisions had not been included herein.

44 S 3. This act shall take effect immediately; provided, however, that
45 the applicable effective date of Parts A through E of this act shall be
46 as specifically set forth in the last section of such Parts.