

416

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. KRUEGER, DUANE -- 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  
a felony 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 PUBLIC CORRUPTION 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 CORRUPTION 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. "DESIGNATED FELONY OFFENSE" SHALL MEAN: (A) ANY FELONY OFFENSE SET  
17    FORTH IN THE PENAL LAW; (B) A CONSPIRACY TO COMMIT ANY FELONY OFFENSE  
18    SET FORTH IN THE PENAL LAW; OR (C) ANY CRIMINAL OFFENSE COMMITTED IN ANY  
19    OTHER STATE, DISTRICT, OR TERRITORY OF THE UNITED STATES AND CLASSIFIED  
20    AS A FELONY THEREIN, WHICH IF COMMITTED WITHIN THIS STATE, WOULD CONSTI-  
21    TUTE AN OFFENSE DESIGNATED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION.

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

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1 3. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE OF NEW YORK  
2 IN HIS OR HER CAPACITY AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND  
3 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL  
4 POLICE AND FIRE RETIREMENT SYSTEM.

5 4. "MEMBER" SHALL MEAN A MEMBER OF THE NEW YORK STATE AND LOCAL  
6 EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND  
7 FIRE RETIREMENT SYSTEM WHO JOINED SUCH SYSTEM ON OR AFTER THE EFFECTIVE  
8 DATE OF THIS ARTICLE.

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

12 6. "RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOY-  
13 EES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE  
14 RETIREMENT SYSTEM.

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

17 1. IN THE CASE OF A MEMBER OR RETIRED MEMBER WHO IS CONVICTED OF ANY  
18 DESIGNATED FELONY OFFENSE SET FORTH IN PARAGRAPH (A) OR (B) OF SUBDIVI-  
19 SION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS ARTICLE, THE COMMIS-  
20 SION OF WHICH IS RELATED TO THE PERFORMANCE OR FAILURE TO PERFORM SUCH  
21 MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND RESPONSIBILITIES, AN  
22 ACTION MAY BE COMMENCED IN SUPREME COURT BY THE DISTRICT ATTORNEY HAVING  
23 JURISDICTION OVER THE OFFENSE FOR THE FORFEITURE OF ALL OR A PORTION OF  
24 THOSE RIGHTS AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED AS  
25 A MEMBER OR RETIRED MEMBER PROVIDED THAT ANY CONTRIBUTIONS MADE BY THE  
26 OFFICIAL TO HIS OR HER RETIREMENT SYSTEM SHALL NOT BE SUBJECT TO FORFEI-  
27 TURE, BUT SHALL BE RETURNED TO SUCH OFFICIAL. SUCH ACTION SHALL BE  
28 COMMENCED WITHIN SIX MONTHS OF SUCH CONVICTION. FOR PURPOSES OF THIS  
29 ARTICLE, A DESIGNATED FELONY OFFENSE IS RELATED TO THE PERFORMANCE OR  
30 FAILURE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND  
31 RESPONSIBILITIES IF IT: (A) CONSTITUTED A MATERIAL VIOLATION OF SUCH  
32 MEMBER OR RETIRED MEMBER'S DUTIES AND RESPONSIBILITIES AS A PUBLIC SERV-  
33 ANT; OR (B) EVEN THOUGH COMMITTED OUTSIDE THE SCOPE OF SUCH MEMBER'S  
34 OFFICIAL DUTIES OR RESPONSIBILITIES, INVOLVED ACTIONS OR CONDUCT BY  
35 WHICH SUCH MEMBER OR RETIRED MEMBER INDICATED OR CONVEYED THAT HE OR SHE  
36 WAS ACTING WITH THE AUTHORITY OF, OR UNDER COLOR OF THE AUTHORITY OF,  
37 ANY GOVERNMENTAL ENTITY.

38 2. WHERE THE ATTORNEY GENERAL FINDS THAT A MEMBER OR A RETIRED MEMBER  
39 HAS BEEN CONVICTED OF A DESIGNATED FELONY OFFENSE AS DEFINED IN PARA-  
40 GRAPH (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS  
41 ARTICLE, THE COMMISSION OF WHICH IS RELATED TO THE PERFORMANCE OR FAIL-  
42 URE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND  
43 RESPONSIBILITIES, AN ACTION MAY BE COMMENCED IN SUPREME COURT BY THE  
44 ATTORNEY GENERAL FOR THE FORFEITURE OF ALL OR A PORTION OF THOSE RIGHTS  
45 AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED AS A MEMBER OR  
46 RETIRED MEMBER. SUCH ACTION SHALL BE COMMENCED WITHIN ONE YEAR OF SUCH  
47 CONVICTION.

48 3. PRIOR TO COMMENCEMENT OF SUCH ACTION DESCRIBED IN SUBDIVISION ONE  
49 OR TWO OF THIS SECTION, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL,  
50 AS THE CASE MAY BE, SHALL PROVIDE NOTICE TO THE COMPTROLLER STATING THAT  
51 HE OR SHE HAS REASON TO BELIEVE THAT THE PERSON CONVICTED COMMITTED THE  
52 FELONY RELATED TO HIS OR HER OFFICIAL DUTIES AND RESPONSIBILITIES.  
53 WITHIN TWENTY DAYS OF RECEIPT OF SUCH NOTICE, THE COMPTROLLER SHALL  
54 SUBMIT A NOTICE OF APPLICABILITY TO THE DISTRICT ATTORNEY OR THE ATTOR-  
55 NEY GENERAL AS THE CASE MAY BE. THE NOTICE OF APPLICABILITY SHALL  
56 CONTAIN A STATEMENT SPECIFYING WHETHER THE PERSON CONVICTED IS OR HAS

1 BEEN A MEMBER OR RETIRED MEMBER OF THE NEW YORK STATE AND LOCAL EMPLOY-  
2 EES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE  
3 RETIREMENT SYSTEM AND SHALL DESCRIBE THE RIGHTS AND BENEFITS TO WHICH  
4 SUCH PERSON IS OR WILL BE ENTITLED FROM SUCH PUBLIC RETIREMENT SYSTEM.

5 4. NO FORFEITURE ACTION MAY BE COMMENCED BY THE DISTRICT ATTORNEY OR  
6 THE ATTORNEY GENERAL UNTIL RECEIPT OF THE NOTICE OF APPLICABILITY AS SET  
7 FORTH IN SUBDIVISION THREE OF THIS SECTION. IN DETERMINING WHETHER TO  
8 SEEK FORFEITURE OF A PORTION, RATHER THAN ALL, OF SUCH RETIREMENT BENE-  
9 FITS, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY CONSIDER MITI-  
10 GATING FACTORS INCLUDING, BUT NOT LIMITED TO: THE NATURE AND SERIOUSNESS  
11 OF THE OFFENSE COMMITTED IN RELATION TO THE AMOUNT OF THE FORFEITURE  
12 PENALTY; WHETHER THE DEFENDANT'S CONDUCT IN COMMITTING THE OFFENSE WAS  
13 WILLFUL OR MALICIOUS; WHETHER THE DEFENDANT MADE ANY SUBSTANTIAL GOOD  
14 FAITH EFFORTS TO PREVENT OR MITIGATE THE HARM CAUSED BY THE OFFENSE;  
15 WHETHER THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS UNDER DURESS,  
16 COERCION OR INDUCED BY OTHERS; THE IMPACT OF THE CRIME ON THE STATE OR  
17 LOCAL GOVERNMENT AND THE NUMBER OF YEARS OF THE DEFENDANT'S PUBLIC  
18 SERVICE PERFORMED WITHOUT CRIMINAL CONDUCT; THE PECUNIARY BENEFIT TO THE  
19 DEFENDANT FROM THE CRIME; AND WHETHER AND TO WHAT EXTENT THE DEFENDANT'S  
20 FAMILY IS DEPENDENT UPON THE DEFENDANT'S PRESENT AND FUTURE RETIREMENT  
21 BENEFITS.

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

36 6. ALL DEFENDANTS IN A FORFEITURE ACTION BROUGHT PURSUANT TO THIS  
37 ARTICLE SHALL HAVE THE RIGHT TO TRIAL BY JURY ON ANY ISSUE OF FACT.

38 7. 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 8. AT ANY TIME DURING THE PENDENCY OF A FORFEITURE ACTION, THE COURT  
42 MAY DISMISS THE ACTION IF IT FINDS THAT SUCH RELIEF IS WARRANTED BY THE  
43 EXISTENCE OF SOME COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE  
44 INCLUDING, BUT NOT LIMITED TO, ONE OR MORE OF THE MITIGATING FACTORS SET  
45 FORTH IN SUBDIVISION FOUR OF THIS SECTION, OR OTHER INFORMATION OR  
46 EVIDENCE WHICH DEMONSTRATES THAT SUCH FORFEITURE WOULD NOT SERVE THE  
47 ENDS OF JUSTICE. THE COURT SHALL ISSUE A WRITTEN DECISION STATING THE  
48 BASIS FOR AN ORDER ISSUED PURSUANT TO THIS SUBDIVISION.

49 9. (A) UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A  
50 FELONY IN CONNECTION WITH HIS OR HER OFFICIAL DUTIES AND RESPONSIBIL-  
51 ITIES IN THIS STATE, THE COURT SHALL ISSUE AN ORDER TO THE APPROPRIATE  
52 RETIREMENT SYSTEM FOR: (I) THE FORFEITURE OR RECOUPMENT OF ALL OR A  
53 PORTION OF THE DEFENDANT'S RIGHTS AND BENEFITS AS A MEMBER OR RETIRED  
54 MEMBER OF SUCH SYSTEM; (II) THE RECOUPMENT OF ALL OR A PORTION OF THE  
55 RETIREMENT BENEFITS PAID TO THE DEFENDANT; AND (III) THE REFUND TO THE  
56 DEFENDANT OF ANY CONTRIBUTIONS MADE BY THE DEFENDANT TO THE RETIREMENT

1 SYSTEM FOR ANY PERIOD FOR WHICH THE DEFENDANT'S RIGHTS AND BENEFITS AS A  
2 MEMBER OR RETIRED MEMBER OF SUCH RETIREMENT SYSTEM HAVE BEEN ORDERED  
3 FORFEIT.

4 (B) IN DETERMINING THE EXTENT OF THE FORFEITURE OR RECOUPMENT THAT IS  
5 WARRANTED, THE COURT MAY CONSIDER ONE OR MORE OF THE MITIGATING FACTORS  
6 SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. ALL ORDERS AND FINDINGS  
7 MADE BY THE COURT PURSUANT TO THIS SECTION SHALL BE SERVED UPON THE  
8 COMPTROLLER.

9 10. UPON A FINAL DETERMINATION THAT REVERSES OR VACATES THE CONVICTION  
10 OR CONVICTIONS OF A DESIGNATED OFFENSE OR OFFENSES, THE MEMBER OR  
11 RETIRED MEMBER WHO HAS FORFEITED RETIREMENT RIGHTS AND BENEFITS PURSUANT  
12 TO THIS SECTION SHALL HAVE SUCH RIGHTS AND BENEFITS RETROACTIVELY  
13 RESTORED UPON APPLICATION TO THE COURT WITH JURISDICTION OVER THE  
14 FORFEITURE ACTION, REGARDLESS OF ANY TEMPORARY RESTRAINING ORDER OR  
15 PRELIMINARY INJUNCTION WHICH MAY BE OUTSTANDING OR ORDER WHICH MAY HAVE  
16 BEEN ISSUED. SUCH COURT, UPON FINDING THAT SUCH A FINAL DETERMINATION  
17 HAS OCCURRED, SHALL ISSUE AN ORDER RETROACTIVELY RESTORING SUCH RIGHTS  
18 AND BENEFITS, TOGETHER WITH SUCH OTHER RELIEF DEEMED APPROPRIATE. AS A  
19 CONDITION TO FULL RESTORATION OF RIGHTS AND BENEFITS AS PROVIDED IN THIS  
20 SUBDIVISION, THE MEMBER OR RETIRED MEMBER SHALL REIMBURSE THE RETIREMENT  
21 SYSTEM FOR ANY CONTRIBUTIONS THAT WERE REFUNDED TO THE MEMBER OR RETIRED  
22 MEMBER PURSUANT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION NINE  
23 OF THIS SECTION.

24 11. EXCEPT AS OTHERWISE PROVIDED BY THIS ARTICLE, THE CIVIL PRACTICE  
25 LAW AND RULES SHALL GOVERN THE PROCEDURE IN ACTIONS COMMENCED UNDER THIS  
26 ARTICLE, EXCEPT WHERE THE ACTION IS REGULATED BY ANY INCONSISTENT  
27 PROVISIONS OF THIS SECTION. IN SUCH ACTIONS, THE COURT MAY NOT CONSIDER  
28 ANY ISSUES PRESENTED TO THE COURT WHICH HEARD THE CRIMINAL ACTION IN  
29 WHICH THE DEFENDANT WAS CONVICTED OR WHICH ARISE OUT OF SUCH CRIMINAL  
30 ACTION AND MAY BE PRESENTED ON APPEAL.

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

35 S 2. This act shall take effect immediately.