S T A T E O F N E W Y O R K

1336

2015-2016 Regular Sessions

I N A S S E M B L Y

January 12, 2015

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

AN ACT to amend the public officers law and the criminal procedure law, in relation to the withholding of salaries of elected officials who have been indicted on charges of any crimes related to their public office

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

Section 1. Article 8 of the public officers law is renumbered article 9 and a new article 8 is added to read as follows:

ARTICLE 8

WITHHOLDING SALARY OF ELECTED OFFICIALS

SECTION 112. DEFINITIONS.
113. TERMS AND CONDITIONS.
114. WITHHOLDING OF SALARY PAYMENTS.

S 112. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "ELECTED OFFICIALS" MEANS EVERY OFFICER WHO IS ELECTED BY ELECTORS OF THE STATE OR OFFICER WHO IS ELECTED BY A POLITICAL PARTY.

2. "CRIMES RELATED TO PUBLIC OFFICE" MEANS ANY OF THE FOLLOWING CRIMINAL OFFENSES WHETHER COMMITTED IN THIS STATE OR IN ANY OTHER JURISDICTION BY AN ELECTED OFFICIAL THROUGH THE USE OF HIS OR HER PUBLIC OFFICE OR BY THE INDIVIDUAL REPRESENTING THAT HE OR SHE WAS ACTING WITH THE AUTHORITY OF ANY GOVERNMENTAL ENTITY, AND ACTING AS AN ELECTED OFFICIAL:

A. A FELONY FOR COMMITTING, AIDING OR ABETTING A LARCENY OF PUBLIC FUNDS FROM THE STATE OR A MUNICIPALITY;

B. A FELONY COMMITTED IN DIRECT CONNECTION WITH SERVICE AS AN ELECTED OFFICIAL; OR

C. A FELONY COMMITTED BY SUCH PERSON WHO, WITH THE INTENT TO DEFRAUD, REALIZES OR OBTAINS, OR ATTEMPTS TO REALIZE OR OBTAIN, A PROFIT, GAIN OR ADVANTAGE FOR HIMSELF OR HERSELF OR FOR SOME OTHER PERSON, THROUGH THE

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

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USE OR ATTEMPTED USE OF THE POWER, RIGHTS, PRIVILEGES OR DUTIES OF HIS OR HER POSITION AS AN ELECTED OFFICIAL.

S 113. TERMS AND CONDITIONS. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, IT SHALL BE A TERM AND CONDITION OF HOLDING PUBLIC ELECTED OFFICE IN THE STATE OF NEW YORK THAT ALL ELECTED OFFICIALS' SALARY PAYMENTS ARE SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

S 114. WITHHOLDING OF SALARY PAYMENTS. 1. A. UPON NOTIFICATION OF AN INDICTMENT PURSUANT TO SECTION 190.95 OF THE CRIMINAL PROCEDURE LAW, THE PUBLIC EMPLOYER OF AN ELECTED OFFICIAL, WHO HAS BEEN INDICTED ON CHARGES OF ANY CRIMES RELATED TO THEIR PUBLIC OFFICE, SHALL WITHHOLD SUCH ELECTED OFFICIAL'S SALARY PAYMENTS. IF SUCH ELECTED OFFICIAL SEEKS ANOTHER PUBLIC OFFICE OR ANOTHER PUBLIC EMPLOYMENT POSITION WHILE UNDER INDICTMENT, IT SHALL BE THE BURDEN OF THE ELECTED OFFICIAL TO NOTIFY THEIR NEW PUBLIC EMPLOYER OF THEIR INDICTMENT. THIS SECTION SHALL APPLY FOR ALL SALARY PAYMENTS WHILE EMPLOYED AS AN ELECTED OFFICIAL, OFFICIAL OR EMPLOYEE OF THE STATE OR LOCAL GOVERNMENT.

B. A PUBLIC EMPLOYER SHALL NOTIFY THE ELECTED OFFICIAL OF SUCH SALARY PAYMENT WITHHOLDING AND PROVIDE THEM WITH A COPY OF NOTIFICATION OF THE INDICTMENT PURSUANT TO SECTION 190.95 OF THE CRIMINAL PROCEDURE LAW.

2. UPON NOTIFICATION, THE PUBLIC EMPLOYER OR EMPLOYERS OF AN ELECTED OFFICIAL FACING CHARGES OF CRIMES RELATED TO THEIR PUBLIC OFFICE THAT HAS HAD SUCH CHARGES DISMISSED, ACQUITTED OR HAVE BEEN FOUND NOT GUILTY BY TRIAL JURY, SHALL PROMPTLY PAY THE WITHHELD SALARY PAYMENTS TO THE ELECTED OFFICIAL WITHIN SIXTY DAYS.

3. UPON A PLEA OF GUILTY, OR BY CONVICTION AFTER TRIAL TO CRIMES RELATED TO PUBLIC OFFICE OF AN ELECTED OFFICIAL, THE WITHHELD SALARY PAYMENTS SHALL NOT BE PAID AND RETURNED. SUCH WITHHELD PAYMENTS SHALL BE DEPOSITED INTO THE PUBLIC EMPLOYER'S GENERAL FUND.

4. A PUBLIC EMPLOYER SHALL PROVIDE THE ELECTED OFFICIAL WITH A DETAILED ACCOUNTING OF THE WITHHELD SALARY PAYMENTS FOLLOWING THE CONCLUSION OF AN INDICTMENT PURSUANT TO SUBDIVISION TWO OR THREE OF THIS SECTION.

S 2. Section 77-a of the public officers law, as added by chapter 1012 of the laws of 1965, is amended to read as follows:

S 77-a. [Members of the legislature] ELECTED OFFICIALS liable to forfeiture of office. The conviction of [a member of the legislature or any officer or employee of the legislature] AN ELECTED OFFICIAL of any [of the crimes defined in sections seventy-five, seventy-six or seventy-seven] CRIME RELATED TO PUBLIC OFFICE, AS DEFINED IN SECTION ONE HUNDRED TWELVE of this chapter, shall involve as a consequence in addition to the punishment provided [in any such section] BY LAW a forfeiture of his OR HER office; and shall disqualify him OR HER from ever afterwards holding any office under this state OR BEING AN OFFICER OR EMPLOYEE OF THE LEGISLATURE.

S 3. The public officers law is amended by adding a new section 77-b to read as follows:

S 77-B. OFFICERS OR EMPLOYEES OF THE LEGISLATURE LIABLE TO FORFEITURE OF OFFICE. THE CONVICTION OF ANY OFFICER OR EMPLOYEE OF THE LEGISLATURE OF ANY CRIME, DEFINED IN SECTION SEVENTY-SEVEN OF THIS ARTICLE, SHALL INVOLVE AS A CONSEQUENCE IN ADDITION TO THE PUNISHMENT PROVIDED BY LAW A FORFEITURE OF HIS OR HER POSITION; AND SHALL DISQUALIFY HIM OR HER FROM EVER AFTERWARDS HOLDING ANY OFFICE UNDER THIS STATE OR BEING AN OFFICER OR EMPLOYEE OF THE LEGISLATURE.

S 4. The criminal procedure law is amended by adding a new section 190.95 to read as follows:

S 190.95 GRAND JURY; NOTIFICATION OF INDICTMENT IN CERTAIN CASES.

UPON THE INDICTMENT OF AN ELECTED OFFICIAL ON CRIMES RELATED TO PUBLIC OFFICE, AS DEFINED IN SECTION ONE HUNDRED TWELVE OF THE PUBLIC OFFICERS LAW, THE GRAND JURY SHALL DIRECT THE DISTRICT ATTORNEY TO NOTIFY THE ELECTED OFFICIAL'S PUBLIC EMPLOYER OF THE INDICTMENT. THE DISTRICT ATTORNEY SHALL NOTIFY THE PUBLIC EMPLOYER NO LATER THAN THIRTY DAYS FOLLOWING THE INDICTMENT.

S 5. The criminal procedure law is amended by adding a new section 220.52 to read as follows:

S 220.52 NOTICE OF ENTRY OF GUILTY PLEA INVOLVING AN ELECTED OFFICIAL.

THE COURT SHALL NOTIFY THE PUBLIC EMPLOYER OR EMPLOYERS OF A DEFENDANT, WHO IS FACING CRIMES RELATED TO THEIR PUBLIC OFFICE AS AN ELECTED OFFICIAL AS DEFINED IN SECTION ONE HUNDRED TWELVE OF THE PUBLIC OFFICERS LAW, THAT HAS ENTERED A GUILTY PLEA TO A COUNT OR COUNTS OF AN INDICTMENT OF A CRIME THAT WAS RELATED TO THEIR PUBLIC OFFICE. THE COURT SHALL NOTIFY SUCH DEFENDANT'S PUBLIC EMPLOYER OR EMPLOYERS OF THE ENTRY OF A GUILTY PLEA WITHIN THIRTY DAYS.

S 6. The criminal procedure law is amended by adding a new section 310.90 to read as follows:

S 310.90 VERDICT; NOTIFICATION IN CERTAIN CASES.

THE VERDICT OF THE JURY INVOLVING A DEFENDANT, WHO AT THE TIME OF THE CRIMINAL ACT IN QUESTION WAS AN ELECTED OFFICIAL AND THE CRIMES WERE RELATED TO THEIR PUBLIC OFFICE, SHALL BE TRANSMITTED BY THE COURT TO THE DEFENDANT'S PUBLIC EMPLOYER OR EMPLOYERS WITHIN THIRTY DAYS.

S 7. Section 290.10 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. UPON ISSUING A TRIAL ORDER OF DISMISSAL FOR A DEFENDANT, WHO AT THE TIME OF THE CRIMINAL ACT OR ACTS IN QUESTION WAS AN ELECTED OFFICIAL AND THE CRIMES WERE RELATED TO THEIR PUBLIC OFFICE, WHICH DISMISSES ALL COUNTS OF THE INDICTMENT WHICH ARE RELATED TO THE DEFENDANT'S PUBLIC OFFICE, THE COURT SHALL NOTIFY THE DEFENDANT'S PUBLIC EMPLOYER WITHIN THIRTY DAYS.

S 8. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.