

# STATE OF NEW YORK

3426

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

Introduced by M. of A. SANTABARBARA -- read once and referred to the  
Committee on Judiciary

### CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 7 of article 5 of the constitution, in  
relation to the public pension of a public officer

Section 1. Resolved (if the Senate concur), That section 7 of article  
5 of the constitution be amended to read as follows:

§ 7. (a) After July first, nineteen hundred forty, membership in any  
pension or retirement system of the state or of a civil division thereof  
shall be a contractual relationship, the benefits of which shall not be  
diminished or impaired.

(b) (i) Notwithstanding subdivision (a) of this section, the public  
pension of a public officer, as defined in paragraph ~~[(e) of this  
section]~~ (ii) of this subdivision, who stands convicted of a felony for  
which such felony has a direct and actual relationship to the perform-  
ance of the public officer's existing duties, may be reduced or revoked,  
following notice and a hearing by an appropriate court, as provided by  
law. The court determination whether to reduce or revoke such pension  
shall be based on the consideration of factors including the severity of  
the crime and the proportionality of a reduction or revocation of such  
pension to such crime. When a court issues an order to reduce or revoke  
such pension, the court shall consider and determine specific findings  
as to the amount of such forfeiture, if any, and whether forfeiture, in  
whole or in part, would result in undue hardship or other inequity upon  
any dependent children, spouse or other dependents; and other factors as  
provided by law. The legislature shall enact legislation to implement  
this amendment taking into account interests of justice.

~~[(e)]~~ (ii) For the purposes of ~~[paragraph (b) of this section]~~ this  
subdivision, the term "public officer" shall mean: ~~[(i)]~~ (A) an official  
filling an elected office within the state; ~~[(ii)]~~ (B) a holder of  
office filled by direct appointment by the governor of this state,  
either upon or without senate confirmation; ~~[(iii)]~~ (C) a county, city,

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

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1 town or village administrator, manager or equivalent position; [~~(iv)~~]  
2 (D) the head or heads of any state or local government department, divi-  
3 sion, board, commission, bureau, public benefit corporation, or public  
4 authority of this state who are vested with authority, direction and  
5 control over such department, division, board, commission, bureau,  
6 public benefit corporation or public authority; [~~(v)~~] (E) the chief  
7 fiscal officer or treasurer of any municipal corporation or political  
8 subdivision of the state; [~~(vi)~~] (F) a judge or justice of the unified  
9 court system; and [~~(vii)~~] (G) a legislative, executive, or judicial  
10 employee of this state who directly assists in the formulation of legis-  
11 lation, rules, regulations, policy, or judicial decision-making and who  
12 is designated as a policymaker as set forth in statute.

13 [~~(d) Paragraph (b) of this section~~] (iii) This subdivision shall only  
14 apply to crimes committed on or after the first of January next succeed-  
15 ing the date upon which the people shall approve and ratify the amend-  
16 ment to the constitution that added this paragraph.

17 (c) (i) Notwithstanding subdivision (a) of this section, the member-  
18 ship in any public pension of a public officer who stands convicted on  
19 an impeachment shall be revoked.

20 (ii) This subdivision shall apply to any public officer who stands  
21 convicted on an impeachment including any public officer convicted on an  
22 impeachment before the effective date of this subdivision.

23 § 2. Resolved (if the Senate concur), That section 24 of article 6 of  
24 the constitution be amended to read as follows:

25 § 24. The assembly shall have the power of impeachment by a vote of a  
26 majority of all the members elected thereto. The court for the trial of  
27 impeachments shall be composed of the president of the senate, the  
28 senators, or the major part of them, and the judges of the court of  
29 appeals, or the major part of them. On the trial of an impeachment  
30 against the governor or lieutenant-governor, neither the lieutenant-gov-  
31 ernor nor the temporary president of the senate shall act as a member of  
32 the court. No judicial officer shall exercise his or her office after  
33 articles of impeachment against him or her shall have been preferred to  
34 the senate, until he or she shall have been acquitted. Before the trial  
35 of an impeachment, the members of the court shall take an oath or affir-  
36 mation truly and impartially to try the impeachment according to the  
37 evidence, and no person shall be convicted without the concurrence of  
38 two-thirds of the members present. Judgment in cases of impeachment  
39 shall not extend further than to removal from office, or removal from  
40 office and disqualification to hold and enjoy any public office of  
41 honor, trust, or profit under this state, and revocation of any member-  
42 ship in a public pension; but the party impeached shall be liable to  
43 indictment and punishment according to law.

44 § 3. Resolved (if the Senate concur), That the foregoing amendment be  
45 referred to the first regular legislative session convening after the  
46 next succeeding general election of members of the assembly, and, in  
47 conformity with section 1 of article 19 of the constitution, be  
48 published for three months previous to the time of such election.