

Regular Session, 2012

HOUSE BILL NO. 10

BY REPRESENTATIVES LIGI AND CHAMPAGNE

RETIREMENT BENEFITS: Requires forfeiture of retirement benefits by any public employee or elected official who is a member of a public retirement system and is convicted of certain state or federal felony acts associated with his office

1 AN ACT

2 To amend and reenact the heading of Subpart L of Part II of Chapter 4 of Subtitle I of Title
3 11 of the Louisiana Revised Statutes of 1950 and to enact R.S. 11:293, relative to
4 retirement benefits; to provide relative to public servants who are members, former
5 members, or retirees of public retirement systems; to require the forfeiture of a
6 portion of retirement benefits by such persons who are convicted of certain felonies
7 related to their offices; to provide relative to the employer and employee
8 contributions made on behalf of such persons; to require the Department of Public
9 Safety and Corrections and the secretary of state to report such office-related
10 felonies; and to provide for related matters.

11 Notice of intention to introduce this Act has been published
12 as provided by Article X, Section 29(C) of the Constitution
13 of Louisiana.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. The heading of Subpart L of Part II of Chapter 4 of Subtitle I of Title 11
16 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted and R.S. 11:293
17 is hereby enacted to read as follows:

1 SUBPART L. APPLICABILITY OF CERTAIN ~~COURT ORDERS~~

2 LEGAL DETERMINATIONS

3 * * *

4 §293. Forfeiture of retirement benefits; public corruption crimes

5 A. As used in this Section, the following words or phrases shall have the
6 following meanings:

7 (1) "Conviction" or "convicted" means a criminal conviction, guilty plea, or
8 plea of nolo contendere that is final, and all appellate review of the original trial
9 court proceedings is exhausted.

10 (2) "Public corruption crime" means a state or federal felony offense for any
11 of the following crimes, conspiracy to commit any of the following crimes for which
12 conspiracy is not an element, or attempt to commit the following crimes, any of
13 which is committed after January 1, 2013, and is associated with and committed
14 during a public servant's service in public office or employment:

15 (a) The theft of public money or thing entrusted to such individual as part of
16 his official duties.

17 (b) Extortion (R.S. 14:66).

18 (c) Perjury (R.S. 14:123 and 124).

19 (d) Public bribery (R.S. 14:118).

20 (e) Corrupt influencing (R.S. 14:120).

21 (f) Obstruction of justice (R.S. 14:130.1).

22 (g) Malfeasance in office (R.S. 14:134, 134.1, and 134.2).

23 (h) Abuse of office (R.S. 14:134.3).

24 (i) Public salary extortion (R.S. 14:136).

25 (j) Public payroll fraud (R.S. 14:138).

26 (k) Political payroll padding (R.S. 14:139).

27 (l) Public contract fraud (R.S. 14:140).

28 (m) Bribery of public officials and witnesses (18 U.S.C. 201).

29 (n) Offer to procure appointive public office (18 U.S.C. 210).

- 1 (o) Acceptance or solicitation to obtain appointive public office (18 U.S.C.
2 211).
- 3 (p) Conspiracy to defraud the government with respect to claims (18 U.S.C.
4 286).
- 5 (q) False, fictitious, or fraudulent claims (18 U.S.C. 287).
- 6 (r) Conspiracy to commit offense or to defraud the United States (18 U.S.C.
7 371).
- 8 (s) Expenditures to influence voting (18 U.S.C. 597).
- 9 (t) Promise of appointment by candidate (18 U.S.C. 599).
- 10 (u) Solicitation of political contributions (18 U.S.C. 602).
- 11 (v) Intimidation to secure political contributions (18 U.S.C. 606).
- 12 (w) Place of solicitation (18 U.S.C. 607).
- 13 (x) Theft of public money, property, or records (18 U.S.C. 641).
- 14 (y) Embezzlement or theft by court officers (18 U.S.C. 645).
- 15 (z) Theft or bribery concerning programs receiving federal funds (18 U.S.C.
16 666).
- 17 (aa) Extortion by officers or employees of the United States (18 U.S.C. 872).
- 18 (bb) Kickbacks from public works employees (18 U.S.C. 874).
- 19 (cc) Fraudulent or false statements or entries (18 U.S.C. 1001).
- 20 (dd) Frauds and swindles (18 U.S.C. 1341).
- 21 (ee) Fraud by wire, radio, or television (18 U.S.C. 1343).
- 22 (ff) Influencing or injuring officer or juror (18 U.S.C. 1503).
- 23 (gg) Interference with commerce by threats or violence (18 U.S.C. 1951).
- 24 (hh) Interstate and foreign travel or transportation in aid of racketeering
25 enterprises (18 U.S.C. 1952).
- 26 (ii) Prohibited activities (18 U.S.C. 1962).
- 27 (3) "Public retirement system" means any state, statewide, or any local
28 public retirement system, plan, or fund.

1 (4) "Public servant" means a public employee or an elected official as
2 defined in R.S. 42:1102 who is a member, former member, deferred retirement
3 option plan participant, or retiree under the provisions of any public retirement
4 system and who meets any of the following criteria:

5 (a) His first employment making him eligible for membership in a public
6 retirement system began on or after January 1, 2013.

7 (b) He was employed in a position making him eligible for membership in the
8 public retirement system prior to January 1, 2013, but had left any such position and
9 is reemployed in such a position on or after that date.

10 (c) He assumes an elective office on or after January 1, 2013, and by virtue
11 of that service or previous public service he is eligible for membership in a public
12 retirement system.

13 B.(1) Any public servant who is convicted for the commission of a public
14 corruption crime shall have any public retirement benefit calculated as provided in
15 this Subsection. In the event of such conviction, the system shall calculate such
16 person's benefit amount based only on an amount of service credit that could be
17 actuarially funded, as though purchased pursuant to R.S. 11:158(C)(1)(a) and (2),
18 using the dollar amount of employee contributions remitted to the system plus
19 interest on such contributions at the system's actuarially assumed rate of return.
20 Such service credit amount shall be used for calculation purposes only and shall not
21 affect retirement eligibility.

22 (2) Any options for payment of benefits after death, which are otherwise
23 applicable to members of public retirement systems upon retirement, shall remain
24 applicable to a person convicted of a public corruption crime; however, for purposes
25 of calculating retirement allowances pursuant to any option selected, the system shall
26 consider the benefit amount determined pursuant to Paragraph (1) of this Subsection
27 to be the maximum allowance available to such person.

28 (3) All of the convicted public servant's service credit attributable to
29 employer contributions and interest on those contributions shall be forfeited, and any

1 dollar amount of such employer contributions and interest, together with any funds
2 in the individual's deferred retirement option plan account, shall be applied to
3 reducing the balance of the unfunded accrued liability of the system in a manner
4 determined by the system's board of trustees. If the system has no unfunded accrued
5 liability, the employer contributions and interest shall revert to the system's trust.

6 C. The provisions of this Section shall not apply to any defined contribution
7 plan.

8 D. The provisions of this Section shall not apply to survivor benefits being
9 received by the surviving unmarried spouse, the surviving minor child, or the
10 surviving physically or mentally handicapped child who would otherwise be entitled
11 to a survivor benefit of a deceased member convicted of a public corruption crime.

12 E. Each public retirement system shall provide every public servant with an
13 attestation form explaining the provisions of this Section. Such public servant shall
14 be required to sign the form indicating that he has read it and understands the
15 contents thereof.

16 F.(1)(a) Upon conviction of a public servant of a public corruption crime, if
17 the court orders restitution as part of the sentence imposed pursuant to Code of
18 Criminal Procedure Article 883.2 or any specific criminal statute, all benefits
19 otherwise due under Subsection B of this Section shall be available to satisfy the
20 order of restitution. The system, upon being served with a copy of the court's order
21 after conviction, shall pay the amount necessary to satisfy the court order, to the
22 extent possible, from such benefits.

23 (b) Upon conviction of a public servant of a public corruption crime, if the
24 court orders payment of a fine as part of the sentence imposed, all benefits otherwise
25 due under Subsection B of this Section shall be available to satisfy the court-ordered
26 fine. The system, upon being served with a copy of the court's order, shall make
27 available to the sheriff or executive officer of the court of conviction such benefits
28 to the extent necessary to satisfy the court order. After collection by the sheriff or
29 court officer, the monies will be disposed of as otherwise provided in R.S. 15:571.11.

1 (2) If the benefits are not sufficient to satisfy both an order for restitution and
2 a fine, the benefits due under Subsection B of this Section shall be proportionally
3 divided for the satisfaction of both the restitution and the fine.

4 (3) The provisions of this Section shall supersede any provision of law
5 exempting public retirement benefits from garnishment, attachment, seizure, or other
6 process.

7 (4) Any benefits remaining after application of Subsection B of this Section
8 and after satisfaction of an order for restitution or fine shall be paid to the public
9 servant in accordance with applicable law.

10 G.(1) A parish prosecutor shall inform the secretary of the Department of
11 Public Safety and Corrections in writing when a conviction for a state public
12 corruption crime is entered against a person who the prosecutor knows, or has reason
13 to believe, is a member of a public retirement system and who is subject to the
14 provisions of this Section. The secretary shall compile such information and
15 transmit it to the appropriate public retirement system.

16 (2) The secretary of state, upon being notified by a United States attorney of
17 a felony conviction for a federal public corruption crime, whether or not such
18 conviction qualifies as a conviction as defined by this Section, shall promptly
19 transmit to each public retirement system information pertaining to such conviction.
20 Each public retirement system shall determine if the provisions of this Section apply
21 to the person convicted of such felony and shall determine if such conviction
22 qualifies as a conviction as that term is defined by this Section.

23 Section 2. This Act shall take effect and become operative if and when the proposed
24 amendment of Article X of the Constitution of Louisiana contained in the Act which
25 originated as House Bill No. ____ of this 2012 Regular Session of the Legislature is adopted
26 at a statewide election and becomes effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ligi

HB No. 10

Abstract: Provides for the forfeiture of public retirement benefits by a public servant convicted of a state or federal felony related to his office.

Proposed law provides for the forfeiture of retirement benefits by a public employee or elected official (hired or beginning service on or after Jan. 1, 2013) convicted of certain crimes related to the holding of office (public corruption crimes). Specifies the state and federal crimes conviction of which results in such forfeiture. Provides that conviction occurs when all appellate review is exhausted.

Proposed law specifically requires the forfeiture of all service credit attributable to employer contributions in the event of a conviction of a public corruption crime by a public servant. The retirement benefits of a public servant so convicted shall be calculated based on employee contributions alone. Such employee contributions shall determine the amount of service credit to be used in calculating his benefits. Provides that any payment options applicable to such persons upon retirement shall remain applicable, except that the reduced benefit amount calculated pursuant to proposed law shall be considered the maximum benefit amount.

Proposed law provides that the dollar amount of all employer contributions forfeited pursuant to proposed law shall be applied toward the unfunded accrued liability of the retirement system or shall become part of the system's assets if the system has no unfunded accrued liability.

Proposed law does not apply to any defined contribution plan nor to any survivor benefits payable to a surviving unmarried spouse, minor children, or physically or mentally handicapped children.

Proposed law requires every public retirement system to submit an attestation form to every member which explains the provisions of proposed law. Such member shall sign such form indicating that he understands the provisions of proposed law.

Proposed law provides that all benefits reduced pursuant to proposed law shall be available for the satisfaction of any court-ordered restitution or criminal fine. Provides that if the employee contributions are insufficient to satisfy both the restitution and the fine, the employee contributions shall be apportioned for the satisfaction of both.

Proposed law provides that a parish prosecutor shall inform the secretary of DPS&C in writing when a conviction has been obtained against a person to whom proposed law may apply. The secretary shall then report this information to the appropriate retirement system. Relative to convictions of federal felonies, requires the secretary of state to report information to the retirement system regarding any federal convictions upon which he receives notice from the U.S. attorney for any federal felony listed in proposed law. The retirement system shall determine if any of its members or retirees are the subject of such convictions and whether such convictions are final for purposes of proposed law.

Effective if and when the proposed amendment of Art. X §29(G) of the Constitution of La. contained in the Act which originated as HB ____ of the 2012 R.S. of the Legislature is adopted at the statewide election and becomes effective.

(Amends the heading of Subpart L of Part II of Chapter 4 of Subtitle I of Title 11 of the La. Revised Statutes of 1950; Adds R.S. 11:293)