

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 committed on
11 or after January 1, 2013, in which the sentencing judge finds the public servant acted
12 willfully and in the course and scope of his official capacity and the evidence
13 establishes any of the following:

14 (a) The public servant realized or attempted to realize a financial profit or
15 a financial gain for himself or for a third party.

16 (b) The public servant committed any criminal sexual act with or upon the
17 person of a minor, and there was a direct association between the public servant and
18 the minor related to the public servant's employment.

19 (3) "Public retirement system" means any state, statewide, or any local
20 public retirement system, plan, or fund.

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

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

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

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

4 B.(1) Following the conviction of a public corruption crime, the sentencing
5 court shall determine if the conviction warrants forfeiture as provided in this
6 Subsection or garnishment as provided in R.S. 11:292. In order to determine the
7 appropriate remedy the sentencing court shall review the following factors:

8 (a) The nature of the offense.

9 (b) The prior service of the public servant and the appropriateness of any
10 mitigating factors.

11 (2)(a) If the court determines that forfeiture is appropriate, the court may
12 order the forfeiture of the public servant's right to receive any benefit or payment of
13 any kind under this Title except a return of the amount contributed by the public
14 servant to the retirement system without interest, subject to Subparagraph (b) of this
15 Paragraph.

16 (b) If the court orders the public servant to make restitution to the state or
17 any political subdivision of the state for monetary loss incurred as a result of the
18 public corruption crime for which he is convicted, the court may order restitution to
19 be paid from the amount contributed by the public servant to the retirement system.

20 (c) Subject to the requirements of Paragraph (3) of this Subsection, the court
21 may award to the member's spouse, dependent, or former spouse, as an alternate
22 payee, some or all of the amount that, but for the order of forfeiture under
23 Subparagraph (a) of this Paragraph, may otherwise be payable. Upon order of the
24 court, the retirement system shall provide information concerning the member's
25 membership that the court considers relevant to the determination of the amount of
26 an award under this Paragraph. In determining the award, the court shall consider
27 the totality of the circumstances, including but not limited to:

28 (i) The role, if any, of the member's spouse, dependent, or former spouse in
29 connection with the crime.

1 (ii) The degree of knowledge, if any, possessed by the member's spouse,
2 dependent, or former spouse in connection with the crime.

3 (3) An award ordered under Subparagraph (2)(c) of this Subsection may not
4 require the retirement system to:

5 (a) Provide a type or form of benefit or an option not otherwise provided by
6 the retirement system.

7 (b) Provide increased benefits determined on the basis of actuarial value.

8 (c) Take an action contrary to the system's governing laws or plan provisions
9 other than the direct payment of the benefit awarded to the spouse, dependent, or
10 former spouse.

11 (4) All of the convicted public servant's service credit attributable to
12 employer contributions and interest on those contributions that are not otherwise
13 assigned pursuant to Subparagraph (2)(c) of this Subsection shall be forfeited, and
14 any dollar amount of such employer contributions and interest, together with any
15 funds in the individual's deferred retirement option plan account, shall be applied to
16 reducing the balance of the unfunded accrued liability of the system in a manner
17 determined by the system's board of trustees. If the system has no unfunded accrued
18 liability, the employer contributions and interest shall revert to the system's trust.

19 C. Notwithstanding the provisions of Subsection B of this Section, survivor
20 benefits being received by the surviving unmarried spouse, the surviving minor
21 child, or the surviving physically or mentally handicapped child who is entitled to
22 a survivor benefit of a deceased public servant convicted of a public corruption crime
23 shall be based solely on the amount of the public servant's benefit forfeited to the
24 retirement system and shall not be based on any amount remitted to the public
25 servant.

26 D. No provision of this Section shall impinge on any judicially recognized
27 community property interest of a current or former spouse.

28 E. Each public retirement system shall provide every public servant with an
29 attestation form explaining the provisions of this Section. Such public servant shall

1 be required to sign the form indicating that he has read it and understands the
2 contents thereof.

3 F.(1) A parish prosecutor shall inform the secretary of the Department of
4 Public Safety and Corrections in writing when a conviction for a state public
5 corruption crime is entered against a person who the prosecutor knows, or has reason
6 to believe, is a member of a public retirement system and who is subject to the
7 provisions of this Section. The secretary shall compile such information and
8 transmit it to the appropriate public retirement system.

9 (2) The secretary of state, upon being notified by a United States attorney of
10 a felony conviction for a federal public corruption crime, whether or not such
11 conviction qualifies as a conviction as defined by this Section, shall promptly
12 transmit to each public retirement system information pertaining to such conviction.

13 Section 2. This Act shall take effect and become operative if and when the proposed
14 amendment of Article X of the Constitution of Louisiana contained in the Act which
15 originated as House Bill No. 9 of this 2012 Regular Session of the Legislature is adopted at
16 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 "public corruption crimes". Defines "public corruption crime" as a state or federal felony committed on or after Jan. 1, 2013, in which the sentencing judge finds that the public servant acted willfully and in the course and scope of his official capacity and that any of the following apply:

- (1) The public servant realized or attempted to realize a financial gain for himself or for a third party.
- (2) The public servant committed any criminal sexual act with or upon the person of a minor, and there was a direct association between the public servant and the minor related to the public servant's employment.

Provides that conviction occurs when all appellate review is exhausted.

Proposed law allows the sentencing judge, in his discretion, to order forfeiture if he finds that the nature of the offense and the prior service of the public servant or any mitigating factors warrant such an order. If forfeiture is ordered, the public servant will lose his right to receive any benefits or payments from the retirement system except a return of his employee contributions without interest.

Proposed law allows the sentencing judge, in his discretion, to order restitution to the state or any political subdivision for monetary losses incurred as a result of the public corruption crime. Allows the judge to order restitution to be paid from the public servant's refunded employee contributions.

Proposed law allows the sentencing judge, in his discretion, to award to the public servant's spouse, former spouse, or dependent an amount from the forfeited benefits as an alternate payee. Provides factors for the court to consider when contemplating such an award:

- (1) The role, if any, of the member's spouse, dependent, or former spouse in connection with the crime.
- (2) The degree of knowledge, if any, possessed by the member's spouse, dependent, or former spouse in connection with the crime.

Proposed law provides that any award to a spouse, former spouse, or dependent cannot require the system to violate its own laws or provisions, provide a benefit not otherwise available to others, or to provide increased benefits determined on the basis of actuarial value.

Proposed law provides that all forfeited amounts not otherwise awarded to a spouse, former spouse, or dependent, shall be applied to the system's unfunded accrued liability (UAL).

Proposed law provides that survivor benefits to an otherwise eligible unmarried spouse, minor child, or handicapped child, are to be paid based on the forfeited amounts and not based on any amounts remitted to the public servant.

Provides that proposed law shall not impinge on any community property interest of a current or former spouse.

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 of the Constitution of La. contained in the Act which originated as HB No. 9 of the 2012 R.S. 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)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Retirement to the original bill.

1. Changes definition of "public corruption crime" from a list of specific statutes to a felony where the public servant acted willing and in the course and scope of his public office to realize financial gain or to commit a criminal sexual act with or upon the person of a minor.
2. Removes provisions relative to automatic forfeiture and calculation of benefits; provisions relative to death and survivor benefits; provisions relative to applicability to defined contribution plans; and provisions relative to court ordered restitution.
3. Allows a court to order forfeiture of retirement benefits except employee contributions. Provides factors for the court to consider.
4. Allows a court to order restitution for monetary loss incurred as a result of the public corruption crime from the public servant's employee contributions.
5. Allows a court to assign some or all of the forfeited benefits to the public servant's spouse, former spouse, or dependent. Provides factors for the court to consider when making such an assignment. Provides that unassigned service credit attributable to employer contributions and interest shall be applied to reducing the balance of the system's UAL.
6. Provides that survivor benefits shall be based on amounts forfeited and not on amounts remitted to the public servant.