

Regular Session, 2012

HOUSE BILL NO. 10

BY REPRESENTATIVES LIGI, ABRAMSON, ADAMS, ARNOLD, BILLIOT, STUART BISHOP, BROADWATER, BROSSETT, BURFORD, TIM BURNS, CHAMPAGNE, CHANEY, DANAHAY, DIXON, EDWARDS, GAINES, GAROFALO, GISCLAIR, GUINN, HARRIS, HARRISON, HAVARD, HENRY, HENSGENS, HOFFMANN, HOLLIS, HOWARD, JONES, KLECKLEY, NANCY LANDRY, LEGER, LORUSSO, MORENO, ORTEGO, PEARSON, PYLANT, REYNOLDS, RITCHIE, SCHRODER, SEABAUGH, ST. GERMAIN, TALBOT, THIBAUT, THOMPSON, WHITNEY, AND WILLMOTT

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 provide relative to forfeiture
6 of a portion of retirement benefits by such persons who are convicted of certain
7 felonies related to their offices; to provide relative to amounts awarded to spouses
8 or dependents; to provide relative to restitution; to provide relative to the rights of
9 spouses and former spouses; to provide relative to the employer and employee
10 contributions made on behalf of such persons; to require the Department of Public
11 Safety and Corrections and the secretary of state to report such office-related
12 felonies; and to provide for related matters.

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

1 Be it enacted by the Legislature of Louisiana:

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

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

6 LEGAL DETERMINATIONS

7 * * *

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

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

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

14 (2) "Public corruption crime" means a state or federal felony committed on
15 or after January 1, 2013, in which the sentencing judge finds the public servant acted
16 willfully and in the course and scope of his official capacity and the evidence
17 establishes any of the following:

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

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

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

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

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

3 (b) He was employed in a position making him eligible for membership in
4 a public retirement system prior to January 1, 2013, but he terminated his service
5 prior to that date and is reemployed in such a position on or after that date.

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

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

13 (a) The nature of the offense.

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

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

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

25 (c) Subject to the requirements of Paragraph (3) of this Subsection, the court
26 may award to the member's spouse, dependent, or former spouse, as an alternate
27 payee, some or all of the amount that, but for the order of forfeiture under
28 Subparagraph (a) of this Paragraph, may otherwise be payable. Upon order of the
29 court, the retirement system shall provide information concerning the member's

1 membership that the court considers relevant to the determination of the amount of
2 an award under this Subparagraph. The system shall also calculate the spousal share
3 of the public servant's benefit for the sentencing court in accordance with existing
4 community property law. Any dependent's share shall be calculated in the same
5 manner as a spousal share. In determining the award, the court shall consider the
6 totality of the circumstances, including but not limited to:

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

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

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

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

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

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

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

27 C. Notwithstanding the provisions of Subsection B of this Section, survivor
28 benefits being received by the surviving unmarried spouse, the surviving minor
29 child, or the surviving physically or mentally handicapped child who is entitled to

1 a survivor benefit of a deceased public servant convicted of a public corruption crime
2 shall be based solely on the amount of the public servant's benefit forfeited to the
3 retirement system and shall not be based on any amount remitted to the public
4 servant.

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

7 E. Each public retirement system shall create an attestation form explaining
8 the provisions of this Section and shall provide such attestation form to each
9 employing agency. Each employing agency shall provide every public servant with
10 such attestation form and such public servant shall be required to sign the form
11 indicating that he has read it and understands the contents thereof.

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

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

22 G. The provisions of this Section shall only apply to benefits earned on or
23 after January 1, 2013.

24 Section 2. This Act shall take effect and become operative if and when the proposed
25 amendment of Article X of the Constitution of Louisiana contained in the Act which
26 originated as House Bill No. 9 of this 2012 Regular Session of the Legislature is adopted at
27 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.

Requires the retirement system to calculate the spousal share of the public servant's benefit for the sentencing court. Further requires calculation by the system of a dependent's share, if applicable, in the same manner as the spousal share.

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 create an attestation form explaining the provisions of proposed law and to supply such forms to employing agencies. Requires employing agencies to provide the attestation form to every member. 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.

Proposed law provides that proposed law shall only apply to benefits earned on or after Jan. 1, 2013.

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.

House Floor Amendments to the engrossed bill.

1. Provides that only benefits earned on or after Jan. 1, 2013, shall be subject to forfeiture under proposed law.
2. Requires the system to calculate the spousal share of a public servant's benefit for the sentencing court in accordance with applicable community property laws and a dependent's share in the same manner.
3. Provides for the involvement of each employing agency in the completion of attestation forms.