
DIGEST

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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.