

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

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.11:272(E) and 293,
4 relative to retirement benefits; to provide relative to public servants who are
5 members, former members, or retirees of public retirement systems; to provide for
6 eligibility to receive such benefits; to provide relative to forfeiture of a portion of
7 retirement benefits by such persons who are convicted of certain felonies related to
8 their offices; to provide relative to amounts awarded to spouses or dependents; to
9 provide relative to restitution; to provide relative to the rights of spouses and former
10 spouses; to provide relative to the employer and employee contributions made on
11 behalf of such persons; to require the Department of Public Safety and Corrections
12 and the secretary of state to report such office-related felonies; and to provide for
13 related matters.

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

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. The heading of Subpart L of Part II of Chapter 4 of Subtitle I of Title 11
19 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted and
20 R.S.11:272(E) and 293 are hereby enacted to read as follows:

1 §272. Early retirement eligibility

2 * * *

3 E. Notwithstanding any provision of law to the contrary, service credit
4 originally earned on or before September 1, 1985, in a retirement system named in
5 Subsection A of this Section shall be utilized to determine applicability of the
6 provisions of Subsection B of this Section, even if the member received a refund of
7 contributions for such service, provided that the member has repaid the refund prior
8 to application for retirement.

9 * * *

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

11 LEGAL DETERMINATIONS

12 * * *

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

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

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

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

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

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

28 (3) "Public retirement system" means any state, statewide, or any local
29 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
8 a public retirement system prior to January 1, 2013, but he terminated his service
9 prior to that date and 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) Following the conviction of a public corruption crime, the sentencing
14 court shall determine if the conviction warrants forfeiture as provided in this
15 Subsection or garnishment as provided in R.S. 11:292. In order to determine the
16 appropriate remedy the sentencing court shall review the following factors:

17 (a) The nature of the offense.

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

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

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

29 (c) Subject to the requirements of Paragraph (3) of this Subsection, the court
30 may award to the member's spouse, dependent, or former spouse, as an alternate

1 payee, some or all of the amount that, but for the order of forfeiture under
2 Subparagraph (a) of this Paragraph, may otherwise be payable. Upon order of the
3 court, the retirement system shall provide information concerning the member's
4 membership that the court considers relevant to the determination of the amount of
5 an award under this Subparagraph. The system shall also calculate the spousal share
6 of the public servant's benefit for the sentencing court in accordance with existing
7 community property law. Any dependent's share shall be calculated in the same
8 manner as a spousal share. In determining the award, the court shall consider the
9 totality of the circumstances, including but not limited to:

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

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

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

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

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

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

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

1 C. Notwithstanding the provisions of Subsection B of this Section, survivor
2 benefits being received by the surviving unmarried spouse, the surviving minor
3 child, or the surviving physically or mentally handicapped child who is entitled to
4 a survivor benefit of a deceased public servant convicted of a public corruption crime
5 shall be based solely on the amount of the public servant's benefit forfeited to the
6 retirement system and shall not be based on any amount remitted to the public
7 servant.

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

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

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

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

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

1 Section 2. This Act shall take effect and become operative if and when the proposed
2 amendment of Article X of the Constitution of Louisiana contained in the Act which
3 originated as House Bill No. 9 of this 2012 Regular Session of the Legislature is adopted at
4 a statewide election and becomes effective.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____