

First Extraordinary Session, 2008

HOUSE BILL NO. 45

BY REPRESENTATIVE HENRY AND SENATOR SCALISE

RETIREMENT BENEFITS: Requires forfeiture of public retirement or pension benefits upon conviction of certain felonies

1 AN ACT

2 To enact R.S. 11:293, relative to public retirement or pension benefits; to provide relative
3 to the loss of the right to receive payment of retirement or pension benefits; to
4 provide circumstances under which certain retirement or pension benefits shall be
5 forfeited; to provide that final conviction of certain felonies associated with public
6 service shall operate to cause automatic forfeiture of such benefits; to specify the
7 felonies for which such forfeiture is mandatory; to provide for notice of conviction,
8 calculation of survivor benefits, and refund of employee contributions; to provide
9 relative to the effect of pardons on such forfeiture; to provide for an effective date;
10 and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 11:293 is hereby enacted to read as follows:

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

14 LEGAL DETERMINATIONS

15 * * *

16 §293. Forfeiture of benefits; felonies requiring forfeiture; payment of survivor
17 benefits; benefits not restored by pardon

18 A.(1)(a) In addition to any penalty otherwise provided by law, an elected or
19 appointed official or public employee of this state or of any political subdivision
20 thereof who has been finally convicted of or pleaded guilty or nolo contendere to the

1 commission of any of the crimes listed in Paragraph (2) of this Subsection shall
2 forfeit the rights and benefits associated with his membership in any Louisiana
3 public retirement or pension system, plan, or fund, supported in whole or in part by
4 public funds. The forfeiture of rights and benefits pursuant to this Section and the
5 determination of whether and in what amounts a survivor benefit is payable shall
6 apply to the monies in any Optional Retirement Plan or Deferred Retirement Option
7 Plan or similarly structured account.

8 (b) Any forfeiture required by this Section shall apply notwithstanding any
9 provision of law or any rule or regulation of any public retirement or pension system,
10 plan, or fund to the contrary, including the provisions of this Title exempting benefits
11 from seizure, garnishment, or execution. The provisions of this Section shall
12 supersede and control in case of any conflict.

13 (c) The prosecutor shall send notice of the final conviction requiring
14 forfeiture to the administrator of the retirement or pension system, plan, or fund of
15 which the official or employee is a member.

16 (2) The forfeiture provided in this Section shall apply only to a conviction
17 of a felony associated with and arising from an act or acts of misconduct by the
18 official or employee in the public office or employment for which retirement or
19 pension benefits accrued in the system, plan, or fund and which involves any of the
20 following:

21 (a) Accepting or giving, or offering to accept or to give, any bribe.

22 (b) The embezzlement of public money or things.

23 (c) Perjury.

24 (d) Obstruction of justice.

25 (e) Malfeasance in office.

26 (f) Public bribery.

27 (g) Corrupt influencing.

28 (h) Public salary extortion.

29 (i) Public payroll fraud.

1 (j) Public contract fraud.

2 (k) Conspiracy or attempt to commit any crime listed in this Subsection.

3 B.(1) Upon receipt of the notification of final conviction, the administrator
4 of the retirement or pension system, plan, or fund shall calculate service credit, final
5 compensation, and the balance in any Optional Retirement Plan or Deferred
6 Retirement Option Plan or similarly structured account as though the convicted
7 official or employee had died and application for survivor benefits or a refund was
8 made by any survivors on the date on which the misconduct for which he was
9 convicted began. Based upon such calculation and in accordance with the survivor
10 benefit provisions applicable to a member's death that does not occur in the discharge
11 of official duties, the administrator of the system, plan, or fund shall pay survivor
12 benefits to the appropriate beneficiaries, or a refund of employee contributions to the
13 official or employee if no survivor benefit is payable.

14 (2)(a) If the official or employee has received any benefit payments and
15 survivor benefits are payable, the administrator shall reduce or withhold the survivor
16 benefits until the amount of payments received by the official or employee in excess
17 of the survivor benefits due has been recouped by the system, plan, or fund.

18 (b) If the official or employee has received any benefit payments and a
19 refund of contributions is payable, the administrator shall reduce such refund by the
20 amount of benefit payments received. If the benefits received exceed the refund
21 amount, the official or employee shall pay the difference to the system, plan, or fund.

22 C.(1) The receipt of an automatic pardon pursuant to the provisions of R.S.
23 15:572 and Article IV, Section 5(E)(1) of the Constitution of Louisiana shall in no
24 case remit the forfeiture of benefits mandated pursuant to this Section.

25 (2) The receipt of a gubernatorial pardon pursuant to the provisions of R.S.
26 15:572 and Article IV, Section 5(E)(1) of the Constitution of Louisiana shall not
27 remit the forfeiture of benefits mandated pursuant to this Section unless the pardon
28 specifies such remission.

1 Section 2. This Act shall take effect and become operative if and when the proposed
2 constitutional amendment of Article I, Section 4(D) and Article X, Section 29(A), (B), and
3 (E)(5)(a) of the Constitution of Louisiana contained in the Act which originated as House
4 Bill No. _____ of this 2008 First Extraordinary Session of the Legislature is adopted at the
5 statewide election to be held on October 4, 2008, 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 [R.S. 1:13(B)] and do not constitute proof or indicia of legislative intent. [R.S. 24:177(E)]

Henry

HB No. 45

Abstract: Provides for the forfeiture of rights and benefits in a La. public retirement system for elected and appointed officials and public employees convicted of certain felony offenses committed by such official or employee in the office for which benefits accrued. Provides that survivor benefits shall be paid to such official's or employee's beneficiaries as though such official or employee had died on the date that misconduct began. Provides for a refund of employer contributions if no survivor benefit is payable.

Proposed law provides that in addition to any penalty otherwise provided by present law, an elected or appointed official or public employee of the state or any political subdivision thereof who has been finally convicted of or pleaded guilty or nolo contendere to the commission of any of the crimes listed in proposed law shall forfeit the rights and benefits associated with his membership in any La. public retirement or pension system, plan, or fund supported in whole or in part by public funds. Provides that the forfeiture of rights and benefits pursuant to proposed law and the determination of whether and in what amounts a survivor benefit is payable shall apply to the monies in any Optional Retirement Plan or Deferred Retirement Option Plan or similarly structured account.

Proposed law provides that this forfeiture shall apply notwithstanding any provision of present law or any rule or regulation of any public retirement or pension system plan or fund to the contrary, including the provisions of present law exempting benefits from seizure, garnishment, or execution. Provides that the prosecutor shall send notice of the final conviction requiring forfeiture to the system, plan, or fund of which the official or employee is a member.

Proposed law provides that the forfeiture provided in proposed law shall apply only to the commission of a felony associated with and arising from an act or acts of misconduct by the official or employee in the public office or employment for which retirement or pension benefits accrued, and which involved:

- (a) Accepting or giving, or offering to accept or to give, any bribe.
- (b) The embezzlement of public money or things.
- (c) Perjury.
- (d) Obstruction of justice.

- (e) Malfeasance in office.
- (f) Public bribery.
- (g) Corrupt influencing.
- (h) Public salary extortion.
- (i) Public payroll fraud.
- (j) Public contract fraud.
- (k) Conspiracy or attempt to commit any such crimes.

Proposed law provides that upon receipt of the notification of final conviction mandating forfeiture, the administrator of the retirement or pension system, plan, or fund shall calculate service credit, final compensation, and the balance in any Optional Retirement Plan or Deferred Retirement Option Plan or similarly structured account as though the convicted official or employee had died and application for benefits or a refund was made by any survivors on the date on which the misconduct for which he was convicted began. Provides that the system, plan, or fund shall pay any survivor benefits or a refund of contributions in accordance with the benefit provisions of such system, plan, or fund based upon such calculation.

Proposed law provides that if the official or employee has received any benefit payments, the administrator shall reduce or withhold the survivor benefits until the amount of payments received by the official or employee in excess of the survivor benefits due has been recouped by the system, plan, or fund. Provides that if the official or employee has received any benefit payments and a refund of contributions is payable, the administrator shall reduce such refund by the amount of benefit payments received. Provides that if the benefits received exceed the refund amount, the official or employee shall pay the difference to the system, plan, or fund.

Present constitution and present law provide for pardons for convicted felons. Present constitution (Art. IV, §5(E)(1)) provides the governor may grant reprieves to persons convicted of offenses against the state and, upon favorable recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses.

Present constitution further provides, however, a first offender convicted of a nonviolent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony, shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor.

Present law (R.S. 15:572) provides further relative to gubernatorial and automatic pardons.

Proposed law retains present constitution and present law.

Proposed law provides that the receipt of an automatic pardon pursuant to provisions of present law (R.S. 15:572) or present constitution (Art. IV, §5(E)(1)) shall in no case remit the forfeiture of benefits mandated pursuant to proposed law.

Proposed law further provides that the receipt of a gubernatorial pardon pursuant to present law (R.S. 15:572) and present constitution (Art. IV, §5(E)(1)) shall not remit the forfeiture of benefits mandated pursuant to proposed law unless the pardon specifies such remission.

Effective if and when the proposed amendment of Art. I, §4(D) and Art. X, §29(A), (B), and (E)(5)(a) of the Constitution of La. contained in the Act which originated as House Bill No. _____ of this 2008 1st E.S. of the Legislature is adopted at the statewide election to be held on Oct. 4, 2008, and becomes effective.

(Adds R.S. 11:293)