
DIGEST

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Henry

HB No. 51

Abstract: Provides for the forfeiture of rights and benefits in a La. public retirement system for elected officials convicted of certain felony offenses committed by such official in the office for which benefits accrued. Provides that survivor benefits shall be paid to such official's beneficiaries as though such official 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 official 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 in the public office 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 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 survivor benefit provisions of such system, plan, or fund based upon such calculation.

Proposed law provides that if the official has received any benefit payments, the administrator shall reduce or withhold the survivor benefits until the amount of payments received by the official in excess of the survivor benefit due has been recouped by the system, plan, or fund. Provides that if the official 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 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, Sec. 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 non-violent 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 (Article IV, Section 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 (Article IV, Section 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 Article I, Section 4(D) and Article X, Section 29(A), (B), and (E)(5)(a) of the Constitution of Louisiana contained in the Act which originated as House Bill No. _____ of this 2008 First Extraordinary Session of the Legislature is adopted at the statewide election to be held on October 4, 2008, and becomes effective.

(Adds R.S. 11:293)