

HOUSE No. 4555

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 4, 2018.

The committee on Public Service to whom was referred the report of the Special Commission on Pension Forfeiture (pursuant to Section 151 of Chapter 133 of the Acts of 2016, as amended by Section 19A of Chapter 5 of the Acts of 2017) so much as relates to pension forfeiture (Senate, No. 2074, Appendix A), reports recommending that the accompanying bill (House, No. 4555) ought to pass.

For the committee,

JERALD A. PARISELLA.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to pension forfeiture.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Paragraph (m) of subdivision 1 of section 5 of chapter 32 of the general
2 laws, as appearing in the 2014 Official Edition, is hereby amended in line 76 by adding after the
3 word “contrary”, the following: “except as provided in section 15 of this chapter,”.

4 SECTION 2. Subdivision 1 of section 10 of chapter 32 of the general laws, as appearing
5 in the 2014 Official Edition, is hereby amended by striking the phrase “without moral turpitude
6 on his part” in lines 6,9,84 and 126.

7 SECTION 3. Section 15 of chapter 32 of the general laws is hereby amended by striking
8 everything after the title and inserting in place thereof the following new section 15.

9 Section 15.

10 (1) Initiation of Forfeiture Proceedings. Proceedings under this section may be initiated
11 by the board or the commission. The board shall notify the member by certified mail when
12 proceedings are initiated. If the member refuses the delivery of the mail, it shall be deemed to

13 have been received. Unless otherwise agreed to by the parties, a hearing shall be held no less
14 than ten days nor more than ninety days after the member has received notification. The board
15 shall conduct the hearing pursuant to the provisions of 840 CMR 10.12. The board shall prepare
16 and file with its clerk or secretary a certificate containing its findings and decision, copies of
17 which shall be sent to the proper parties within fifteen days after completion of such hearing.

18 (2) Forfeiture of a retirement allowance upon conviction. Upon final conviction of a
19 felony criminal offense involving violation of the laws applicable to a member's office or
20 position or arising out of and in the course of their employment, a member shall be subject to the
21 forfeiture provisions of this section. A retirement board, upon notification of such conviction of
22 a member, must hold a hearing to determine whether the crimes for which a member was
23 convicted involved the laws applicable to the member's office or position or if said criminal
24 offenses were committed while the member was in the course of his or her employment, the total
25 value of the member's potential retirement benefits, and the amount of said benefits which shall
26 be forfeited. For the purposes of this section, 'criminal offense involving violation of the laws
27 applicable to a member's office or position,' shall also include, but not be limited to, in the case
28 of a member whose primary job responsibilities involve contact with children or any member of
29 the Massachusetts Teachers' Retirement System or a teacher who is a member of the Boston
30 Retirement System, a conviction for knowing purchase or possession of visual material of a child
31 depicted in sexual conduct under section 29C of chapter 272 of the general laws, or a conviction
32 of a sex offense involving a child as defined in section 178C of chapter 6 of the general laws
33 whom the member has contact with as part of his or her official duties, or a conviction of any
34 other sex offense or sexually violent offense, as those terms are defined in said section 178C, in

35 which the victim was any person under the age of 18 whom the member had contact with as part
36 of his or her official duties.

37 (3) Forfeiture amount. Any member with ten or more years of creditable service on the
38 date of the offense who is subject to forfeiture under the foregoing paragraph (2) shall forfeit
39 their retirement allowance as determined by the board. A member's allowance shall be reduced
40 by either one-third, two-thirds, to a minimum allowance or their right to an allowance shall be
41 forfeited entirely. Such minimum allowance shall be equal to the amount a member would
42 receive in group 1 having ten years of creditable service and at the minimum age for a group 1
43 employee; provided that in no event shall a member whose pension has been reduced to the
44 minimum allowance be eligible for any retirement benefit prior to reaching the minimum age for
45 a group 1 employee; and provided further that, except in cases of total forfeiture, a reduced
46 retirement allowance shall not be reduced below the amount of the annual annuity portion. Such
47 reduced allowance shall be payable for the life of the member; provided that, if the member
48 retires having elected option (c) the beneficiary shall receive, upon the death of the member, the
49 option (c) benefit as if forfeiture had not occurred, based on the age and actual creditable service
50 at the time of the member's retirement, if the board determines that the beneficiary (i) had no
51 role in the illegal conduct for which the member was convicted, (ii) did not have knowledge of
52 the illegal conduct, and (iii) did not commit nor conspire to commit the murder or voluntary
53 manslaughter of the member upon whom the retirement allowance is based. In the event the
54 entire allowance is forfeited, the member shall not be entitled to receive a retirement allowance
55 under the provisions of section one to 28, nor shall any beneficiary be entitled to receive a
56 retirement allowance under such provisions on account of such member. Further, in the event of
57 total forfeiture, unless otherwise prohibited by law, a member or beneficiary shall receive only a

58 return of their accumulated total deductions; provided, however, that the rate of regular interest
59 for the purpose of calculating accumulated total deductions shall be zero. Any retirement
60 allowance received by a member up to the decision of total forfeiture by a board shall be offset
61 against and reduce the accumulated total deductions otherwise due the member. In determining
62 the amount of the forfeiture the board must consider and make findings of fact relative to the
63 following factors:

64 (1) the severity of the crime for which the member was convicted including the sentence
65 imposed as well as the maximum sentence provided for by law;

66 (2) the amount of monetary loss suffered by the state, municipality, political subdivision,
67 or by any other person as a result of the crime for which the member was convicted or the
68 financial gain realized by the member;

69 (3) the degree of public trust reposed in the member by virtue of the member's office or
70 position and the degree to which it was violated;

71 (4) if the crime was part of a fraudulent scheme against the state or political subdivision,
72 the role of the member in the fraudulent scheme;

73 (5) any recommendation by the prosecuting attorney or their office to the degree of
74 forfeiture; provided further that, any decision by a board to entirely forfeit a member's benefit
75 shall be consistent with the recommendation of the prosecuting attorney or their office; and

76 (6) any such other factors as, in the judgment of the board, justice may require.

77 Any member who has had their retirement allowance forfeited entirely or has had a
78 portion of their retirement allowance forfeited under this paragraph shall be ineligible to become

79 a member of a different retirement system and is also prohibited from increasing their allowance
80 from the forfeited amount except by cost of living increases granted pursuant to sections 102 and
81 103.

82 Any member who has had their retirement allowance forfeited entirely or has had a
83 portion of their retirement allowance forfeited under this paragraph shall cease to be an active
84 member of the retirement system and shall be ineligible for membership in any retirement
85 system.

86 (4) Forfeiture for members having less than ten years of creditable service. Any member,
87 having less than ten years of creditable service on the date the offense is committed, who upon
88 conviction is subject to the provisions of this section shall forfeit all rights to a retirement
89 allowance based upon any creditable service prior to and after the date of the offense and shall
90 receive a return of his accumulated total deductions; provided, however, that the rate of regular
91 interest for the purpose of calculating accumulated total deductions shall be zero. The member
92 shall thereupon cease to be a member in the retirement system and shall be ineligible to become
93 a member of any retirement system.

94 (5) Notification. If a current employer, last employer, the attorney general or a district
95 attorney becomes aware of a final conviction of a member of a retirement system under
96 circumstances which may require forfeiture of the member's rights to a pension, or retirement
97 allowance pursuant to this chapter, section 59 of chapter 30 or section 25 of chapter 268A, they
98 shall immediately notify the retirement board and the commission of such conviction.

99 (6) Repayment of allowance. If a member's final conviction of an offense results in a
100 forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the

101 member to repay all benefits in excess of the allowable amount received after the date of the
102 offense of which the member was convicted. Following a member's conviction and partial
103 forfeiture, the member's retirement allowance will be reduced, upon such terms and conditions
104 as the board may determine, until all excess payment amounts are recovered.

105 (7) Misreported Salary. In no event shall any member be entitled to receive a retirement
106 allowance under this chapter, which is based upon a salary that was intentionally concealed from
107 or intentionally misreported to the commonwealth, or any political subdivision, district or
108 authority of the commonwealth. If a member intentionally concealed compensation from or
109 intentionally misreported compensation to an entity to which the member was required to report
110 the compensation, even if the reporting was not required for purposes of calculating the
111 member's retirement allowance, the member's retirement allowance shall be based only upon the
112 regular compensation actually reported to that entity or the amount reported to the board,
113 whichever is lower. Unless otherwise prohibited by law, such member shall receive a return of
114 any accumulated total deductions paid on amounts in excess of the compensation actually
115 reported, but no interest shall be payable on the accumulated deductions returned to the member.
116 The board shall notify the commission of any proceedings commenced pursuant to this
117 subdivision and shall provide any and all documents relating to said proceedings upon request of
118 the commission. Notwithstanding the waiver provisions of paragraph (a) of subdivision 3 of
119 section 21 of chapter 32 of the general laws any calculations performed pursuant to this section
120 will be submitted to the commission for approval.

121 (8) Appeal of Forfeiture. Any person who is aggrieved by a decision made pursuant to
122 this section regarding the forfeiture of all or any portion of a member's retirement allowance
123 under this section may, within thirty days after the certification of the decision bring a petition in

124 the superior court. This action shall be commenced in the superior court in which a member was
125 convicted, or in Suffolk Superior Court, or in the Massachusetts Superior Court covering the
126 geographic area in which a member resides. The court shall review all legal issues under a de
127 novo standard, but may base its determination either on the administrative record below, or may,
128 in its discretion, request additional evidence.

129 (9) Restitution. If a member has been found to have misappropriated funds or property of
130 their employer, restitution may be made using all or a portion of the total deductions of the
131 member on account with a retirement system. If restitution is made using the accumulated total
132 deductions of the member on account with a retirement system then the annuity portion of any
133 retirement allowance will be reduced when a retirement allowance becomes effective or when a
134 retirement allowance is resumed, as the case may be. The pension portion of the retirement
135 allowance shall remain unchanged from the allowance determined using the accumulated total
136 deductions in the member's account prior to restitution.

137 SECTION 4. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line 63
138 by striking the phrase: "or any member who is aggrieved by any action taken or decision of a
139 board or the public employee retirement administration commission rendered with reference to
140 his dereliction of duty as set forth in section 15,".

141 SECTION 5. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line
142 113 by adding after the word "rendered": , except decisions made or actions taken pursuant to
143 section 15 of this chapter,.

144 SECTION 6. Section 105 of said chapter 32 is hereby amended by adding the following
145 paragraph;

146 (d) Any member having had their retirement allowance forfeited entirely or having had
147 any portion of their retirement allowance forfeited pursuant to section 15 of this chapter shall be
148 ineligible for reinstatement to service under the provisions of this section.

149 SECTION 7. Paragraph (b) of subdivision (2) of section (8) of chapter 32 is hereby
150 amended by inserting in line 105 after the word “compensation”: ; provided, however, that any
151 member who has had their retirement allowance forfeited entirely or had any portion of their
152 retirement allowance forfeited pursuant to section 15 shall not become an active member of the
153 retirement system upon reinstatement but shall contribute to the deferred compensation fund
154 established by section 64D of chapter 29.