

SENATE No. 2074, Appendix A

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. Public Service.

The Commonwealth of Massachusetts

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

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

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

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

(3) Forfeiture amount. Any member with ten or more years of creditable service on the date of the offense who is subject to forfeiture under the foregoing paragraph (2) shall forfeit a portion of their retirement allowance as determined by the board. A member's allowance shall be reduced by one-third, two-thirds or to a minimum allowance, such minimum allowance being equal to that which a member would receive in group 1 having ten years of creditable service and at the minimum age for a group 1 employee; provided that in no event shall a member whose pension has been reduced to the minimum allowance be eligible for any retirement benefit prior to reaching the minimum age for a group 1 employee; and provided further that in no event shall a member's retirement allowance be reduced below the amount of the annual annuity portion. Such reduced allowance shall be payable for the life of the member; provided that, if the member retires having elected option (c) the beneficiary shall receive, upon the death of the member, the option (c) benefit as if forfeiture had not occurred, based on the age and actual creditable service at the time of the member's retirement, if the board determines that the beneficiary (i) had no role in the illegal conduct for which the member was convicted, (ii) did not have knowledge of the illegal conduct, and (iii) did not commit nor conspire to commit the murder or voluntary manslaughter of the member upon whom the retirement allowance is based. In determining the amount of the forfeiture the board must consider and make findings of fact relative to the following factors:

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

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

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

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

(5) any recommendation by the prosecuting attorney general or district attorney relative to the degree of forfeiture; and

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

Any member who has had a portion of their retirement allowance forfeited under this paragraph shall be ineligible to become a member of a different retirement system and is also prohibited from increasing their allowance from the forfeited amount except by cost of living increases granted pursuant to sections 102 and 103.

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

(4) Forfeiture for members having less than ten years of creditable service. Any member, having less than ten years of creditable service on the date the offense is committed, who upon conviction is subject to the provisions of this section shall forfeit all rights to a retirement allowance based upon any creditable service prior to and after the date of the offense and shall

78 receive a return of his accumulated total deductions; provided, however, that the rate of regular
79 interest for the purpose of calculating accumulated total deductions shall be zero. The member
80 shall thereupon cease to be a member in the retirement system and shall be ineligible to become
81 a member of any retirement system.

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

87 (6) Repayment of allowance. If a member's final conviction of an offense results in a
88 forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the
89 member to repay all benefits in excess of the allowable amount received after the date of the
90 offense of which the member was convicted. Following a member's conviction and partial
91 forfeiture, the member's retirement allowance will be reduced, upon such terms and conditions
92 as the board may determine, until all excess payment amounts are recovered.

93 (7) Misreported Salary. In no event shall any member be entitled to receive a retirement
94 allowance under this chapter, which is based upon a salary that was intentionally concealed from
95 or intentionally misreported to the commonwealth, or any political subdivision, district or
96 authority of the commonwealth. If a member intentionally concealed compensation from or
97 intentionally misreported compensation to an entity to which the member was required to report
98 the compensation, even if the reporting was not required for purposes of calculating the
99 member's retirement allowance, the member's retirement allowance shall be based only upon the

regular compensation actually reported to that entity or the amount reported to the board, whichever is lower. Unless otherwise prohibited by law, such member shall receive a return of any accumulated total deductions paid on amounts in excess of the compensation actually reported, but no interest shall be payable on the accumulated deductions returned to the member. The board shall notify the commission of any proceedings commenced pursuant to this subdivision and shall provide any and all documents relating to said proceedings upon request of the commission. Notwithstanding the waiver provisions of paragraph (a) of subdivision 3 of section 21 of chapter 32 of the general laws any calculations performed pursuant to this section will be submitted to the commission for approval.

(8) Appeal of Forfeiture. Any person who is aggrieved by a decision made pursuant to this section regarding the forfeiture of any portion of a member's retirement allowance under this section may, within thirty days after the certification of the decision bring a petition in the superior court. This action shall be commenced in the superior court in which a member was convicted, or in Suffolk Superior Court, or in the Massachusetts Superior Court covering the geographic area in which a member resides. The court shall review all legal issues under a de novo standard, but may base its determination either on the administrative record below, or may, in its discretion, request additional evidence.

(9) Restitution. If a member has been found to have misappropriated funds or property of their employer, restitution may be made using all or a portion of the total deductions of the member on account with a retirement system. If restitution is made using the accumulated total deductions of the member on account with a retirement system then the annuity portion of any retirement allowance will be reduced when a retirement allowance becomes effective or when a retirement allowance is resumed, as the case may be. The pension portion of the retirement

123 allowance shall remain unchanged from the allowance determined using the accumulated total
124 deductions in the member's account prior to restitution.

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

129 SECTION 5. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line
130 113 by adding after the word "rendered": , except decisions made or actions taken pursuant to
131 section 15 of this chapter,.

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

134 (d) Any member having had any portion of their retirement allowance forfeited pursuant
135 to section 15 of this chapter shall be ineligible for reinstatement to service under the provisions
136 of this section.

137 SECTION 7. Paragraph (b) of subdivision (2) of section (8) of chapter 32 is hereby
138 amended by inserting in line 105 after the word "compensation": ; provided, however, that any
139 member who has had any portion of their retirement allowance forfeited pursuant to section 15
140 shall not become an active member of the retirement system upon reinstatement but shall
141 contribute to the deferred compensation fund established by section 64D of chapter 29.