

HOUSE No. 17

So much of the recommendations of the Massachusetts Teachers' Retirement System (House, No. 15) as relates to pension forfeiture. Public Service.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 a
22 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.

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

59 be zero. Any retirement allowance received by a member up to the decision of total forfeiture by
60 a board shall be offset against and reduce the accumulated total deductions otherwise due the
61 member. In determining the amount of the forfeiture the board must consider and make findings
62 of fact relative to the following factors:

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

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

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

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

72 (5) any recommendation by the prosecuting attorney or their office to the degree of
73 forfeiture; and

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

75 Any member who has had their retirement allowance forfeited entirely or has had a
76 portion of their retirement allowance forfeited under this paragraph shall be ineligible to become
77 a member of a different retirement system and is also prohibited from increasing their allowance
78 from the forfeited amount except by cost of living increases granted pursuant to sections 102 and
79 103.

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

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

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

97 (6) Repayment of allowance. If a member's final conviction of an offense results in a
98 forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the
99 member to repay all benefits in excess of the allowable amount received after the date of the
100 offense of which the member was convicted. Following a member's conviction and partial

101 forfeiture, the member's retirement allowance will be reduced, upon such terms and conditions
102 as the board may determine, until all excess payment amounts are recovered.

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

119 (8) Appeal of Forfeiture. Any person who is aggrieved by a decision made pursuant to
120 this section regarding the forfeiture of all or any portion of a member's retirement allowance
121 under this section may, within thirty days after the certification of the decision bring a petition in
122 the superior court. This action shall be commenced in the Massachusetts Superior Court covering
123 the geographic area in which a member resides or was convicted, or in Suffolk Superior Court.

124 The court shall review all legal issues under a de novo standard, but may base its determination
125 either on the administrative record below, or may, in its discretion, request additional evidence.

126 (9) Restitution. In no event shall any member after final conviction of an offense
127 involving the funds or property of any governmental unit in which or by which he is employed or
128 was employed at the time of his retirement or termination of service, as the case may be, or of
129 any system of which he is a member, be entitled to receive a retirement allowance or a return of
130 his accumulated total deductions under the provisions of sections one to twenty-eight inclusive,
131 nor shall any beneficiary be entitled to receive any benefits under such provisions on account of
132 such member, unless and until full restitution for any such misappropriation has been made.
133 Restitution may be made using all or a portion of the total deductions of the member on account
134 with a retirement system. If restitution is made using the accumulated total deductions of the
135 member on account with a retirement system then the annuity portion of any retirement
136 allowance will be reduced when a retirement allowance becomes effective or when a retirement
137 allowance is resumed, as the case may be. The pension portion of the retirement allowance shall
138 remain unchanged from the allowance determined using the accumulated total deductions in the
139 member's account prior to restitution.

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

144 SECTION 5. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line
145 113 by adding after the word “rendered”: , except decisions made or actions taken pursuant to
146 section 15 of this chapter,.

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

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

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