

1 H.41

2 Introduced by Representatives Lippert of Hinesburg and Sweaney of Windsor

3 Referred to Committee on

4 Date:

5 Subject: Tax and finance; public moneys; pensions; forfeiture

6 Statement of purpose of bill as introduced: This bill proposes to require the
7 Attorney General or State's Attorney to petition a judge to order the partial or
8 total civil forfeiture of retirement payments to public officials convicted of
9 certain crimes related to their employment.

10 An act relating to civil forfeiture of retirement payments to public officials
11 convicted of certain crimes

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 32 V.S.A. § 607 is added to read:~~

14 ~~§ 607. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE~~

15 ~~(a) The General Assembly finds and declares that honorable public service~~
16 ~~is a condition precedent to receiving retirement payments. Each time a~~
17 ~~member is reelected, promoted, or otherwise changes his or her employment~~
18 ~~relationship, he or she shall be deemed to consent and agree to be subject to the~~
19 ~~provisions of this subchapter, including but not limited to this condition~~
20 ~~precedent.~~

1 ~~(b) Notwithstanding any other provision of law, on or after the effective~~
2 ~~date of this subchapter, if any member is convicted of or pleads guilty or nolo~~
3 ~~contendere to any crime related to public office in any state, territory, tribal, or~~
4 ~~federal court, he or she shall be considered to have served dishonorably, and~~
5 ~~his or her retirement payments may be subject to civil forfeiture as set forth in~~
6 ~~this subchapter.~~

7 Sec. 2. 32 V.S.A. § 608 is added to read:

8 § 608. DEFINITIONS

9 As used in this subchapter.

10 (1) "Contribution" shall have the same meaning as "accumulated
11 contribution" set forth in 3 V.S.A. § 455(a)(11), 16 V.S.A. § 1931(1), and
12 24 V.S.A. § 5051(1), and shall include contributions to any defined
13 contribution plan under 3 V.S.A. § 500(c) or 24 V.S.A. § 5070, and any other
14 retirement plan of a municipality authorized under Section 401a of the Internal
15 Revenue Code.

16 (2) "Crime related to public office" means any of the following criminal
17 offenses committed in connection with the member's public office or
18 employment, or which the member's position placed the member in a position
19 to commit:

20 (A) The committing, aiding, or abetting of an embezzlement of
21 public funds from the State, a county, municipality, or quasi-public agency.

1 ~~(B) The committing, aiding, or abetting of any felonious theft from~~
2 ~~the State, a county, municipality, or quasi-public agency;~~

3 (C) Bribery in connection with service as a public official; or

4 (D) The committing of any felony by a member who, willfully and
5 with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a
6 financial profit, gain, or advantage for himself or herself or for some other
7 person, through the use or attempted use of the power, rights, privileges, or
8 duties of his or her position as a public official.

9 (3) "Member" shall have the same meaning as in 3 V.S.A. § 455(a)(11),
10 16 V.S.A. § 1931(10), and 24 V.S.A. § 5051(13), and shall include anyone
11 participating in a defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A.
12 § 5070, and any other retirement plan of a municipality authorized under
13 Section 401a of the Internal Revenue Code.

14 (4) "Public official" shall mean any elected official of the State or a
15 subdivision thereof, and any employee of the State, a county, or municipality,
16 including any employee of a supervisory union school district. Public official
17 shall include "employees" as defined in 3 V.S.A. § 455(a)(9) and 24 V.S.A.
18 § 5051(10), and "teachers" as defined in 16 V.S.A. § 1931(20).

19 (5) "Retirement payments" shall include "pensions" as defined in
20 3 V.S.A. § 455(a)(14), 16 V.S.A. § 1931(12), 24 V.S.A. § 5051(16), as well as
21 payments made under defined contribution plans under 3 V.S.A. § 500,

1 ~~24 V.S.A. § 5070, and any other retirement plan of a municipality authorized~~
2 under Section 401a of the Internal Revenue Code.

3 Sec. 3. 32 V.S.A. § 609 is added to read:

4 § 609. NOTICE; FORFEITURE; FACTORS; INNOCENT DEPENDENTS
5 AND BENEFICIARIES; APPLICATION

6 (a) Upon the filing of any charge of a crime related to public office against
7 a member, the prosecuting officer shall inform the Attorney General or State's
8 Attorney.

9 (b) If a member is convicted of or pleads guilty or nolo contendere to a
10 crime related to public office in any state, territory, tribal, or federal court, the
11 Attorney General or State's Attorney shall petition the Civil Division of the
12 Superior Court for an order to revoke or reduce the retirement payments to
13 which the member is otherwise entitled under law for service as a public
14 official.

15 (c) A copy of the petition shall be sent by certified mail to the member and
16 any known spouse, dependent, or designated beneficiary of the member.

17 (d) In determining the degree to which the member's retirement payments
18 shall be forfeited, the Court shall consider and make findings on the following
19 factors:

1 ~~(1) the severity of the crime related to public office for which the~~
2 ~~member has been convicted or to which the member has pled guilty or nolo~~
3 ~~contendere;~~

4 ~~(2) the amount of monetary loss suffered by the State, a county,~~
5 ~~municipality, or quasi-public agency or by any other person as a result of the~~
6 ~~crime related to public office;~~

7 ~~(3) the degree of public trust reposed in the member by virtue of the~~
8 ~~member's position as a public official;~~

9 ~~(4) if the crime related to public office was part of a fraudulent scheme~~
10 ~~against the State, a county, municipality, or quasi-public entity, the role of the~~
11 ~~member in the fraudulent scheme; and~~

12 ~~(5) any such other factors as, in the judgment of the Court, justice may~~
13 ~~require.~~

14 ~~(e) If the Court determines that a member's retirement payments should be~~
15 ~~forfeited to any degree, it may, after taking into consideration the financial~~
16 ~~needs and resources of any innocent spouse, dependents, and designated~~
17 ~~beneficiaries of the member, order that some or all of the retirement payments~~
18 ~~be paid to any innocent spouse, dependent, or beneficiary as justice may~~
19 ~~require. In determining whether to make an award under this section, the~~
20 ~~Court shall consider:~~

1 ~~(1) the role, if any, of the member's spouse, dependent, or designated~~
2 ~~beneficiary in connection with the offense;~~

3 ~~(2) the degree of knowledge, if any, possessed by the member's spouse,~~
4 ~~dependent, or designated beneficiary in connection with the offense; and~~

5 ~~(3) the financial needs and resources of the member's spouse,~~
6 ~~dependent, or designated beneficiary.~~

7 ~~(f) If the Court determines that a member's retirement payments should not~~
8 ~~be forfeited to any degree, it shall order that retirement payments be made to~~
9 ~~the member.~~

10 ~~(g) This subchapter shall not apply to retirement payments that accrued~~
11 ~~prior to the effective date of this subchapter or to crimes committed before the~~
12 ~~effective date of this subchapter.~~

13 Sec. 4. 32 V.S.A. § 610 is added to read:

14 § 610. PROCEDURE AND APPEALS

15 (a) Venue for petitions under this subchapter shall be in the Superior Court,
16 Washington Civil Division.

17 (b) Hearings under this subchapter shall be conducted by the Court without
18 a jury and shall be subject to the Vermont Rules of Civil Procedure as
19 consistent with this subchapter. The State shall have the burden of proof by a
20 preponderance of the evidence. Affidavits of witnesses shall be admissible
21 evidence which may be rebutted by witnesses called by either party. The

1 ~~affidavits shall be delivered to the other party at least five days prior to the~~
2 ~~hearing.~~

3 ~~(c) An order under this subchapter may be appealed as a matter of right to~~
4 ~~the Supreme Court by the Attorney General or State's Attorney that filed the~~
5 ~~petition, the member, or the member's spouse, dependent, or designated~~
6 ~~beneficiary.~~

7 Sec. 5. 32 V.S.A. § 611 is added to read:

8 § 611. RETURN OF CONTRIBUTIONS; EXEMPTIONS; QUALIFIED

9 DOMESTIC RELATIONS ORDERS

10 (a) Any member whose retirement payments are revoked or reduced
11 pursuant to section 609 of this title shall be entitled to a return of his or her
12 contribution paid into the relevant retirement system or systems, without
13 interest. Any member of a defined contribution plan under 3 V.S.A. § 500(c),
14 24 V.S.A. § 5070, or similar retirement plan of a municipality authorized under
15 Section 401a of the Internal Revenue Code, shall be entitled to his or her
16 contribution, without interest, in proportion to the amount his or her retirement
17 payment was reduced.

18 (b) Notwithstanding the provisions of subsection (a) of this section, no
19 payments in return of contributions shall be made or ordered unless and until
20 the Civil Division of the Superior Court determines that the member whose
21 retirement payments have been revoked or reduced pursuant to section 609 of

1 ~~this title has satisfied in full any judgments or orders rendered by any court of~~
2 competent jurisdiction for the payment of restitution for losses incurred as a
3 result of the crime related to public office. If the Court determines that the
4 member whose retirement payments have been revoked or reduced under
5 section 609 has failed to satisfy any outstanding judgment or order of
6 restitution rendered by any court of competent jurisdiction, it may order that
7 any funds otherwise due to such member as a return of contribution, or any
8 portion thereof, be paid in satisfaction of the judgment or order.

9 (c) No provision of section 609 of this title or this section shall be
10 construed to prohibit or limit any payment made pursuant to a qualified
11 domestic relations order issued prior to any such conviction or plea by:

12 (1) any member who is convicted of or pleads guilty or nolo contendere
13 to any crime related to public office; or

14 (2) any state, county, or municipal agency responsible for the
15 administration of such payment on behalf of such public official.

16 (d) Notwithstanding the provisions of section 609 of this title, no retirement
17 payments shall be reduced or revoked if the Internal Revenue Service
18 determines that such reduction or revocation will negatively affect or
19 invalidate the status of a retirement plan under Section 401(a) of the Internal
20 Revenue Code of 1986, 26 U.S.C. § 401, or any subsequent corresponding
21 Internal Revenue Code of the United States, as from time to time amended.

1 ~~Sec. 6. 32 V.S.A. § 612 is added to read:~~

2 § 612. COLLECTIVE BARGAINING AGREEMENTS

3 No collective bargaining agreement entered into on or after the effective
4 date of this subchapter shall contain any provision that limits the application of
5 the provisions of sections 607–611 of this title to any public official.

6 Sec. 7. EFFECTIVE DATE

7 This act shall take effect on July 1, 2013.

Sec. 1. 32 V.S.A. chapter 7, subchapter 7 is added to read:

Subchapter 7. Forfeiture of Public Employee Retirement Benefits

§ 621. STATEMENT OF PURPOSE

It is the purpose of this subchapter to establish a procedure by which the
pension benefits of a public employee convicted of certain crimes may be
forfeited. Honorable public service is a condition precedent for a public
employee to receive retirement benefits, and any public employee who is
convicted of any of the designated crimes relating to his or her public office
shall be considered to have served dishonorably, and his or her retirement
benefits may be subject to forfeiture.

§ 622. DEFINITIONS

As used in this subchapter:

(1) “Contribution” shall have the same meaning as “accumulated
contribution” set forth in 3 V.S.A. § 455(a)(1), 16 V.S.A. § 1931(1), and

24 V.S.A. § 5051(1), and shall include the sum of all amounts deducted from the compensation of a member of any defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any earnings or losses on those contributions, and the sum of all amounts deducted from the compensation of a member of any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401, and any earnings or losses on those contributions.

(2) “Crime related to public office” means any of the following criminal offenses if the offense is a felony and is committed in connection with employment as a member:

(A) any offense under 13 V.S.A. chapter 21;

(B) false personation as defined in 13 V.S.A. § 2001;

(C) false pretenses or tokens as defined in 13 V.S.A. § 2002;

(D) grand larceny as defined in 13 V.S.A. § 2501;

(E) person holding property in official capacity or belonging to the state or a municipality as defined in 13 V.S.A. § 2537;

(F) false claim as defined in 13 V.S.A. § 3016;

(G) a felony under the laws of the United States or any other state, including a territory, commonwealth, the District of Columbia, or military, federal, or tribal court, an element of which involves:

(i) a larceny;

(ii) an embezzlement;

(iii) the fraudulent conversion of money, property, or other valuable things for personal or other use; or

(iv) an intent to defraud; or

(H) an attempt to commit, or aiding in the commission of, any offense listed in this subdivision (2).

(3) "Member" shall have the same meaning as in 3 V.S.A. § 455(a)(11), 16 V.S.A. § 1931(10), and 24 V.S.A. § 5051(13), and shall include anyone participating in a defined contribution plan under 3 V.S.A. § 500 or 24 V.S.A. § 5070, and any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

(4) "Retirement benefits" shall have the same meaning as "pensions" as defined in 3 V.S.A. § 455(a)(14), 16 V.S.A. § 1931(12), and 24 V.S.A. § 5051(16), and shall also mean benefits derived from employer contributions to defined contribution plans under 3 V.S.A. § 500, 24 V.S.A. § 5070, and benefits derived from employer contributions to any other retirement plan of a municipality authorized under the Internal Revenue Code, 26 U.S.C. § 401.

§ 623. FORFEITURE OF PUBLIC EMPLOYEE RETIREMENT BENEFITS

(a) Honorable public service is a condition precedent to receiving retirement benefits. Each time a member is hired, reassigned, promoted, demoted, enters into a new collective bargaining contract, or otherwise

changes his or her employment relationship or status, he or she shall be deemed to consent and agree to be subject to the provisions of this subchapter, including to this condition precedent.

(b) Notwithstanding any other provision of law to the contrary, any member who is convicted of any crime related to public office shall be considered to have served dishonorably, and his or her retirement benefits may be subject to forfeiture.

(c) If a member is convicted of a crime related to public office, the Attorney General or State's Attorney shall file an action in the Civil Division of the Superior Court to forfeit the member's retirement benefits in whole or in part.

(d) A copy of the complaint shall be served on the member and any known spouse, dependent, or designated beneficiary of the member.

(e) Hearings under this subchapter shall be conducted by the Court without a jury, and the Attorney General or State's Attorney shall have the burden of proof.

(f) The Court shall grant the petition if it finds by a preponderance of the evidence that:

(1) the person is a member as defined in this subchapter; and

(2) the person was convicted of a crime related to public office.

(g) If the Court grants the petition, it shall then determine the degree, if any, to which the member's retirement benefits shall be forfeited. In making

the determination, the Court shall consider and make findings on the following factors:

(1) the severity of the crime related to public office for which the member has been convicted;

(2) the amount of monetary loss suffered by the State, a county, a municipality, or by any other person as a result of the crime related to public office;

(3) the degree of public trust reposed in the member; and

(4) any other factors as, in the judgment of the Court, justice may require.

(h) If the Court determines that a member's retirement benefits should be forfeited to any degree, it may order that some or all of the retirement benefits be paid to any innocent spouse, dependent, or beneficiary as justice may require. In determining whether to make an award under this section, the Court may consider:

(1) the degree of knowledge, if any, possessed by the member's spouse, dependent, or designated beneficiary in connection with the offense;

(2) the financial needs and resources of the member's spouse, dependent, or designated beneficiary; and

(3) any other factors as, in the judgment of the Court, justice may require.

(i) If the Court determines that a member's retirement benefits should not be forfeited to any degree, it shall order that retirement benefits be made to the member.

§ 624. VENUE, PROCEDURE, AND APPEALS

(a) Proceedings to forfeit retirement benefits under this subchapter shall be heard in the Civil Division of the Superior Court. Venue may be in the Washington unit, the unit where the conviction for the crime related to public office occurred, or in any unit where the member or any known spouse, dependent, or designated beneficiary resides.

(b) The Supreme Court, pursuant to 12 V.S.A. § 1, may enact rules and develop procedures consistent with this subchapter to govern proceedings to forfeit retirement payments.

(c) An order under this subchapter may be appealed as a matter of right to the Supreme Court by the Attorney General or State's Attorney that filed the petition, the member, or the member's spouse, dependent, or designated beneficiary.

§ 625. RETURN OF CONTRIBUTIONS; EXEMPTIONS; QUALIFIED

DOMESTIC RELATIONS ORDERS

(a) Any member whose retirement benefits are forfeited to any degree pursuant to section 623 of this title shall be entitled to a return of his or her contribution in the same manner as provided by the relevant retirement system.

(b) Notwithstanding the provisions of subsection (a) of this section, returns of contributions shall not be made or ordered unless and until the Civil Division of the Superior Court determines that the member whose retirement benefits have been forfeited to any degree pursuant to section 623 of this title has satisfied in full any judgments or orders rendered by any court of competent jurisdiction for the payment of restitution for losses incurred as a result of the crime related to public office. If the Court determines that the member whose retirement benefits have been forfeited to any degree under section 623 has failed to satisfy any outstanding judgment or order of restitution rendered by any court of competent jurisdiction, it may order that any funds otherwise due such member as a return of contribution, or any portion thereof, be paid in satisfaction of the judgment or order.

(c) A provision of section 623 of this title or this section shall not be construed to prohibit or limit any payment made pursuant to a qualified domestic relations order issued prior to any such conviction and applicable to:

(1) any member who is convicted of any crime related to public office; or

(2) any state, county, or municipal agency responsible for the administration of such payment on behalf of such member.

(d) Notwithstanding the provisions of section 623 of this title, retirement benefits shall not be forfeited to any degree if the Internal Revenue Service

determines that such forfeiture will negatively affect or invalidate the status of a retirement plan under the Internal Revenue Code, 26 U.S.C. § 401, or any subsequent corresponding Internal Revenue Code of the United States, as may be amended.

§ 626. APPLICATION; COLLECTIVE BARGAINING AGREEMENTS

(a) This subchapter shall not apply to retirement benefits that accrued prior to the effective date of this subchapter or to crimes committed before the effective date of this subchapter.

(b) No collective bargaining agreement or other employment agreement entered into on or after the effective date of this subchapter shall contain any provision that limits the application of the provisions of this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.