

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 247a

50th Legislature, 1st Session, 2011

Tracking Number: .183526.1

Short Title: Forfeiture of Retirement for Certain Crimes

Sponsor(s): Senator Sue Wilson Beffort

Analyst: Craig J. Johnson

Date: March 6, 2011

AS AMENDED

The Senate Judiciary Committee amendments allow the court to:

- **order the forfeiture of all or a portion of a member's pension and other retirement benefits (rather than total forfeiture); and**
- **before issuing a forfeiture order, determine the community interest of any spouse of the member to ensure that the order does not affect the spouse's interest.**

The amendments also state that if the court order forfeiture of a portion of the pension and benefits, then the state retirement system shall revoke service credit; refunds accumulated member contributions, and cease paying a pension to the extent provided in the court order.

Original Bill Summary:

SB 247 provides for the forfeiture of pensions and other retirement benefits of active and retired members who are convicted of a felony arising out of the misuse of public money related to the member's public employment.

Among its provisions, SB 247 provides the following process for forfeiture of retirement benefits if:

- in the adjudication of a felony, the defendant is a member or retired member of a state retirement system through the *Educational Retirement Act*, the *Public Employees Retirement Act*, the *Magistrate Retirement Act*, or the *Judicial Retirement Act*, and the felony arises from the misuse of public money and is related to the members public employment, then the district attorney or attorney general shall file for an order of forfeiture of pension.
- the member is convicted of a felony arising out of the misuse of public money and related to the member's public employment, then the court may order the forfeiture of the member's right to a pension and other retirement benefits.
- the conviction is appealed, then pending the final appeal, the state system shall suspend the member's service credit and suspend any pension; however, the member shall still remain a 'retiree' for purposes of the *Retiree Health Care Act* during the suspension.

- there is no appeal or the conviction is upheld upon final appeal, the state system shall:
 - revoke the member's service credit;
 - refund accumulated member contributions to the member, if the member is not currently receiving a pension;
 - cease paying the pension and refund any accumulated member contributions, if the member is receiving a pension; and
 - notify the retiree health care authority that the member is no longer a 'retiree' for purposes of the *Retiree Health Care Act*.

Fiscal Impact:

SB 247 does not contain an appropriation.

Technical Issues:

If enacted, the provisions of SB 247 would only apply to crimes committed on or after the effective date of the bill, which would be 90 days after the session or June 17, 2011.

Substantive Issues:

An analysis from the Administrative Office of the Courts states that:

- the National Association of State Retirement Systems compiled an analysis of selected state policies governing the termination or garnishment of public pensions in December 2010;
- New Mexico was included in the 41 states for which state policies were described;
- of the 41 states, 23 have some provisions for the forfeiture or revocation of a public employee's pension due to a variety of felony convictions, most related to the individual's employment; and
- of the 23 states with policies regarding forfeiture of pension and benefits, five apply only to elected officials and four specifically refer to both employees and elected officials.

Related Bills:

SB 259a *Forfeiture of Public Official Benefits*