

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2013**

Bill Number: H-41 Name of Bill: Pension Forfeiture

Agency/ Dept: Public Safety Author of Bill Review: Lieutenant Paul White

Date of Bill Review: 30 JAN 2013 Status of Bill: (check one):

Upon Introduction     As passed by 1<sup>st</sup> body     As passed by both bodies     Fiscal

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**Recommended Position:**

Support     Oppose     Remain Neutral     Support with modifications identified in #8 below

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**Analysis of Bill**

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**1. Summary of bill and issue it addresses.**

This bill proposes to require the Attorney General or State's Attorney to petition a judge to order the partial or total civil forfeiture of retirement payments to public officials convicted of certain crimes related to their employment.

**2. Is there a need for this bill?**

Yes. There seems to be clear agreement among the administration, the legislature, and the general public that there should be some mechanism by which the retirement payments to a public employee can be forfeited in the event of conviction of certain employment-related crimes committed by the employee.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

No programmatic implications specific to the Department of Public Safety have been identified.

**4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

This legislation, if passed, would impact the Attorney General's Office, the Department of State's Attorneys, the Judiciary, and the Retirement Division of the State Treasurer's Office. The AG's office and/or State's Attorneys' offices will be tasked with filing forfeiture petitions; the Judiciary will be tasked with considering the evidence and ruling on the petitions; and the Treasurer's office will be tasked with carrying out the forfeitures and re-calculating the effected employees' (and their beneficiaries') pension payments. It is believed that all of these entities will support the bill simply because it is believed to be "the right thing to do".

**5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?**

This legislation as written applies not only to state employees but to any “public official”, which is proposed to be defined as any elected official of the State or a subdivision thereof, any employee of the State, a county, or municipality, any employee of a supervisory union school district, “employees” as defined in 3 VSA § 455(a)(9) and 24 VSA § 5051(10), and “teachers” as defined in 16 VSA § 1931(20). Therefore, there would be implications for any entity that manages retirement plans for any of these “public officials” that are not covered under one of the three retirement systems administered by the State Treasurer’s Office. This would include various county governments and municipalities, as well as quasi-public organizations such as the VT Housing Finance Agency, the VT Center for Crime Victim Services, and the Chittenden County Transportation Authority, to name just a few. These quasi-public organizations (or the firms that they employ to manage their retirement plans) would be tasked with implementing any court-ordered pension forfeitures.

Regardless, because this legislation is widely viewed as being “the right thing to do”, it is difficult to imagine any of these entities taking anything other than a supportive position with regard to this legislation. To do otherwise would be viewed by the general public as the organization siding with convicted criminals rather than with the taxpayers who fund the respective retirement plans and would be a politically unpopular position to take.

**6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?**

This proposal is expected to be widely supported for the reasons stated above.

**6.2 Who else is likely to oppose the proposal and why?**

No opponents have been identified.

**7. Rationale for recommendation:**

The rationale for this recommendation to support the proposal is spelled out above, however there are several issues that should be considered. When the legislature debates this proposal there are several questions that are likely to arise and which will need to be decided. They include:

- A) Should the forfeiture be mandatory or discretionary? As currently proposed the only thing that is mandatory is that the Attorney General or State’s Attorney must petition the Court for an order to revoke or reduce the employee’s retirement payments; whether or not to order forfeiture is left to the discretion of the Court.
- B) Should the employee’s retirement payments be forfeited in full or only partially? As currently proposed this question is left to the discretion of the Court, with the Court able to consider such things as the financial needs of an innocent spouse, dependant, or beneficiary.
- C) Who makes the decision on forfeiture? As currently proposed the forfeiture decision is made by a Superior Court Judge. However it is possible that this responsibility could be vested with some other body, such as the Board of Trustees of the relevant pension plan, for example.

- D) What crimes should lead to forfeiture, only felonies or should misdemeanor crimes be included as well? Should only financial crimes be included or should non-financial crimes be considered? Should only on-the-job offenses be included or should crimes committed by a public official outside the scope of their employment be considered? As currently proposed the Court is only allowed to consider certain specifically listed financial crimes when committed in connection with the public official's employment, those listed crimes consisting only of felony-level offenses.
- E) Should the employee's contributions to the retirement plan be forfeited as well or only the employer's contributions and the investment gains? As currently proposed the employee's contributions are not subject to forfeiture, however the Court can order that the employee's contributions be used to satisfy any outstanding judgments.
- F) Should forfeiture apply only to pension benefits accrued after the effective date of the law, or should the Judge have discretion to reach back and order forfeiture of benefits accrued prior to the effective date? As currently proposed the forfeiture law would only apply to crimes committed after the effective date and to pension benefits accrued after the effective date.

**8. Specific modifications that would be needed to recommend support of this bill:**

It is recommended that the Department of Public Safety support this bill as currently proposed. If any modifications are made then this position should be re-evaluated.