

**HOUSE . . . . . No. 18**

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So much of the recommendations of the Teachers' Retirement System (House, No. 16) as relates to pension forfeiture. Public Service.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
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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.