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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1545 Session of  
2013

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INTRODUCED BY BOBACK, SACCONI, STERN, WATSON, JAMES, MAJOR,  
KORTZ, MACKENZIE, GROVE, MULLERY, BARRAR, SWANGER, MILNE,  
BENNINGHOFF, TOEPEL, LAWRENCE, GOODMAN, GILLEN AND MURT,  
JUNE 18, 2013

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 18, 2013

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AN ACT

1 Amending the act of July 8, 1978 (P.L.752, No.140), entitled "An  
2 act providing for the forfeiture of the pensions of certain  
3 public employees and authorizing the State or political  
4 subdivision to garnish the pension benefits of certain public  
5 officers and employees upon conviction of certain criminal  
6 activity related to their office or position of employment,"  
7 further providing for definitions, for disqualification and  
8 forfeiture of benefits and for restitution.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. The definition of "crimes related to public  
12 office or public employment" in section 2 of the act of July 8,  
13 1978 (P.L.752, No.140), known as the Public Employee Pension  
14 Forfeiture Act, amended July 15, 2004 (P.L.733, No.86), is  
15 amended and the section is amended by adding definitions to  
16 read:

17 Section 2. Definitions.

18 The following words and phrases when used in this act shall  
19 have, unless the context clearly indicates otherwise, the  
20 meanings given to them in this section:

1 "Crimes related to public office or public employment." Any  
2 of the criminal offenses as set forth in the following  
3 provisions of Title 18 (Crimes and Offenses) of the Pennsylvania  
4 Consolidated Statutes or other enumerated statute when committed  
5 by a public official or public employee through his public  
6 office or position or when his public employment places him in a  
7 position to commit the crime:

8 Any of the criminal offenses set forth in Subchapter B of  
9 Chapter 31 (relating to definition of offenses) when the  
10 criminal offense is committed by a school employee [as defined  
11 in 24 Pa.C.S. § 8102 (relating to definitions)] against a  
12 student.

13 Section 2713 (relating to neglect of care-dependent person).

14 Section 3124.2 (relating to institutional sexual assault).

15 Section 3922 (relating to theft by deception) when the  
16 criminal culpability reaches the level of a misdemeanor of the  
17 first degree or higher.

18 Section 3923 (relating to theft by extortion) when the  
19 criminal culpability reaches the level of a misdemeanor of the  
20 first degree or higher.

21 Section 3926 (relating to theft of services) when the  
22 criminal culpability reaches the level of a misdemeanor of the  
23 first degree or higher.

24 Section 3927 (relating to theft by failure to make required  
25 disposition of funds received) when the criminal culpability  
26 reaches the level of a misdemeanor of the first degree or  
27 higher.

28 Section 4101 (relating to forgery).

29 Section 4104 (relating to tampering with records or  
30 identification).

1 Section 4113 (relating to misapplication of entrusted  
2 property and property of government or financial institutions)  
3 when the criminal culpability reaches the level of misdemeanor  
4 of the second degree.

5 Section 4304 (relating to endangering welfare of children).

6 Section 4701 (relating to bribery in official and political  
7 matters).

8 Section 4702 (relating to threats and other improper  
9 influence in official and political matters).

10 Section 4902 (relating to perjury).

11 Section 4903(a) (relating to false swearing).

12 Section 4904 (relating to unsworn falsification to  
13 authorities).

14 Section 4906 (relating to false reports to law enforcement  
15 authorities).

16 Section 4909 (relating to witness or informant taking bribe).

17 Section 4910 (relating to tampering with or fabricating  
18 physical evidence).

19 Section 4911 (relating to tampering with public records or  
20 information).

21 Section 4952 (relating to intimidation of witnesses or  
22 victims).

23 Section 4953 (relating to retaliation against witness, victim  
24 or party).

25 Section 5101 (relating to obstructing administration of law  
26 or other governmental function).

27 Section 5123 (relating to contraband).

28 Section 5301 (relating to official oppression).

29 Section 5302 (relating to speculating or wagering on official  
30 action or information).

1 Section 6301 (relating to corruption of minors).

2 Article III of the act of March 4, 1971 (P.L.6, No.2), known  
3 as the "Tax Reform Code of 1971."

4 In addition to the foregoing specific crimes, the term also  
5 includes all criminal offenses as set forth in Federal law  
6 substantially the same as the crimes enumerated herein.

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8 "School employee." As defined in 24 Pa.C.S. § 8102 (relating  
9 to definitions).

10 "Student." An individual under 18 years of age who is:

11 (1) instructed by a school employee;

12 (2) supervised by a school employee;

13 (3) counseled by a school employee; or

14 (4) mentored by a school employee.

15 Section 2. Section 3 of the act is amended to read:

16 Section 3. Disqualification and forfeiture of benefits.

17 (a) Notwithstanding any other provision of law, no public  
18 official or public employee nor any beneficiary designated by  
19 such public official or public employee shall be entitled to  
20 receive any retirement or other benefit or payment of any kind  
21 except a return of the contribution paid into any pension fund  
22 without interest, if such public official or public employee is  
23 convicted or pleads guilty or no [defense] contest to any crime  
24 related to public office or public employment.

25 (b) [The benefits shall be forfeited upon entry of a plea of  
26 guilty or no defense or upon initial conviction and no payment  
27 or partial payment shall be made during the pendency of an  
28 appeal. If] The benefits shall be immediately forfeited upon the  
29 public official's or public employee's entry of a plea of guilty  
30 or no contest or upon initial entry of a jury verdict or

1 judicial order of guilty, with respect to any crimes related to  
2 public office or public employment. The forfeiture shall not be  
3 stayed or affected by the withdrawal of, or the court's refusal  
4 to accept, the plea or by the pendency of an appeal or  
5 collateral attack on the plea, verdict or order, regardless of  
6 whether a court has entered or stayed the sentence pending the  
7 appeal or collateral attack. If a plea, verdict or order is  
8 vacated and a verdict of not guilty is rendered or the  
9 indictment or criminal information finally dismissed, then the  
10 public official or public employee shall be reinstated as a  
11 member of the pension fund or system and shall be entitled to  
12 all benefits including those accruing during the period of  
13 forfeiture if any. Such [conviction or] plea, verdict or order  
14 shall be deemed to be a breach of a public officer's or public  
15 employee's contract with his employer.

16 (c) Each time a public officer or public employee is  
17 elected, appointed, promoted, or otherwise changes a job  
18 classification, there is a termination and renewal of the  
19 contract for purposes of this act.

20 (d) The appropriate retirement board may retain a member's  
21 contributions and interest thereon for the purpose of paying any  
22 fine imposed upon the member of the fund, or for the repayment  
23 of any funds misappropriated by such member from the  
24 Commonwealth or any political subdivision.

25 (e) Notwithstanding any other provision of this act, the  
26 State Employees' Retirement Board shall not disburse any funds  
27 to any person who has forfeited their right to benefits until  
28 the Auditor General and the Attorney General have determined and  
29 certified that there has been no loss to the Commonwealth as a  
30 result of the conduct that resulted in forfeiture of benefits.

1 If there is a loss to the Commonwealth, the board shall pay the  
2 amount of the loss to the State Treasurer from the member's  
3 contributions and the interest thereon.

4 Section 3. Section 4 of the act, repealed in part October 5,  
5 1980 (P.L.693, No.142), is amended to read:

6 Section 4. Restitution for monetary loss.

7 (a) [Whenever] For any public official or employee who is a  
8 member of any pension system funded by public moneys [is  
9 convicted or pleads guilty or pleads no defense], whenever the  
10 public official or employee enters a plea of guilty or no  
11 contest, in any court of record, to any crime related to a  
12 public office or public employment or whenever there is initial  
13 entry of a jury verdict or judicial order of guilty against the  
14 public official or employee, in any court of record, to any  
15 crime related to a public office or public employment, the court  
16 shall order the defendant to make complete and full restitution  
17 to the Commonwealth or political subdivision of any monetary  
18 loss incurred as a result of the criminal offense.

19 (b) If the court fails to order such restitution the  
20 Commonwealth, through the Attorney General, or a political  
21 subdivision shall petition the court pronouncing sentence for an  
22 order establishing the amount of restitution due it. If the  
23 court does not have authority to order restitution, the  
24 Commonwealth or the political subdivision shall bring an  
25 original action for restitution.

26 (c) Notwithstanding any law or provision of law exempting  
27 the pension account or benefits of any public official or public  
28 employee from garnishment or attachment, whenever the court  
29 shall order restitution or establish the amount of restitution  
30 due after petition, all sums then credited to the defendant's

1 account or payable to the defendant including the contributions  
2 shall be available to satisfy such restitution order.

3 (d) The retirement board, administrator of the pension fund  
4 or employer of the defendant, upon being served with a copy of  
5 the court's order, shall pay over all such pension benefits,  
6 contributions or other benefits to the extent necessary to  
7 satisfy the order of restitution.

8 Section 4. The General Assembly finds and declares as  
9 follows:

10 (1) This section applies to the following provisions:

11 (i) The editorial change in the second paragraph of  
12 the definition of "crimes related to public office or  
13 public employment" in section 2 of the act.

14 (ii) The addition of the definitions of "school  
15 employee" and "student" in section 2 of the act.

16 (2) The provisions referred to in paragraph (1) are  
17 intended to clarify the scope of the act as amended by the  
18 act of July 15, 2004 (P.L.733, No.86), entitled "An act  
19 amending the act of July 8, 1978 (P.L.752, No.140), entitled  
20 'An act providing for the forfeiture of the pensions of  
21 certain public employees and authorizing the State or  
22 political subdivision to garnish the pension benefits of  
23 certain public officers and employees upon conviction of  
24 certain criminal activity related to their office or position  
25 of employment,' further defining 'crimes related to public  
26 office or public employment' to include certain sexual  
27 offenses committed by school employees against students."

28 Section 5. Except for the editorial change in the second  
29 paragraph of the definition of "crimes related to public office  
30 or public employment" in section 2 of the act and the addition

1 of the definitions of "school employee" and "student" to section  
2 2 of the act, the amendment of sections 2, 3 and 4 and of the  
3 act shall apply to crimes related to public office or public  
4 employment committed on and after the effective date of this  
5 section.

6 Section 6. This act shall take effect as follows:

7 (1) The following provisions shall take effect  
8 immediately:

9 (i) The editorial change in the second paragraph of  
10 the definition of "crimes related to public office or  
11 public employment" in section 2 of the act.

12 (ii) The addition of the definitions of "school  
13 employee" and "student" to section 2 of the act.

14 (iii) Section 4 of this act.

15 (iv) This section.

16 (2) The remainder of this act shall take effect in 60  
17 days.