

**COUNTY OF LEHIGH, PENNSYLVANIA
RESOLUTION NO. 2016 – 31
SPONSORED BY COMMISSIONER SCHWARE
REQUESTED DATE: JUNE 1, 2016**

**SUPPORTING THE PASSAGE OF STATE HOUSE BILL 17;
AMENDING THE PUBLIC EMPLOYEE PENSION FORFEITURE ACT**

WHEREAS, the County of Lehigh requires that public officials and public employees entrusted with carrying out the business of the citizens County maintain the highest of ethical standards and professional conduct; and

WHEREAS, the Lehigh County Board of Commissioners further believes that when the public trust is violated by a government official or employee during the conduct of official business, that official or employee should forfeit his or her taxpayer-funded pension; and

WHEREAS, the Pennsylvania Assembly recently approved House Bill 17 – an action that would close existing loop holes in the Public Employee Pension Forfeiture Act (Act 140 of 1978) that currently allow persons charged with a forfeiture crime to plead to a non-forfeiture crime in order to maintain their pensions; and

WHEREAS, House Bill 17 would also expand the list of felonies requiring forfeiture of the government – subsidized portion of a public pension if an official or employee is found guilty, pleads guilty or no contest to committing in the course of their jobs; and

WHEREAS, a copy of House Bill 17, Printer's No. 3364, is attached to this resolution as Exhibit A.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF LEHIGH COUNTY, PENNSYLVANIA, THAT:

1. The Lehigh County Board of Commissioners joins the State House in supporting Bill 17 and encourages Senator Lisa Boscola and Senator Pat Browne to do so in the Senate.
2. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Resolution.
3. Any resolution or part of resolution conflicting with the provisions of this resolution is hereby repealed insofar as the same affects this resolution.

4. A copy of this resolution shall be sent Senator Boscola, Senator Browne, and the County Commissioners Association of Pennsylvania.
5. The County Executive shall distribute copies of this resolution to the proper officers and other personnel whose further action is required to achieve the purpose of this resolution.

ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS

on the ____ day of _____, 2016, by the following vote:

Commissioners

AYE

NAY

Geoff Brace
Thomas C. Creighton, III
Percy H. Dougherty
Dan Hartzell
Amanda Holt
David S. Jones, Sr.
Marty Nothstein
Brad Osborne
Michael P. Schware

ATTEST: _____
Clerk to the Board of Commissioners

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 17 Session of
2015

INTRODUCED BY PETRI, BARRAR, BLOOM, CUTLER, DIAMOND, EVERETT,
LAWRENCE, MACKENZIE, MALONEY, MARSHALL, MICCARELLI, MURT,
SACCONE, SIMMONS, STEPHENS, WATSON, FARRY, SANTARSIERO,
B. MILLER, KILLION AND DEAN, FEBRUARY 23, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 17, 2016

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 for monetary loss;
9 and repealing a retroactivity provision.

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

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

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall
20 have, unless the context clearly indicates otherwise, the

EXHIBIT

A

1 meanings given to them in this section:

2 "Benefits administrator." A retirement board, pension fund
3 administrator or employer that manages, controls or maintains a
4 pension system for public officials or public employees.

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

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

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

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

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

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

30 Section 4101 (relating to forgery).

1 Section 4104 (relating to tampering with records or
2 identification).

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

7 [Section 4701 (relating to bribery in official and political
8 matters).]

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

11 [Section 4902 (relating to perjury).]

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

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

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

17 [Section 4909 (relating to witness or informant taking
18 bribe).]

19 Section 4910 (relating to tampering with or fabricating
20 physical evidence).

21 Section 4911 (relating to tampering with public records or
22 information).

23 Section 4952 (relating to intimidation of witnesses or
24 victims).

25 Section 4953 (relating to retaliation against witness, victim
26 or party).

27 Section 5101 (relating to obstructing administration of law
28 or other governmental function).

29 Section 5301 (relating to official oppression).

30 Section 5302 (relating to speculating or wagering on official

1 action or information).

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 Any criminal offense under the laws of this Commonwealth
5 classified as a felony or punishable by a term of imprisonment
6 exceeding five years.

7 In addition to the foregoing specific crimes, the term also
8 includes all criminal offenses as set forth in Federal law that
9 are:

10 (1) substantially the same as the crimes enumerated
11 herein[.];

12 (2) classified as a felony; or

13 (3) punishable by a term of imprisonment exceeding five
14 years.

15 * * *

16 "Public official" or "public employee." Any person who is
17 elected or appointed to any public office or employment
18 including justices, judges and [justices of the peace]
19 magisterial district judges and members of the General Assembly
20 or who is acting or who has acted in behalf of the Commonwealth
21 or a political subdivision or any agency thereof including but
22 not limited to any person who has so acted and is otherwise
23 entitled to or is receiving retirement benefits whether that
24 person is acting on a permanent or temporary basis and whether
25 or not compensated on a full or part-time basis. This term shall
26 not include independent contractors nor their employees or
27 agents under contract to the Commonwealth or political
28 subdivision nor shall it apply to any person performing tasks
29 over which the Commonwealth or political subdivision has no
30 legal right of control. However, this term shall include all

1 persons who are members of any retirement system funded in whole
2 or in part by the Commonwealth or any political subdivision. For
3 the purposes of this act such persons are deemed to be engaged
4 in public employment.

5 "SCHOOL EMPLOYEE." AS DEFINED IN 24 PA.C.S. § 8102 (RELATING <--
6 TO DEFINITIONS).

7 "STUDENT." AN INDIVIDUAL WHO IS:

8 (1) INSTRUCTED BY A SCHOOL EMPLOYEE;

9 (2) SUPERVISED BY A SCHOOL EMPLOYEE;

10 (3) COUNSELED BY A SCHOOL EMPLOYEE; OR

11 (4) MENTORED BY A SCHOOL EMPLOYEE.

12 Section 2. Sections 3(a), (b) and (d) and 4(a) and (d) of
13 the act are amended to read:

14 Section 3. Disqualification and forfeiture of benefits.

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

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

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

14 * * *

15 (d) The appropriate [retirement board] benefits
16 administrator may retain a member's contributions and interest
17 thereon for the purpose of paying any fine imposed upon the
18 member of the fund by a court of competent jurisdiction, or for
19 the repayment of any funds misappropriated by such member from
20 the Commonwealth or any political subdivision.

21 * * *

22 Section 4. Restitution for monetary loss.

23 (a) Whenever any public official or public employee who is a
24 member of any pension system funded by public moneys [is
25 convicted or pleads guilty or pleads no defense] enters a plea
26 of guilty or no contest in any court of record to any crime
27 related to a public office or public employment or whenever
28 there is initial entry of a jury verdict or judicial order of
29 guilty against the public official or public employee in any
30 court of record to any crime related to a public office or

1 public employment, the court shall order the defendant to make
2 complete and full restitution to the Commonwealth or political
3 subdivision of any monetary loss incurred as a result of the
4 criminal offense.

5 * * *

6 (d) [The retirement board, administrator of the pension fund
7 or employer of the defendant] Upon the finding of guilty of a
8 public official or public employee, or upon the entry of a plea
9 of guilty or no contest in any court of record by a public
10 official or public employee, the court shall notify the
11 appropriate benefits administrator of such finding or entrance
12 of plea. The appropriate benefits administrator, upon being
13 served with a copy of the court's order, shall pay over all such
14 pension benefits, contributions or other benefits to the extent
15 necessary to satisfy the order of restitution.

16 Section 3. Section 7 of the act is repealed:
17 [Section 7. Retroactively.

18 The provisions of this act shall be retroactive to December
19 1, 1972.]

20 SECTION 4. THE GENERAL ASSEMBLY FINDS AND DECLARES AS
21 FOLLOWS:

22 (1) THIS SECTION APPLIES TO THE FOLLOWING PROVISIONS:

23 (I) THE EDITORIAL CHANGE IN THE SECOND PARAGRAPH OF
24 THE DEFINITION OF "CRIMES RELATED TO PUBLIC OFFICE OR
25 PUBLIC EMPLOYMENT" IN SECTION 2 OF THE ACT.

26 (II) THE ADDITION OF THE DEFINITIONS OF "SCHOOL
27 EMPLOYEE" AND "STUDENT" IN SECTION 2 OF THE ACT.

28 (2) THE PROVISIONS REFERRED TO IN PARAGRAPH (1) ARE
29 INTENDED TO CLARIFY THE SCOPE OF THE ACT AS AMENDED BY THE
30 ACT OF JULY 15, 2004 (P.L.733, NO.86), ENTITLED "AN ACT

1 AMENDING THE ACT OF JULY 8, 1978 (P.L.752, NO.140), ENTITLED
2 'AN ACT PROVIDING FOR THE FORFEITURE OF THE PENSIONS OF
3 CERTAIN PUBLIC EMPLOYEES AND AUTHORIZING THE STATE OR
4 POLITICAL SUBDIVISION TO GARNISH THE PENSION BENEFITS OF
5 CERTAIN PUBLIC OFFICERS AND EMPLOYEES UPON CONVICTION OF
6 CERTAIN CRIMINAL ACTIVITY RELATED TO THEIR OFFICE OR POSITION
7 OF EMPLOYMENT,' FURTHER DEFINING 'CRIMES RELATED TO PUBLIC
8 OFFICE OR PUBLIC EMPLOYMENT' TO INCLUDE CERTAIN SEXUAL
9 OFFENSES COMMITTED BY SCHOOL EMPLOYEES AGAINST STUDENTS."
10 Section 4 5. The following provisions apply to crimes <--
11 related to public office or public employment committed on or
12 after the effective date of this section:
13 (1) The amendment or addition of the definitions of
14 "benefits administrator," "crimes related to public office or
15 public employment" EXCEPT FOR THE EDITORIAL CHANGE IN THE <--
16 SECOND PARAGRAPH OF THE DEFINITION, and "public official" or
17 "public employee" in section 2 of the act.
18 (2) The amendment of section 3(a), (b) and (d) of the
19 act.
20 (3) The amendment of section 4(a) and (d) of the act.
21 (4) The repeal of section 7 of the act.
22 Section 5 6. This act shall take effect immediately. <--