

2007 DRAFTING REQUEST

Bill

Received: 11/01/2007

Received By: **rchampag**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Ryan**

This file may be shown to any legislator: **NO**

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - retirement**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibiting payment of WRS pensions to certain felons

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State Retire
/1	rchampag 11/12/2007	bkraft 11/13/2007	pgreensl 11/13/2007	_____	sbasford 11/13/2007	cduerst 11/16/2007	

FE Sent For:

*at
intro*

<END>

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/?	rchampag	1 bjk 11/13	11/13 ps	11/13 ps			
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FE Sent For:

<END>

Champagne, Rick

From: Smith, Ryan
Sent: Wednesday, October 31, 2007 2:01 PM
To: Champagne, Rick
Subject: Bill Draft Request

Rick,

Rob is looking to get a bill drafted to mandate that public officials convicted of felonies involving their office forfeit the taxpayer-funded portion of their pensions. I think this is your area, but if not, could you pass it on to the correct attorney? Several other states have similar laws on the books.

Here's a little background article:

http://seattlepi.nwsource.com/local/269826_pensionstates11web.asp#list

Florida's law includes all public employees, but Rob would want to limit his bill to only elected officials. Also, it may be necessary to limit the scope of the bill to future transgressions, as I don't think you can go back in time to grab these benefits. Florida's provision is embedded in their Constitution, as follows (but we would want to do it in statutes):

PUBLIC DISCLOSURE INITIATIVE

ARTICLE II, SECTION 8

Section 8. Ethics in Government. A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

If you have any questions, feel free to give me a call.

Thanks,

Ryan Smith

6-0484

11/01/2007



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CONDUCT UNBECOMING

Thursday, May 11, 2006

State can strip rights to pension

By LEWIS KAMB
P-I INVESTIGATIVE REPORTER

In California, it takes specific felony convictions.

In Rhode Island, certain misdemeanors could be enough.

While in New York, merely "administrative misconduct" can be the trigger.

Taxpayer-subsidized pension funds in at least 13 states are subject to what are known as "'forfeiture laws" -- regulations that allow public employers to withhold pensions from employees who misbehave.

But at a time when defined benefit pension plans are disappearing across America, the retirement benefits of criminal cops, deviant teachers or other miscreant public servants remain protected in Washington.

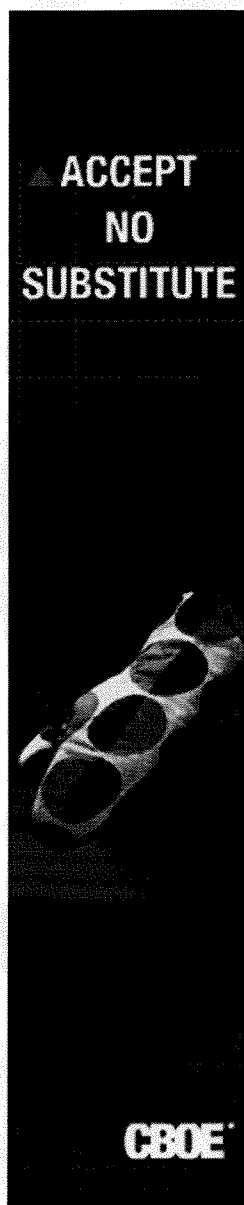
The reason? Mainly, an 1956 state Supreme Court decision known as the "Bakenhus Doctrine."

"Our court has found a pension is a guarantee that we may not reduce in any way to an employee that has already earned it," said state Rep. Helen Sommers, who for years served on the state's now-defunct Joint Committee on Pension Policy.

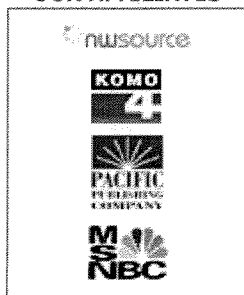
Named for a retired Seattle policeman, Bakenhus holds that a public employee is entitled to the pension rights afforded at the time that employee was hired.

That means, since there's now essentially no forfeiture law on the books in Washington, none of the roughly 436,500 active, retired and inactive members of the state's 14 retirement plans can lose their taxpayer-subsidized pension benefits -- no matter what they do.

• Personals



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"You can't go back and change things for those already in," Sommers said.

Or, as then-Attorney General Ken Eikenberry wrote in 1981, provisions for employees already in such plans are "cast in cement."

But that doesn't mean state lawmakers can't change the rules for future employees. "We can do it for new people," Sommers said, adding she isn't sure why, to her knowledge, lawmakers here haven't tried.

They've had plenty of reason to do so.

Like when King County sheriff's Sgt. Mathias Bachmeier murdered a man to cover-up for an insurance fraud. Or, when fellow Deputy Bill Erdt garnered five criminal convictions for sexually abusing his stepdaughter. Both now receive tax free disability pensions.

High-profile misconduct cases are increasingly leading states to enact forfeiture laws as anti-public corruption strategies, said attorney Robert Klausner, one of the nation's leading experts on retirement law.

Exactly what kind of misconduct triggers a public employee's pension rights to be stripped varies from state to state. But generally, all laws involve a breach of public trust.

Florida has one of the toughest. Convictions of a variety of specified crimes trigger automatic forfeitures. "There is no middle ground," Klausner said.

In New York, forfeiture can occur for "administrative misconduct."

"If a cop does something wrong and NYPD fires them before they collect their pension, they lose it," said Rhonda Cavagnaro, legal counsel for the New York Police Department Pension Fund.

Forfeiture isn't exclusive to states. While federal law prohibits private sector workers from pension forfeiture, the same doesn't hold true for government employees. In 1954, Congress enacted the so-called "Hiss Act," which mandates federal workers convicted of treason or similar crimes can lose pensions.

The federal Social Security Administration also can withhold benefits from convicts while they're imprisoned.

And Congress is now is considering the "Federal Pension Forfeiture Act" -- legislation that would deny retirement benefits to federal employees and Congressional members convicted of felonies while in office. The bill was sparked by the case of former U.S. Rep. Randy "Duke" Cunningham, R-Calif., who resigned last year with a pension after taking more than \$2 million in bribes.

Not everyone is sold on pension forfeiture. James B. Jacobs, a New York University Law School professor who co-authored a 1997 study on forfeiture laws for the American Criminal Law Review, says he generally finds such laws to be irrational political responses.

"Forfeiture is a very arbitrary kind of punishment," Jacobs said. "It's not geared toward the extent of the wrongdoing or the culpability of the offender."

Jacobs views monetary fines as more just punishment. He recommends that if states are to adopt forfeiture laws, they look to New Jersey as a model. With no automatic triggers, forfeiture is considered on a case-by-case basis there.

Washington legislators have dabbled with changes to public pension plans.

In 1997, they passed "the Bachmeier Rule" -- a statute prohibiting a public employee convicted of a felony from drawing a disability pension when that disability was caused by criminal conduct.

Another law, the "slayer rule" passed in 1998, prohibits a beneficiary from collecting the pension of someone they've killed.

Washington even once had -- or technically has -- a forfeiture law: a statute last amended in 1937 still in state code today. It held city pension boards could strip pensions from police employees due to a felony conviction, or for becoming "an habitual drunkard."

The law's practical effect all but ended when local pension plans around Washington unified into a single state plan, to which the law doesn't apply. Few officers hired when that law was applicable remain working today.

"It's still on the books," said Jerry Westby, an assistant state Attorney General. "But I imagine it has very little, if any, effect."

Forfeiture "hasn't been on our radar," said Kelly Fox, chairman of the board overseeing the newer state police and firefighters pension plan. "We have not received word there's any interest to modify the statutes today."

For policymakers, Sommers said, the difficulty in crafting such a measure is in determining what triggers forfeiture. "It's really hard to draw a bright line as to where you would take a dramatic step, and where you wouldn't," she said.

Once such laws are adopted, Klausner said, typically they're accepted.

"I've never heard a good police officer object to another cop losing a

pension who's disgraced the badge," he said. "Ever."

PUBLIC EMPLOYEE FORFEITURE LAWS

At least 13 states and the federal government possess forfeiture laws or rules under which misbehaving public employees can lose taxpayer-subsidized pensions. Here's a look at some of the different laws:

California: Public officials convicted of felonies connected with their offices forfeit the taxpayer-funded portion of their pensions.

Florida: Public employees must forfeit taxpayer-funded portions of their pensions when they commit certain crimes, including theft and any felony involving misuse of public office.

New Jersey: Public employees who commit "misconduct during the member's public service" can lose all or part of taxpayer-funded portions of pensions; decided on a case-by-case basis.

Rhode Island: Retirement benefits "shall be revoked or reduced" if employee "is convicted of or pleads guilty to any crime related to his or her public office or public employment.

Other states with forfeiture laws or rules: Illinois, Louisiana, Massachusetts, Michigan, Missouri, Oklahoma, Tennessee, Texas, West Virginia.


*Washington has a forfeiture law last amended in 1937 that is now obsolete but still in state code.


Source: P-I reporting; National Association of State Retirement Administrators; Robert Klausner, legal counsel for the National Conference on Public Employee Retirement Systems.


DOCUMENTS CITED IN THIS ARTICLE

1. 1981 letter from then-Attorney General Ken Eikenberry regarding pension benefits for state employees.
2. Judgment and sentence document for Mathias Bachmeier.

P-I investigative reporter Lewis Kamb can be reached at 206-448-8336 or lewiskamb@seattlepi.com.

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ABOUT THIS REPORT

This story is part of an ongoing investigation of the King County Sheriff's department.
See more.

THE STORIES

Taxpayers foot the bill for keeping bad cops on the job

Problem sheriff's deputies continued working and drawing salaries for years after they could've been fired. This has fattened their retirements -- and cost taxpayers millions.

Instead of trial, cop got extra perks

An agreement with Dan Ring, a deputy under investigation, allowed him to avoid jail and make more money in his retirement.

State can strip rights to pension

Some other states have forfeiture laws that ban misbehaving public employees from collecting state pensions.

How we did the research for

this report

Summarizing our methodology.

Sims wants to halt pensions to crooked cops

The King County executive says he will seek legislation to prevent officers convicted of certain crimes from collecting publicly funded retirement benefits.

WHOM TO CONTACT

Here is contact information for public officials who can address issues raised in this series:

Susan Rahr
King County Sheriff's Office
(206) 296-4155

Steve Nelsen
Law Enforcement Officers and Fire Fighters Plan 2 Retirement Board
(360) 586-2320

Sen. Linda Evans Parlette
Law Enforcement Officers and Fire Fighters Plan 2 Retirement Board
(360) 786-7622

Rep. Geoff Simpson
Law Enforcement Officers and Fire Fighters Plan 2 Retirement Board
(360) 786-7918

Sandra Matheson
Washington Department of Retirement Systems
(360) 664-7312

Sen. Karen Fraser
The Select Committee on Pension Policy
(360) 786-7642

Christine Gregoire
Governor
State of Washington
(360) 902-4111



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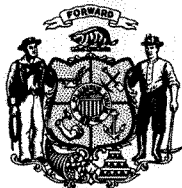


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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3388/1

RAC:.....

Lbjk

→ 
2007 BILL

SA ✓
X-ref ✓

gen. cod ✓

1 AN ACT ...; **relating to:** prohibiting an elected official, who is convicted of certain
2 felonies, from receiving an annuity, lump sum payment, or death benefit under
3 the Wisconsin Retirement System.

death benefit ✓

Analysis by the Legislative Reference Bureau

This bill prohibits a supreme court justice, court of appeals judge, circuit judge or a state, county, or municipal official elected by vote of the people, or a person appointed to fill a vacancy in such a position, from receiving an annuity, lump sum payment, or annuity under the Wisconsin Retirement System if the person has been convicted of a felony related to the performance of his or her duties while in elective office. The prohibition first applies to convictions for offenses committed on the bill's effective date.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 40.23 (1) (a) (intro.) of the statutes is amended to read:

BILL

1 ✓ 40.23 (1) (a) (intro.) Except as provided in ~~par. pars.~~ par. (am) and (ar), any
2 participant who has attained age 55, and any protective occupation participant who
3 has attained age 50, on or before the annuity effective date shall be entitled to a
4 retirement annuity in accordance with the actuarial tables in effect on the effective
5 date of the annuity if the participant submits an application for a retirement annuity
6 on a form furnished by the department and all of the following apply:

History: 1981 c. 96, 386; 1983 a. 141, 267, 391; 1987 a. 309, 372; 1987 a. 403 s. 256; 1989 a. 13; 1989 a. 56 s. 259; 1991 a. 152; 1995 a. 225, 302, 414; 1997 a. 35, 69; 1999 a. 11; 2003 a. 33; 2005 a. 153, 154.

7 **SECTION 2.** 40.23 (1) (ar) of the statutes is created to read:

8 ✓ 40.23 (1) (ar) Notwithstanding s. 40.19, a participant who is an elected official,
9 as defined in s. 40.02 (24) (a) or (b), may not receive a retirement annuity if he or she
10 has been convicted of a felony related to the performance of his or her duties while
11 in elective office. ✓

12 **SECTION 3.** 40.25 (6) of the statutes is created to read:

13 ✓ 40.25 (6) A participant who is an elected official, as defined in s. 40.02 (24) (a)
14 or (b), may not be paid a lump sum payment under this section if he or she has been
15 convicted of a felony related to the performance of his or her duties while in elective
16 office. ✓

17 **SECTION 4.** 40.63 (1) (e) of the statutes is created to read:

18 ✓ 40.63 (1) (e) If the participant is an elected official, as defined in s. 40.02 (24)
19 (a) or (b), the participant has not been convicted of a felony related to the performance
20 of his or her duties while in elective office. ✓

21 **SECTION 5.** 40.71 (intro.) of the statutes is amended to read:

Duerst, Christina

From: Smith, Ryan

Sent: Friday, November 16, 2007 9:15 AM

To: LRB.Legal

Subject: Draft Review: LRB 07-3388/1 Topic: Prohibiting payment of WRS pensions to certain felons

Please Jacket LRB 07-3388/1 for the SENATE.

11/16/2007