



# SENATE BILL 398: Felony Forfeiture Changes/Retirement.

2019-2020 General Assembly

<b>Committee:</b>	Senate Pensions and Retirement and Aging. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	May 1, 2019
<b>Introduced by:</b>	Sens. Johnson, Wells	<b>Prepared by:</b>	Tawanda N. Foster Committee Counsel
<b>Analysis of:</b>	First Edition		

### OVERVIEW: Senate Bill 398 does the following:

- Amends the felony forfeiture statutes.
- Applies forfeiture provisions to the National Guard Pension Fund and to the Disability Income Plan of North Carolina.
- Requires retirement benefit forfeiture for any judge who has been convicted on impeachment by the General Assembly, or removed from office by the Supreme Court.
- Makes changes to compliance and fraud reviews of programs with the Department of State Treasurer and its external contracts.

### CURRENT LAW & BILL ANALYSIS:

#### PART I. FELONY FORFEITURE CLARIFICATION

**Current Law** provides pensions can be forfeited upon conviction of certain felonies under federal or state law when the offense is committed while the member is in service and the conduct on which the offense is based is directly related to the member's service as an elected official, a member of the General Assembly, or other office or employment.

**Sections 1(a)-1(d)** amends the felony retirement benefit forfeiture law in TSERS, LGERS, CJRS, and LRS to repeal a requirement that the forfeiture applies to felony convictions where the court finds that the member's conduct is directly related to the member's office or employment.

**Sections 1(e)-1(g)** applies felony forfeiture provisions to the National Guard Pension Fund and to the Disability Income Plan of North Carolina.

Section 1(h) makes 1(e), 1(f), and 1(g) effective when it becomes law and applies to any applicable retirement benefits forfeiture occurring on or after that date.

#### PART II. LIMIT PAYOUTS TO MEMBER CONTRIBUTIONS IF UNDER FELONY INDICTMENT

**Section 2** provides on or after October 1, 2019, the Board of Trustees of TSERS, LGERS, CJRS, and LRS will suspend the retirement benefits upon notification or discovery of the indictment of a member for a felony offense that would require forfeiture of benefits if convicted. If the member is not convicted, the retirement benefits would be restored with interest.

#### PART III. FORFEITURE OF RETIREMENT BENEFITS/JUDGES

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**Section 3(a)** adds a new section to Consolidated Judicial Retirement System, providing for the forfeiture of retirement benefits for conviction on impeachment or removal from office.

- The Board of Trustees will not pay retirement benefits or allowances, except for a return of member contributions plus interest to any justice or judge if:
  - (1) the judge is convicted on impeachment under Article IV of the Constitution and Chapter 123 of the General Statutes; or
  - (2) the judge is removed from office by the Supreme Court under G.S. 7A-376(b) for reasons other than physical or mental incapacity.
- If a judge or justice whose benefits are forfeited has vested on or before January 1, 2020, then that member is not entitled to any creditable service that accrued after January 1, 2020, except for the return of member contributions plus interest.
- If a judge or justice whose benefits were forfeited subsequently has the conviction on impeachment or removal from office vacated or set aside for any reason, the member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the Treasurer determines a reversal of the benefit forfeiture is appropriate, then all the benefits will be restored upon repayment of all accumulated contributions plus interest and the individual will receive reinstatement of the service credit forfeited.

**Section 3(b)** makes a clarifying change to prohibit the purchase of forfeited service.

**Section 3(c)** makes a conforming change to clarify that a judge removed from office receives a return of member contributions plus interest.

**Section 3(d)** requires the General Assembly and the Supreme Court to notify the State Treasurer and the Board of Trustees of the conviction on impeachment or removal from office of a justice or judge.

**Section 3(e)** makes this section effective January 1, 2020, and applies to offenses committed on or after that date.

## **Current Law & Background**

**Removal from Office:** Article IV, Section 17(1) of the North Carolina Constitution provides that a judge's removal from office by the General Assembly for any reason other than mental or physical incapacity shall be by impeachment.<sup>1</sup> Pursuant to **G.S. 123-5**, each member of the Council of State and each justice or judge of the General Court of Justice can be impeached for commission of any felony, commission of any misdemeanor involving moral turpitude, malfeasance in office, or willful neglect of duty. Upon conviction by the Senate with concurrence of two-thirds of the Senators present, the judge can be removed from office and/or disqualified from holding any office of honor, trust, or profit under this State.<sup>2</sup>

In addition to the General Assembly's power to remove a judge, **G.S. 7A-376(b)** authorizes the North Carolina Supreme Court to remove any justice or judge of the General Court of Justice for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. **G.S. 7A-376(c)** provides that a judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity of disability retirement under any provision of State law.

**Pension Benefit Forfeiture Laws:** The General Assembly has previously enacted laws pertaining to pension benefit forfeiture: S.L. 2012-193 and S.L. 2007-179.

**S.L. 2012-193** amended the laws governing the State's public retirement systems to establish retirement benefit restrictions for members convicted of any felony under federal or State law for acts committed

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<sup>1</sup> Pursuant to Article IV, Section 17(a), the General Assembly may remove a judge for mental or physical disability by joint resolution of two-thirds of all the members of each house.

<sup>2</sup> G.S. 123-13.

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after December 1, 2012, if the offense is committed while in service and the conduct resulting in the conviction is directly related to the member's office or employment. The impact of the benefit restriction depends on whether the member vested on or after December 1, 2012. Section 5 and 6 of that act amended the Consolidated Judicial Retirement System by adding G.S. 135-75.1A Forfeiture of retirement benefits for certain felonies related to employment or office holding, and G.S. 135-56(j). G.S. 135-56(j) provides that if a member [of the Consolidated Judicial Retirement System] is in service and has not vested on December 1, 2012, and is convicted of an offense for acts committed after December 1, 2012, then the member must forfeit all benefits under the System, except for a return of member contributions plus interest. If a member has vested on December 1, 2012, and is convicted of an offense for acts committed after December 1, 2012, then the member is not entitled to any creditable service that accrued after December 1, 2012.

**S.L. 2007-179** provided that elected officials who are members of the Legislative Retirement System (LRS), the Local Governmental Employees' System (LGERS), or the Consolidated Judicial Retirement System (CJRS) forfeit their pensions upon conviction of a State or federal offense involving public corruption or a felony violation of election laws. (Specific offenses are listed in the law.) The federal or State offense must be committed while serving as an elected government official and the conduct on which the offense is based must be directly related to the member's service as an elected official. If a member who is an elected official has not vested on July 1, 2007, and is convicted of a specified offense for acts committed after July 1, 2007, then the member forfeits all benefits except for a return of member contributions plus interest. If the member has vested on July 1, 2007, is convicted of a specified offense for acts committed after July 1, 2007, then the member is not entitled to any creditable service accrued after July 1, 2007. No member forfeits benefits or creditable service earned from a position not as an elected official. The act became effective July 1, 2007, and applied to offenses committed on or after that date.

## PART IV. DST COMPLIANCE AND FRAUD REVIEWS

**Section 4** provides for compliance and fraud reviews of programs with the Department of State Treasurer and its external contracts.

**EFFECTIVE DATE:** Except as otherwise provided, this act is effective when it becomes law.

*Theresa Matula, Committee Staff, substantially contributed to this summary.*