

SUBJECT: Pension forfeiture for elected officers convicted of certain felonies

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 7 ayes — S. Davis, Moody, Capriglione, Nevárez, Price, Shine, Turner

0 nays

WITNESSES: For — Dave Jones, Clean Elections Texas; Carol Birch, Public Citizen Texas; David Kazen, Texas Family Law Foundation; Michael Openshaw; (*Registered, but did not testify*: JC Dufresne, Common Cause Texas; Tony McDonald, Empower Texans; Craig McDonald, Texans for Public Justice; Lon Burnam)

Against — None

On — Anu Anumeha, State Pension Review Board; (*Registered, but did not testify*: Joanne Richards, Common Ground for Texans)

DIGEST: CSHB 500 would prohibit government pensions from being paid to elected state and local officials convicted of certain felonies arising from their duties in public office. For any felony conviction, the bill would require a legislator, governor, or statewide elected official to vacate the official's office on the date the conviction became final.

Pension payments. The bill's pension forfeiture requirements would apply to legislators, judges, other state elected officials, and officials elected to positions in political subdivisions such as cities and counties. A qualifying felony would be one involving bribery; embezzlement, extortion, or theft of public money; perjury; coercion of a public servant or voter; tampering with a governmental record; misuse of official information; conspiracy to commit any of the preceding offenses; or abuse of official capacity. Upon conviction, the trial judge would be required to make an affirmative finding of fact that the defendant was a member of the elected class of the Employees Retirement System of Texas or became eligible for a public retirement system wholly or in part due to the

person's elected office.

The court would be required to notify the retirement system of the conviction. The governmental entity where the defendant served also would be required to notify the retirement system within 30 days of the conviction.

Upon receipt of the notice or a similar notice from a federal court or U.S. attorney, the retirement system would be required to suspend retirement pay to the member. Members would be entitled to a refund of their contributions and earned interest.

Community property and alternate payees. A court could, in the same manner as in a divorce or annulment proceeding, award to the member's spouse all or part of the community property interest in the retirement annuity forfeited by the member. If the member's annuity had been subject to a written marital property agreement before the member committed the offense, a court would be required to award the forfeited annuity to the spouse as provided in the agreement. Such an award would be the separate property of that spouse and could not be converted to community property.

If the member's spouse was convicted as a party to the felony, the spouse would forfeit the member's retirement annuity and service retirement contributions to the same extent as the member.

Benefits payable to an alternate payee such as a former spouse, child, or other dependent under a qualified domestic relations order established before the bill's effective date would not be affected. Any refund of the member's contributions and earned interest would be subject to awards made to a former spouse in a divorce or child support order.

Overtaken conviction. Should a conviction be overturned on appeal or the defendant pardoned or declared innocent, the individual would be entitled to resumed annuity payments plus an amount equal to the accrued total of payments and earned interest on withheld amounts.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to an official who committed a qualifying felony offense on or after that date.

**SUPPORTERS
SAY:**

CSHB 500 would protect the public's trust in state and local governments by prohibiting a public retirement system from paying pensions to elected officials convicted of certain felony crimes related to their elective offices. State and local elected officials should not be allowed to receive public compensation in the form of a retirement benefit after being sentenced for a crime such as bribery or theft of public money.

The bill would sufficiently protect innocent spouses by allowing a court to award all or part of the retirement benefit subject to forfeiture. Retirement benefits also would be shielded for ex-spouses and children who had a court-approved domestic relations order prior to the bill's effective date.

The requirement for a state elected official to vacate office upon a final felony conviction would draw a bright line that is currently missing in state law. While a convicted felon is ineligible to run for re-election, the Texas Constitution and statutes are silent on what may be done for the duration of their terms. Allowing a convicted felon to remain in office corrodes the public's trust in state government. The expulsion requirement would not apply to legislators or state officers who were under indictment, appealing a conviction, or undergoing deferred adjudication. Nor would it apply to misdemeanor convictions, allowing officeholders to retain their elected positions after being convicted of lower-level offenses.

**OPPONENTS
SAY:**

CSHB 500 should be amended to require a final conviction before taking away an elected official's pension. This would prevent retirement systems from possibly having to calculate and refund benefits if an official's conviction was overturned on appeal.

More broadly, pension forfeiture laws are unjust because they represent an added penalty beyond the appropriate punishment determined by the

criminal justice system. Pensions are benefits earned by officials, whose families may be relying on the income. The loss of this benefit would disproportionately impact lower-earning officials relative to those with greater economic means later in life.

Enacting this bill also could open the door to future legislation removing pensions for other crimes and other classes of employees.

NOTES:

A companion bill, SB 500 by V. Taylor, was approved by the Senate on February 8 and referred to the House Committee on General Investigating and Ethics on March 7.