

By Representative Edwards

1                                   A bill to be entitled  
2           An act relating to public officers and  
3           employees; amending s. 112.3173, F.S., which  
4           provides for the forfeiture of retirement  
5           benefits by a public officer or employee  
6           convicted of specified felony offenses  
7           involving breach of the public trust or whose  
8           office or employment is terminated by reason of  
9           his or her commission or aiding in the  
10          commission of such offense; specifying  
11          additional offenses for which such forfeiture  
12          is required; requiring such forfeiture when the  
13          officer or employee is found to have committed  
14          such offense in a proceeding conducted under  
15          the Administrative Procedure Act; providing an  
16          effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20           Section 1. Section 112.3173, Florida Statutes, is  
21 amended to read:22           112.3173 Felonies involving breach of public trust and  
23 other specified offenses by public officers and employees;  
24 forfeiture of retirement benefits.--25           (1) INTENT.--It is the intent of the Legislature to  
26 implement the provisions of s. 8(d), Art. II of the State  
27 Constitution. In addition, to further ensure that public  
28 officers and employees do not abuse the public trust vested in  
29 them, it is the intent of the Legislature that public officers  
30 and employees who abuse such trust and are found to have  
31 committed a specified felony offense, whether criminally

1 convicted or not, shall forfeit their rights and benefits  
2 under any public retirement system or pension plan.

3 (2) DEFINITIONS.--As used in this section, unless the  
4 context otherwise requires, the term:

5 (a) "Conviction" and "convicted" mean an adjudication  
6 of guilt by a court of competent jurisdiction; a plea of  
7 guilty or of nolo contendere; a jury verdict of guilty when  
8 adjudication of guilt is withheld and the accused is placed on  
9 probation; or a conviction by the Senate of an impeachable  
10 offense.

11 (b) "Court" means any state or federal court of  
12 competent jurisdiction which is exercising its jurisdiction to  
13 consider a proceeding involving the alleged commission of a  
14 specified offense.

15 (c) "Public officer or employee" means an officer or  
16 employee of any public body, political subdivision, or public  
17 instrumentality within the state.

18 (d) "Public retirement system" means any retirement  
19 system or plan to which the provisions of part VII of this  
20 chapter apply.

21 (e) "Specified offense" means:

22 1. The committing, aiding, or abetting of an  
23 embezzlement of public funds;

24 2. The committing, aiding, or abetting of any theft by  
25 a public officer or employee from his or her employer;

26 3. Bribery in connection with the employment of a  
27 public officer or employee;

28 4. Any felony specified in chapter 838, except ss.  
29 838.15 and 838.16;

30 5. The committing of an impeachable offense; ~~or~~

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1           6. The committing of any felony by a public officer or  
2 employee who, willfully and with intent to defraud the public  
3 or the public agency for which the public officer or employee  
4 acts or in which he or she is employed of the right to receive  
5 the faithful performance of his or her duty as a public  
6 officer or employee, realizes or obtains, or attempts to  
7 realize or obtain, a profit, gain, or advantage for himself or  
8 herself or for some other person through the use or attempted  
9 use of the power, rights, privileges, duties, or position of  
10 his or her public office or employment position;-

11           7. The use or attempted use by the public officer or  
12 employee of his or her official position to commit any felony  
13 violation of chapter 794, chapter 800, or chapter 827; or

14           8. The committing of any felony involving a breach of  
15 the public trust.

16           (3) FORFEITURE.--

17           (a) Any public officer or employee who is convicted of  
18 a specified offense committed prior to retirement,~~or whose~~  
19 ~~office or employment is terminated by reason of his or her~~  
20 ~~admitted commission, aid, or abetment of a specified offense,~~  
21 shall forfeit all rights and benefits under any public  
22 retirement system of which he or she is a member, except for  
23 the return of his or her accumulated contributions as of the  
24 date of termination.

25           (b) Any public officer or employee who by clear and  
26 convincing evidence is found in a proceeding conducted in  
27 accordance with chapter 120 to have committed a specified  
28 offense prior to retirement, or whose office or employment is  
29 terminated by reason of his or her admitted commission, aid,  
30 or abetment of a specified offense, shall forfeit all rights  
31 and benefits under any public retirement system of which he or

1 she is a member, except for the return of his or her  
2 accumulated contributions as of the date of termination.

3 (4) NOTICE.--

4 (a) The clerk of a court in which a proceeding  
5 involving a specified offense is being conducted against a  
6 public officer or employee shall furnish notice of the  
7 proceeding to the Commission on Ethics. Such notice is  
8 sufficient if it is in the form of a copy of the indictment,  
9 information, or other document containing the charges. In  
10 addition, if a verdict of guilty is returned by a jury or by  
11 the court trying the case without a jury, or a plea of guilty  
12 or of nolo contendere is entered in the court by the public  
13 officer or employee, the clerk shall furnish a copy thereof to  
14 the Commission on Ethics.

15 (b) The Secretary of the Senate shall furnish to the  
16 Commission on Ethics notice of any proceeding of impeachment  
17 being conducted by the Senate. In addition, if such trial  
18 results in conviction, the Secretary of the Senate shall  
19 furnish notice of the conviction to the commission.

20 (c) The employer of any member whose office or  
21 employment is terminated by reason of his or her admitted  
22 commission, aid, or abetment of a specified offense shall  
23 forward notice thereof to the commission.

24 (d) The Commission on Ethics shall forward any notice  
25 and any other document received by it pursuant to this  
26 subsection to the governing body of the public retirement  
27 system of which the public officer or employee is a member or  
28 from which the public officer or employee may be entitled to  
29 receive a benefit. When called on by the Commission on Ethics,  
30 the Division of Retirement shall assist the commission in  
31 identifying the appropriate public retirement system.

1 (5) FORFEITURE DETERMINATION.--

2 (a) Whenever the official or board responsible for  
3 paying benefits under a public retirement system receives  
4 notice pursuant to subsection (4), or otherwise has reason to  
5 believe that the rights and privileges of any person under  
6 such system are required to be forfeited under this section,  
7 such official or board shall give notice and hold a hearing in  
8 accordance with chapter 120 for the purpose of determining  
9 whether such rights and privileges are required to be  
10 forfeited. If the official or board determines that such  
11 rights and privileges are required to be forfeited, the  
12 official or board shall order such rights and privileges  
13 forfeited.

14 (b) Any order of forfeiture of retirement system  
15 rights and privileges is appealable to the district court of  
16 appeal.

17 (c) When a final order of forfeiture is entered  
18 pursuant to paragraph (3)(a), the payment of retirement  
19 benefits ordered forfeited, except payments drawn from  
20 nonemployer contributions to the retiree's account, shall be  
21 stayed pending an appeal of the ~~as to a~~ felony conviction. If  
22 such conviction is reversed, no retirement benefits shall be  
23 forfeited pursuant to paragraph (3)(a). If such conviction is  
24 affirmed, retirement benefits shall be forfeited as ordered in  
25 this section.

26 (d) If any person's rights and privileges under a  
27 public retirement system are forfeited pursuant to this  
28 section and that person has received benefits from the system  
29 in excess of his or her accumulated contributions, such person  
30 shall pay back to the system the amount of the benefits  
31 received in excess of his or her accumulated contributions.

1 If he or she fails to pay back such amount, the official or  
2 board responsible for paying benefits pursuant to the  
3 retirement system or pension plan may bring an action in  
4 circuit court to recover such amount, plus court costs.

5 (6) FORFEITURE NONEXCLUSIVE.--

6 (a) The forfeiture of retirement rights and privileges  
7 pursuant to this section is supplemental to any other  
8 forfeiture requirements provided by law.

9 (b) This section does not preclude or otherwise limit  
10 the Commission on Ethics in conducting under authority of  
11 other law an independent investigation of a complaint which it  
12 may receive against a public officer or employee involving a  
13 specified offense.

14 Section 2. This act shall take effect October 1, 1997.

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17 HOUSE SUMMARY

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19 Revises provisions which require the forfeiture of  
20 retirement benefits by a public officer or employee  
21 convicted of specified felony offenses involving breach  
22 of the public trust, or whose office or employment is  
23 terminated by reason of his or her commission or aiding  
24 in the commission of such offense. Specifies additional  
25 offenses for which such forfeiture is required. Requires  
26 such forfeiture when the officer or employee is found to  
27 have committed such offense in a proceeding conducted  
28 under the Administrative Procedure Act.

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