

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Reporting Potential Public Employee Pension Forfeiture Crimes to the State Employees' Retirement System	Number: 570.15 Amended
Date: April 7, 2014	By Direction of:  David E. Durbin, Executive Director State Employees' Retirement System
Contact Agency: State Employees' Retirement System, Bureau of Benefit Administration, Telephone 717.237.0272	

This directive establishes policy, responsibilities, and procedures for agencies to report to the State Employees' Retirement System (SERS) members who are charged with and convicted of, or plead guilty or no defense to certain crimes relating to public office or public employment and, thus, may potentially be subject to pension forfeiture as set forth in the *Public Employee Pension Forfeiture Act 1978-140 (Act 140)*. Marginal dots are excluded due to major changes.

1. PURPOSE.

- a. This directive establishes policy, responsibilities, and procedures for agencies to report to SERS those SERS members who are charged with and convicted of, or plead guilty or no defense to certain crimes relating to public office or public employment and, thus, may potentially be subject to pension forfeiture as set forth in *Act 140*.
- b. To meet SERS' responsibility to administer the *Retirement Code* in accordance with existing laws passed by the General Assembly; its fiduciary obligation to SERS members; and its commitment to provide consultation and guidance to member agencies on all matters regarding SERS.

2. **SCOPE.** This directive applies to all departments, boards, commissions and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction that have employees who are eligible to become a SERS member. This policy shall be interpreted in accordance with the *Retirement Code*. Accordingly, SERS' policy and the responsibilities and procedures set forth herein are the same for all SERS employers and members.

3. **OBJECTIVE.** To ensure that SERS is notified of any SERS member that may potentially be subject to pension forfeiture as set forth in *Act 140*.

4. DEFINITIONS.

- a. **Public Employee Pension Forfeiture Act, 1978-140 (Act 140).** *Act of July 8, 1978, , P.L. 752, No. 140, as amended, 43 P.S. § 1311-1315.*
- b. **Public Official or Public Employee.** A person who is elected or appointed to any public office or employment, including justices, judges, justices of the peace, and members of the General Assembly, or who is acting or who has acted on behalf of the commonwealth or a political subdivision or any agency thereof including whether that person is acting on a permanent, temporary, full-time, or part-time basis. Does not apply to independent contractors or their employees or agents; or any person performing tasks over which the commonwealth or political subdivision has no legal right of control.
- c. **Retirement Code.** The Pennsylvania statute that authorizes and controls the administration, policies, and procedures of SERS as well as the rights and benefits of its members. The *Retirement Code* is set forth at *71 Pa. C.S. §§ 5101-5957*.
- d. **SERS.** The organization created by the *Retirement Code* to administer retirement benefits for Pennsylvania state employees, including overseeing the pension system and, under the authority of the State Employees' Retirement Board, pursuant to *Act 1987-81*, managing the optional deferred compensation program.
- e. **SERS Member.** An active member, inactive member, annuitant, vestee, or special vestee who is making, or has at any time, made contributions to the SERS fund. Eligibility for membership in SERS is specified in [Management Directive 570.1, Mandatory Membership in the State Employees' Retirement System](#) and [Management Directive 570.6, Optional Membership in the State Employees' Retirement System](#).

5. POLICY.

- a. The *Public Employee Pension Forfeiture Act, Act of July 8, 1978, P.L.752, No. 140, (43 P.S. § 1311-1315),* as amended. As a reasonable condition of employment, a public employee affirms and reaffirms his/her commitment to perform his/her job with honesty and integrity while employed by the Commonwealth of Pennsylvania or any agency as a SERS member, regardless of whether the public employment is on a full-time or part-time basis.
- b. An agreement to perform a term of public service without committing a crime set forth in *Act 140* is in effect as long as the individual remains a SERS member. As such, whether or not a public employee's right to receive a retirement benefit or he/she is in actual receipt of benefits, all previous accumulated rights to receive such benefit are subject to forfeiture by and through the agreement which is formed or renewed each time a person chooses to become a public employee or public official as defined in *43 P.S. § 1312* or is elected, appointed, promoted, or otherwise changes a job classification as a public official or public employee.

- c. For forfeiture to occur, the SERS member must be charged with and plead guilty or no defense to or be convicted of a crime set forth in *Act 140*.
- d. The following criminal offenses, as set forth in *Title 18* of the *Pennsylvania Consolidated Statutes* or other enumerated statute, when committed by a public official or public employee through his/her public office or position, or when his/her public employment places him/her in a position to commit the crime(s), may trigger the application of *Act 140*:
 - (1) Any of the criminal offenses set forth in Subchapter B of Chapter 31 (relating to definition of offenses), when the criminal offense is committed by a school employee as defined in *24 Pa. C.S. § 8102* (relating to definitions) against a student.
 - (2) *Section 3922* (relating to theft by deception), when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.
 - (3) *Section 3923* (relating to theft by extortion), when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.
 - (4) *Section 3926* (relating to theft of services), when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.
 - (5) *Section 3927* (relating to theft by failure to make required disposition of funds received), when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.
 - (6) *Section 4101* (relating to forgery).
 - (7) *Section 4104* (relating to tampering with records or identification).
 - (8) *Section 4113* (relating to misapplication of entrusted property and property of government or financial institutions) when the criminal culpability reaches the level of misdemeanor of the second degree.
 - (9) *Section 4701* (relating to bribery in official and political matters).
 - (10) *Section 4702* (relating to threats and other improper 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 authorities).
 - (14) *Section 4906* (relating to false reports to law enforcement authorities).
 - (15) *Section 4909* (relating to witness or informant taking bribe).
 - (16) *Section 4910* (relating to tampering with or fabricating physical evidence).
 - (17) *Section 4911* (relating to tampering with public records or information).

- (18) *Section 4952* (relating to intimidation of witnesses or victims).
- (19) *Section 4953* (relating to retaliation against witness, victim, or party).
- (20) *Section 5101* (relating to obstructing administration of law or other governmental function).
- (21) *Section 5301* (relating to official oppression).
- (22) *Section 5302* (relating to speculating or wagering on official action or information).
- (23) *Article III, Act of March 4, 1971 (P.L. 6, No. 2)*, known as the "*Tax Reform Code of 1971*."
- (24) Any criminal offense as set forth in Federal law that is substantially the same as one of the foregoing crimes.

6. RESPONSIBILITIES. Agencies must report to SERS all pending or concluded criminal actions against any SERS member that may involve any crime set forth in Section 5 of this directive.

7. PROCEDURES.

a. Agency Head shall provide notice to SERS' Bureau of Benefit Administration of any action to be reported pursuant to Section 6 of this directive. Notification should be given as soon as the member is charged with a crime and again when the member is convicted or pleads guilty or no defense to the charges. If available, notification should include:

- (1) date and location of alleged or actual crime(s);
- (2) court in which proceedings occurred or will occur;
- (3) court docket number(s);
- (4) sentencing order(s)/court documents;
- (5) amount of any monetary loss to the agency; and
- (6) newspaper articles regarding the alleged or actual crime(s) and the SERS member.

b. SERS. Upon notification, SERS will determine if the SERS member is subject to pension forfeiture and, if appropriate, follow internal procedures to forfeit the pension in accordance with *Act 140*.

This directive replaces, in its entirety, *Management Directive 570.15*, dated June 6, 2006.