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**POLICY NO.**  
**Committee**

020033  
Admin Comm.

**Issue No.** 1.0  
**Effective Date:** 09/06/2018  
01/09/2020

**Policy Category:**

Administration  
Benefits

**Page(s)**

4

**Approved.**

By: \_\_\_\_\_  
Chair of the Board

**Subject:** **FELONY FORFEITURE OF BENEFITS**

### **FELONY FORFEITURE OF BENEFITS**

#### **SECTION I. PURPOSE AND SCOPE**

The Public Employees' Pension Reform Act of 2013 (PEPRA) added two Felony Forfeiture Statutes applicable to all public employees as of January 1, 2013.

1. Government Code section 7522.72 applies to public employees who were first employed, appointed, or elected **before** January 1, 2013.
2. Government Code section 7522.74 applies to public employees who were first employed, appointed, or elected **on or after** January 1, 2013.

(Collectively, the statutes are referred hereinafter as the "Felony Forfeiture Statutes.")

Both Felony Forfeiture Statutes provide that when a public employee (Member) is convicted on or after January 1, 2013 by a state or federal trial court of any felony under the law it mandates forfeiture of benefits:

- (a) For conduct arising out of or in the performance of [the public employee's] official duties, in pursuit of the office or appointment [of the public employee], or in connection with obtaining salary, disability retirement, service retirement or other benefits. (Gov. Code §§ 7522.72, subdiv. (b)(1) & 7522.74, subdiv. (b)(1).)
- (b) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties. (Gov. Code §§ 7522.72, subdiv. (b)(2) & 7522.74, subdiv. (b)(2).)

The result of the Member's conduct and subsequent conviction due to such conduct as described above, mandates that the Member forfeit accrued rights and benefits in any public retirement system he or she is a Member of at the time the felony is committed retroactive to the first commission date of the crime. After the forfeiture of benefits, a Member cannot return to SBCERA covered employment and accrue further benefits in

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SBCERA. (Gov. Code §§ 7522.72, subdiv. (c)(1) & Gov. Code §§ 7522.74, subdiv. (c)(1).)

The Felony Forfeiture Statutes require SBCERA to return any employee contributions made by the Member on or after the earliest date of the commission of any felony described in subdivision (b) of Government Code section 7522.72. The return of any contributions will only be made on a qualifying distribution event as described in Government Code sections 7522.72, subdivision (d)(3) and 7522.74, subdivision (d)(3).

## SECTION II. ROLES & RESPONSIBILITIES

1. The Member and the prosecuting agency are required by law to notify the employer who employed the Member at the time of the commission of the felony within 60 days of the felony conviction and provide the employer all information required by the Felony Forfeiture Statutes. (Gov. Code §§ 7522.72, subdiv. (e)(1) § 7522.24, subdiv. (e)(1).)

2. The employer is required to notify SBCERA within 90 days of the Member's conviction. (Gov. Code §§ 7522.72, subdiv. (f) & 7522.24, subdiv. (f).) The employer, when notifying SBCERA of a conviction of the Member, will need to provide the following felony conviction information:

- a. Member's name and social security number;
- b. Termination date of employment;
- c. Earliest date of the commission of the felony;
- d. The court(s) in which the case was heard;
- e. The name and mailing address of the prosecuting agency (state and/or federal);
- f. Copy of communication received from the prosecuting agency;
- g. Description of the felony charges for which the Member was convicted;
- h. Date of conviction;
- i. Copy of court documents related to the Member's conviction/guilty plea;
- j. Statement of whether the felony offense was committed during the conduct or performance of the Member's job duties as described in Government Code sections 7522.72, subdiv. (b)(1) and (2) & 7522.74, subdiv. (b)(1) and (2).

3. Although the Felony Forfeiture Statutes require the employer to notify SBCERA of a Member's felony conviction, the media, third parties, or the Members themselves can notify SBCERA. When this occurs, SBCERA will reach out to the employer and ask for the felony conviction information listed in Section II (2)(a)-U).

### SECTION III. PROCEDURE

Upon receipt of notification from any source of a felony conviction of a SBCERA Member, but before the benefits are adjusted in accordance with the Felony Forfeiture Statutes, the Chief Executive Officer (CEO) or designee will investigate and analyze the matter in consultation with Chief Counsel or designee and determine whether the conviction violates one or more of the Felony Forfeiture Statutes and/or other applicable law.

The investigation will be based on felony conviction information received from the employer in Section II.(2) and any other information the CEO or designee and Chief Counsel or designee determines is necessary to discharge its obligation under the Felony Forfeiture Statutes. The SBCERA Board of Retirement (Board) may exercise its subpoena power (Gov. Code sec. 31535) for this purpose.

If the CEO, in consultation with Chief Counsel, determines that a Member's conviction of a felony arises out of the conduct of his or her public employment and falls under one of the Felony Forfeiture Statutes, then SBCERA will provide written notification to the Member, specifying the following:

- (i) The Felony Forfeiture Statute that applies to his or her SBCERA benefits;
- (ii) The first date of commission and date of conviction;
- (iii) Documentary support for the conclusion that such Felony Forfeiture Statute applies or does not apply;
- (iv) Showing how the forfeiture is calculated;
- (v) The effective date of the changes to the Member's benefit; and,
- (vi) Informing the Member has the right and the time to appeal the determination, in which the SBCERA Board will decide the case.

Changes and adjustments to the Member's benefit, including collection of overpayments, will occur no later than 31 days after the time for the Member to appeal has lapsed, or as soon thereafter as is feasible in light of the specific facts of the case. However, the disbursement of contributions will only occur on a qualifying distribution event. (Gov. Code §§ 7522.72, subdiv. (d)(3) & 7522.74, subdiv. (d)(3).) If contributions are returned to the Member as result of the applicability of the Felony Forfeiture Statutes and on a qualifying distribution event, SBCERA will notify the court and the district attorney at least three (3) business days before disbursement of funds. (Gov. Code §§ 7522.72, subdiv. (d)(2) & 7522.74, subdiv. (d)(2).)

The notice to the Member will include a copy of this policy.

### **SECTION IV. APPEAL**

The Member is provided an opportunity to appeal the CEO's determination as specified in Section III of this policy. The Member has 60 days from the date of the CEO's written notification to appeal the decision to the SBCERA Board. If the Member does not appeal within the time prescribed, then on the 61<sup>st</sup> day from the date of the CEO's determination, SBCERA will make changes and adjustments to the Member's benefit as stated herein and required by the Felony Forfeiture Statutes.

In the event the Member appeals the CEO's determination as specified in Section III of this policy, the matter will be scheduled for determination by the SBCERA Board at a regularly scheduled meeting. Both SBCERA and the Member will have the opportunity to present evidence to the SBCERA Board; however, such evidence is required to be submitted no later than 14 days before the meeting in which this matter is scheduled to be heard. At such meeting, SBCERA will present its evidence, conclusion, and recommendation. The Member and his or her counsel, if represented, will be provided an opportunity to present to the SBCERA Board.

At this meeting, the SBCERA Board will take action on this matter based on the information presented. The SBCERA Board's decision is final as of the date the SBCERA Board took action on this matter. Judicial review of the SBCERA Board's final decision shall be subject to Code of Civil Procedure 1094.6. Following each decision, the CEO or designee shall send written notice of the Board's decision.