SLS 10RS-180

Regular Session, 2010

SENATE BILL NO. 13

BY SENATOR B. GAUTREAUX

RETIREMENT BENEFITS. Allows garnishment of Louisiana public retirement or pension system, plan, or fund benefits of an elected official to pay fines or restitution imposed for a felony associated with his office. (7/1/10)

1	AN ACT
2	To amend and reenact R.S. 11:292, 570, 930, 951.3, 952.3, 1378, 1905, 3014, 3051, 3111,
3	3140, 3198, 3229, 3321(A), 3345, 3389, 3408, 3440, 3470, 3513, 3608(A), 3691,
4	3770, 3800, and 3823, and R.S. 13:3881(D)(1), relative to garnishment or seizure of
5	pension or retirement benefits; to provide for garnishment or seizure of benefits from
6	public retirement or pension systems, plans, or funds; to provide relative to the
7	applicability of certain court orders to such benefits; to provide for garnishment or
8	seizure of such benefits to pay any fine or restitution ordered for certain felony
9	convictions associated with service as an elected official; to provide for an effective
10	date; and to provide for related matters.
11	Notice of intention to introduce this Act has been published.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 11:292, 570, 930, 951.3, 952.3, 1378, 1905, 3014, 3051, 3111, 3140,
14	3198, 3229, 3321(A), 3345, 3389, 3408, 3440, 3470, 3513, 3608(A), 3691, 3770, 3800, and
15	3823 are hereby amended and reenacted to read as follows:
16	§292. Seizure for child support: garnishment or seizure for payment of certain
17	fines or restitution

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1	$\underline{\mathbf{A}}$. Notwithstanding any other provision of law to the contrary, any
2	retirement allowance, benefit, or refund of accumulated contributions paid to any
3	member, former member, or retiree under the provisions of any public retirement
4	system, or the portion of a retirement allowance, benefit, or refund of accumulated
5	contributions paid to a spouse or former spouse under the provisions of R.S. 11:291,
6	shall be subject to garnishment or court-ordered assignment to pay child support.
7	B.(1) Notwithstanding any other provision of law to the contrary, any
8	pension, retirement allowance, or benefit, or any refund of accumulated
9	contributions payable to any member, former member, or retiree under the
10	provisions of any public pension or retirement system, plan, or fund shall be
11	subject to garnishment under a writ of fieri facias to pay any court-ordered
12	restitution or fine imposed on such member, former member, or retiree as a
13	result of a conviction of or a plea of guilty or nolo contendere to the commission
14	of a felony for misconduct associated with such person's service as an elected
15	official for which credit in the system, plan, or fund was earned or accrued.
16	(2) Notwithstanding any other provision of law to the contrary, a
17	garnishment authorized pursuant to this Subsection may be continuing in
18	nature as necessary to pay the court-ordered restitution or fine in full.
19	* * *
20	§570. Exemption from execution
21	Any annuity, retirement allowance or benefit, or refund of contributions, or
22	any optional benefit or any other benefit paid or payable to any person under the
23	provisions of this Subpart is exempt from state or municipal tax, and is exempt from
24	levy and sale, garnishment, attachment or any other process whatsoever, except as
25	provided in R.S. 11:292, and is unassignable.
26	* * *
27	§930. Exemption from execution
28	Annuity contracts issued under the optional retirement plan and all rights
29	thereto of a participant in the optional retirement plan shall be exempt from any state

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1	or municipal tax, assessment for the insolvency of any life insurance company, any
2	levy or sale, garnishment, attachment, or any process whatsoever, except as
3	provided in R.S. 11:292, and shall be unassignable except as otherwise specifically
4	provided in the annuity contract.
5	* * *
6	§951.3. Pensions, benefits, etc., exemption from seizure
7	The right of a person to a pension, an annuity, or a retirement allowance, to
8	the return of contributions, the pension, annuity or retirement allowance itself, or any
9	other right accrued or accruing to any person under the provisions of this Part and
10	the money in the various accounts created by this Part shall not be subject to
11	execution, garnishment, attachment or any other process whatsoever, except as
12	provided in R.S. 11:292, and shall be unassignable except as specifically provided
13	for in this Part.
14	* * *
15	§952.3. Exemption of pension and other rights from levy and other processes
16	The right of a person to a retirement allowance, or to the return of
17	contributions; the retirement allowance itself; any optional benefit or any other right
18	accrued or accruing to any person under the provisions of this Part; and the moneys
19	in the funds created by this Part are exempt from any state or municipal tax, and
20	exempt from levy and sale, garnishment, attachment, or any other process
21	whatsoever, except as provided in R.S. 11:292, and shall be unassignable except
22	as otherwise specifically provided in this Part.
23	* * *
24	\$1378. Retirement pay or pension; exemption from taxes and execution
25	Any retirement pay or pension paid to any judge or the surviving spouse of
26	any judge under the unfunded judicial retirement plan is exempt from any state or
27	municipal income tax, and is exempt from levy and sale, garnishment, attachment
28	or any other process whatsoever, except as provided in R.S. 11:292.
29	* * *

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§1905. Exemption from execution

2 The following items are hereby exempt from any state or municipal tax and from levy and sale, garnishment, attachment, or any other process whatsoever as 3 provided in this Chapter, except as provided in R.S. 42:720.21: 11:292: the right of 4 5 a person to a pension, an annuity, or a retirement allowance, or to the return of contributions, the pension, annuity, or retirement allowance itself, any optional 6 benefit or any other right accrued or accruing to any person, and the moneys in 7 8 various funds created by this Chapter. These enumerated items shall be 9 unassignable, except as in this Chapter specifically otherwise provided. Benefits 10 paid under this Chapter shall be exempt from state income tax. If the contributions 11 of an employee are paid by an employer in order to secure credit for service, these 12 funds may be assigned to the employer until such time as the employee has repaid 13 contributions so paid or the employer has released the contributions so paid by written notice to the board. 14

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* * *

16 §3014. Exemptions from execution

17 The right of a person to an annuity, a retirement allowance, or benefit, or to 18 the return of contributions, or to any optional benefit or any other right accrued or 19 accruing to any person under the provisions of this Part, and the monies in the system 20 created by this Part, is <u>are</u> hereby exempt from any state or municipal tax, and 21 exempt from levy and sale, garnishment, attachment, or any other process 22 whatsoever, <u>except as provided in R.S. 11:292</u>, and shall be unassignable except 23 as in this Part specifically otherwise provided.

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* * *

25 §3051. Assignment prohibited

The right of a person to an annuity, a pension or any other benefit or refund, or any right accrued or accruing to any member or beneficiary under the provisions of this system, and the monies belonging to the system, shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of

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1	bankruptcy, or the insolvency law or any other process of law except as specifically
2	provided by the provisions of this system and in R.S. 11:292, and except that the
3	City shall have the right to set off funds for any claim arising from embezzlement by
4	or fraud of a member.
5	* * *
6	§3111. Exemption from seizure and attachment
7	No Except as provided in R.S. 11:292, no portion of the said Firemen's
8	Pension and Relief Fund shall, before or after its order for distribution is issued by
9	the said Board of Trustees to the person or persons entitled thereto under the
10	provisions of this Part, be held, seized, or levied upon, by virtue of any attachment,
11	garnishment, execution, or order or decree, or any other process whatsoever, issued
12	out of or by any court, for the payment or satisfaction, in whole or in part, of any
13	debt, damage, claim, judgment, or decree against any beneficiary of such Fund; but
14	shall be exempt therefrom. That the said The Fund shall be kept, held, and
15	distributed for no purposes other than those provided for in this Part.
16	* * *
17	§3140. Exemption from seizure and attachment
18	No Except as provided in R.S. 11:292, no portion of the Firemen's Pension
19	and Relief Fund shall, before or after its order for distribution is issued by the board
20	of trustees to the person or persons entitled thereto under the provisions of this Part,
21	be held, seized, taken, subjected to, detained or levied upon, by virtue of any
22	attachment, garnishment, execution, injunction, writ, order, decree or any other
23	process whatsoever, issued out of or by any court of this state, for the payment or
24	satisfaction, in whole or in part, of any debt, damage, demand, claim, judgment or
25	decree against any beneficiary of such Fund; but shall be exempt therefrom. The
26	Fund shall be kept, held, and distributed solely for the purposes named in this Part
27	and for no other purposes whatsoever.
28	* * *
29	§3198. Exemption from seizure and attachment

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1 That Except as provided in R.S. 11:292, no portion of the said Firemen's 2 Pension and Relief Fund shall, before or after its order for distribution is issued by the said board of trustees to the person or persons entitled thereto under the 3 provisions of this Part, be held, seized, taken, subjected to, detained, or levied upon, 4 5 by virtue of any attachment, garnishment, execution, injunction, writ, order, decree, or any other process whatsoever, issued out of or by any court of this state, for the 6 7 payment or satisfaction, in whole or in part, for any debt, damage, demand, claim, 8 judgment, or decree, against any beneficiary of such fund; but shall be exempt 9 therefrom. That said The fund shall be sacredly kept, held, and distributed for the purposes named in this Part, and for no other purposes whatsoever. 10

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§3229. Exemption from seizure and attachment

13 No Except as provided in R.S. 11:292, no portion of the Firemen's Pension and Relief Fund shall, before or after its order for distribution is issued by the board 14 of trustees to the person or persons entitled thereto under the provisions of this Part, 15 be held, seized, taken, subjected to, detained, or levied upon, by virtue of any 16 attachment, garnishment, execution, injunction, writ, order, decree, or any other 17 process whatsoever, issued out of or by any court of this state, for the payment or 18 19 satisfaction, in whole or in part, of any debts, damage, demand, claim, judgment or 20 decree against any beneficiary of such fund, but shall be exempt therefrom. The 21 fund shall be kept, held, and distributed solely for the purposes named in this Part 22 and for no other purposes whatsoever.

- 23 * * *
- 24

§3321. Exemption from seizure and attachment

A. No Except as provided in R.S. 11:292, no portion of the Firemen's Pension and Relief Fund shall, before or after any order for distribution is issued by the said board of directors to the person or persons entitled thereto under the provisions of this Part, be held, seized, or levied upon, by virtue of any attachment, garnishment, execution, or order or decree, or any other process whatsoever issued

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out of, or by any court, for the payment or satisfaction, in whole or in part, of any debt, damage, claim, judgment, or decree against any beneficiary of said fund; but shall be exempt therefrom. That the said <u>The</u> fund shall be kept, held, and distributed for no purpose other than those provided for in this Part.

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§3345. Exemption from seizure

7 No Except as provided in R.S. 11:292, no portion of the pension fund shall, 8 before or after its order for distribution is issued by the board of trustees to the 9 person or persons entitled thereto under the provisions of this Part, be held, seized, 10 taken, subjected to, detained, or levied upon by virtue of any attachment, 11 garnishment, execution, writ, order, injunction, decree, or any other process 12 whatsoever, issued out of or by any court of the state of Louisiana, for the payment, 13 or satisfaction, in whole or in part, of any debt, claim, damage, demand, judgment, or any other decree against any beneficiary of this fund, but shall be exempt 14 therefrom. 15

- 16 * * *
- 17

§3389. Exemption of pension and other rights from levy and other process

The right of a person to a pension, an annuity, a retirement allowance, or to 18 19 the return of contributions; the pension, annuity, or retirement allowance itself; any 20 optional benefit or any other right accrued or accruing to any person under the 21 provisions of this Part; and the moneys in the various funds created by this Part are 22 exempt from any state or municipal tax, and all state income tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, except as 23 provided in R.S. 11:292, and shall be unassignable except as otherwise specifically 24 provided in this Part. The fund shall be sacredly held, kept, and secured and 25 distributed for the purpose of pensioning the persons named in this Part and for the 26 27 payment of death benefits and for no other purpose whatsoever.

28 * * *

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§3408. Exemption from seizure and attachment

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1 No Except as provided in R.S. 11:292, no portion of the fireman's pension 2 and relief fund, before or after its order for distribution is issued by the board of 3 trustees to the person or persons entitled thereto under the provisions of this Part, shall be held, seized, taken, subjected to, detained, or levied upon, by virtue of any 4 5 attachment, garnishment, execution, injunction, writ, order, decree, or any other process whatsoever, issued out of or by any court of this state, for the payment or 6 7 satisfaction, in whole or in part, of any debt, damage, demand, claim, judgment, or 8 decree against any beneficiary of such fund, but shall be exempt therefrom. The 9 fund shall be kept, held, and distributed solely for the purposes named in this Part 10 and for no other purposes whatsoever.

- 11 * *
- 12 §3440. Exemption from seizure and attachment

13 No Except as provided in R.S. 11:292, no portion of the said Firemen's Pension and Relief Fund shall, before or after its order for distribution is issued by 14 the said Board of Trustees to the person or persons entitled thereto under the 15 provisions of this Part, be held, seized, taken, subjected to, detained, or levied upon, 16 17 by virtue of any attachment, garnishment, execution, injunction, writ, order, decree, or any other process whatsoever, issued out of or by any court of this state, for the 18 19 payment or satisfaction, in whole or in part, of any debt, damage, demand, claim, 20 judgment, or decree, against any beneficiary of such fund;, but shall be exempt 21 therefrom. The Fund shall be sacredly kept, held, and distributed for the purposes 22 named in this Part, and for no other purposes whatsoever.

- 23 * *
- 24

§3470. Exemption from seizure and attachment

That Except as provided in R.S. 11:292, no portion of the said Firemen's Pension and Relief Fund shall, before or after its order for distribution is issued by the said board of trustees to the person or persons entitled thereto under the provisions of this Part, be held, seized, taken, subjected to, detained, or levied upon, by virtue of any attachment, garnishment, execution, injunction, writ, order, decree,

*

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1	or any other process whatsoever, issued out of or by any court of this state, for the
2	payment or satisfaction, in whole or in part, of any debt, damage, demand, claim,
3	judgment, or decree against any beneficiary of such fund;, but shall be exempt
4	therefrom. That said The fund shall be sacredly kept, held, and distributed for the
5	purposes named in this Part, and for no other purposes whatsoever.
6	* * *
7	§3513. Fund not subject to execution
8	The Except as provided in R.S. 11:292, the fund, or any portion thereof,
9	before or after an order for its distribution is issued, shall be exempt from assignment
10	or pledge by a beneficiary of the fund or from seizure by virtue of any judicial
11	process issued against the beneficiary.
12	* * *
13	§3608. Attachment of fund; exemption from state income tax
14	A. No Except as provided in R.S. 11:292, no portion of the fund shall
15	before or after the order for distribution is issued by the board of directors to the
16	person or persons entitled thereto under the provisions of this Subpart, be held,
17	seized, or levied upon, by virtue of any attachment, garnishment, execution, or order
18	or decree, or any other process whatsoever, issued out of, or by, any court, for the
19	payment or satisfaction, in whole or in part, of any debt, damage, claim, judgment,
20	or decree against any beneficiary of such fund, but shall be exempt therefrom. The
21	fund shall be kept, held, and distributed for no purpose other than those provided for
22	in this Subpart. No present or future revision or amendments to the fund shall have
23	the effect of reducing any benefit now in existence.
24	* * *
25	§3691. Exemption from execution
26	The right of a person to a pension, an annuity, or a retirement allowance, to
27	the return of contributions, the pension, annuity, or retirement allowance itself, any
28	optional benefit or any other right accrued or accruing to any person under the
29	provisions of this Subpart, and the moneys in the various funds created by this

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1 Subpart, are hereby exempt from any state or municipal tax, and exempt from levy 2 and sale, garnishment, attachment, or any other process whatsoever, except as provided in R.S. 11:292, and shall be unassignable except as in this Subpart 3 4 specifically otherwise provided. * 5 §3770. Exemption from seizure and attachment 6 No Except as provided in R.S. 11:292, no portion of the said Bus Drivers' 7 8 Pension and Relief Fund shall, before or after its order for distribution is issued by 9 the said Board of Trustees to the person or persons entitled thereto under the 10 provisions of this Part, be held, seized, taken, subjected to, detained, or levied upon 11 by virtue of any attachment, garnishment, execution, injunction, writ, order, decree, 12 of or any other process whatsoever, issued out of or by any Court court of this State 13 state for the payment or satisfaction, in whole or in part, of any debt, damage, demand, claim, judgment, or decree, against any beneficiary of such fund, but shall 14 be exempt therefrom. That said The Fund shall be sacredly kept, held, and 15 distributed for the purposes named in this Part, and for no other purposes 16 17 whatsoever. * 18 19 §3800. Exemption from seizure and attachment That no Except as provided in R.S. 11:292, no portion of the said Electrical 20 21 Workers' Pension and Relief Fund shall, before or after its order for distribution is issued by the said Board of Trustees to the person or persons entitled thereto under 22 the provisions of this Part, be held, seized, taken, subjected to, detained, or levied 23 upon by virtue of any attachment, garnishment, execution, injunction, writ, order, 24 decree, or any other process whatsoever, issued out of, or by, any Court court of this 25 State state for the payment or satisfaction, in whole or in part, of any debt, damage, 26 27 demand, claim, judgment, or decree, against any beneficiary of such Fund, but shall be exempt therefrom. That said The Fund shall be sacredly kept, held, and 28

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distributed for the purposes named in this Part, and for no other purposes

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1	whatsoever.
2	* * *
3	§3823. Exemption from execution
4	The right of a person to a pension, an annuity, or a retirement allowance or
5	benefit;, or to the return of contributions;; the pension, annuity, or retirement
6	allowance itself; to any optional benefit; or any other right accrued or accruing to any
7	person under the provisions of this Part or to any person with such rights in the
8	Employees' Retirement System of the city of New Orleans are is exempt from any
9	state or municipal tax and, are except as provided in R.S. 11:292, exempt from levy
10	and sale, garnishment, attachment, or any other process whatsoever.
11	* * *
12	Section 2. R.S. 13:3881(D)(1) is hereby amended and reenacted to read as follows:
13	§3881. General exemptions from seizure
14	* * *
15	D.(1) Except as provided in Paragraph (2) of this Subsection and in R.S.
16	<u>11:292</u> , the following shall be exempt from all liability for any debt except alimony
17	and child support: all pensions, all tax-deferred arrangements, annuity contracts, and
18	all proceeds of and payments under all tax-deferred arrangements and annuity
19	contracts, as defined in Paragraph (3) of this Subsection.
20	* * *
21	Section 3. This Act shall become effective on July 1, 2010; if vetoed by the governor
22	and subsequently approved by the legislature, this Act shall become effective on July 1,
23	2010, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Lauren B. Bailey.

DIGEST

<u>Present law</u> (R.S. 13:3881(A) and R.S. 20:33) provides for a general exemption from seizure under any writ, mandate, or process whatsoever for certain income or property of a debtor. Specifies that, except as provided in <u>present law</u>, the following shall be exempt from all liability for any debt except alimony and child support:

(1) All pensions.

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- (2) All tax-deferred arrangements.
- (3) Annuity contracts.
- (4) All proceeds of and payments under all tax-deferred arrangements and annuity contracts.

<u>Proposed law</u> retains <u>present law</u>. Provides that the pension or retirement benefit of an elected official may be garnished or seized to pay any fine or restitution imposed as a penalty for conviction of a felony associated with his office.

<u>Present law</u> (R.S. 11:291) provides for protection of a spouse's community property interest in the public retirement or pension benefit of a member or retiree of a state or statewide retirement system.

The state public retirement systems are:

- (1) The Louisiana State Employees' Retirement System (LASERS);
- (2) The Teachers' Retirement System of Louisiana (Teachers');
- (3) The Louisiana School Employees' Retirement System (LSERS); and
- (4) The State Police Pension and Retirement System (SPPRS).

The statewide public retirement systems are:

- (1) The Assessors' Retirement Fund (LARF);
- (2) The Clerks of Court Retirement and Relief Fund (Clerks);
- (3) The District Attorneys' Retirement System (DARS);
- (4) The Firefighters' Retirement System (FRS);
- (5) The Municipal Employees' Retirement System of Louisiana (MERS);
- (6) The Municipal Police Employees' Retirement System (MPERS);
- (7) The Parochial Employees' Retirement System of Louisiana (PERS);
- (8) The Registrars of Voters Employees' Retirement System (ROVERS); and
- (9) The Sheriffs' Pension and Relief Fund (Sheriffs').

Proposed law retains present law.

<u>Present law</u> (R.S. 11:292) provides that notwithstanding any other provision of <u>present law</u> to the contrary, any retirement allowance, benefit, or refund of accumulated contributions paid to any member, former member, or retiree under the provisions of any public retirement system, or the portion of a retirement allowance, benefit, or refund of accumulated contributions paid to a spouse or former spouse under the provisions of <u>present law</u> (R.S. 11:291) shall be subject to garnishment or court-ordered assignment to pay child support.

Proposed law retains present law.

Various provisions of <u>present law</u> specific to particular public retirement or pension systems, plans, or funds provide that any annuity, retirement allowance or benefit, or refund of

Page 12 of 13 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions. contributions, or any optional benefit or any other benefit paid or payable to any person under the provisions of <u>present law</u> is exempt from any state or municipal tax and is exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and is unassignable.

Proposed law retains present law.

Some provisions of <u>present law</u> regarding such exemptions specify that garnishment or assignment pursuant to <u>present law</u> (R.S. 11:292) is an exception to the provisions exempting retirement or pension benefits from execution. Provide that benefits may be garnished or assigned pursuant to <u>present law</u>.

<u>Proposed law</u> retains <u>present law</u>. These provisions apply to LASERS, Teachers', LSERS, SPPRS, LARF, Clerks, DARS, MERS, the Employees' Retirement System of the city of Baton Rouge and the parish of East Baton Rouge, the Employees' Retirement System of the city of Shreveport, ROVERS, Sheriffs', MPERS, FRS, the Firemen's Pension and Relief Fund for the City of Bossier City, and the Policemen's Pension and Relief Fund for the city of Bossier City.

Other provisions of <u>present law</u> exempting retirement or pension benefits from garnishment or execution do not contain a specific reference to the exception for seizure for child support in <u>present law</u> (R.S. 11:292), although such exception applies to the benefits. These provisions apply to judges and court officers; members of the Teachers' Optional Retirement Plan; Orleans Parish school employees; LSU Retirement System members; employees of the city of Alexandria and of the city of Bogalusa; firefighters in the city of Alexandria, the consolidated fire districts of Bastrop, the city of Bossier City, the city of Houma, the city of Lake Charles, the city of Monroe, the city of New Orleans, Fire Protection District Number One for the parish of Ouachita, the city of Shreveport, and the city of West Monroe; police officers in any municipality having a population between 7,500 and 250,000 and in the city of Lafayette; and employees of the New Orleans Sewerage and Water Board.

<u>Proposed law</u> retains <u>present law</u> and adds specific reference to the applicable exception for child support contained in <u>present law</u>.

<u>Proposed law</u> provides that the pension or retirement benefit of an elected official or former elected official payable from any public retirement or pension system, plan, or fund may be subject to seizure or garnishment for payment of any restitution or fine imposed upon conviction of or a plea of guilty or nolo contendere to a felony associated with the elected official's service for which such retirement benefit was earned or accrued.

<u>Proposed law</u> specifies that, notwithstanding any provision of law to the contrary, a garnishment authorized pursuant to <u>proposed law</u> may be continuing in nature as necessary to pay the court-ordered restitution or fine in full.

Effective July 1, 2010.

(Amends R.S. 11: 292, 570, 930, 951.3, 952.3, 1378, 1905, 3014, 3051, 3111, 3140, 3198, 3229, 3321(A), 3345, 3389, 3408, 3440, 3470, 3513, 3608(A), 3691, 3770, 3800, and 3823 and R.S. 13:3881(D)(1))