

AMENDED IN SENATE AUGUST 27, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN SENATE MAY 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 399

Introduced by Assembly Member Brownley

February 23, 2009

~~An act to amend Section 20731 of, and to amend, repeal, and add Section 22864 of, the Government Code, relating to public employee benefits, and declaring the urgency thereof, to take effect immediately. An act to amend Section 22708 of the Education Code, and to amend Section 20731 of, and to add Sections 20969, 75103.6, and 75605.1 to, the Government Code, relating to public employee benefits.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 399, as amended, Brownley. Public employee benefits.

(1) The Public Employees' Retirement Law (PERL) permits a member of the Public Employees' Retirement System (PERS) with less than 3 years of service who enters employment as a member of another public retirement system supported, in whole or in part, by state funds, within 6 months of leaving state service to elect to leave accumulated contributions on deposit in the retirement fund. The law provides that failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

This bill would require that a member who is permanently separated from all service covered by PERS, who is not in specified public service, and 70 years of age, be provided with an election to withdraw contributions or, if vested, an election to either apply for service retirement or withdraw contributions. The bill would require that failure to apply for service retirement or to make an election to withdraw contributions within 90 days be deemed an election to withdraw contributions. The bill would specify the method of distribution of contributions for members who cannot be located with reasonable diligence. The bill also would make technical changes.

(2) The State Teachers' Retirement System, the Public Employees' Retirement System, and the Judges' Retirement System and the Judges Retirement System II provide pension benefits based in part upon credited service. The Public Employees' Retirement Law provides that credit for service generally is accrued based upon service rendered and compensated in a fiscal year, and that time during which a member is absent without compensation is not allowed for computing service. The State Teachers' Retirement Law provides that a member's creditable service is calculated in relation to his or her creditable compensation. The Judges' Retirement System II Law provides that service means the period of time that a judge received a salary and made contributions to the system by reason of holding office as a judge, as specified. Pursuant to various executive orders, state employees have been furloughed without compensation. Existing law, in effect until July 1, 2010, permits a judge or justice to elect to waive irrevocably a certain percentage of salary, and a judge or justice who does so is not obligated to appear for work on a day a court is closed pursuant to specified authority. That law prohibits this waiver from being deemed a reduction in salary or service for the purpose of providing retirement benefits, among others.

This bill would require, for members of the State Teachers' Retirement System, that the calculations of a retirement allowance for a state employee subject to mandatory furloughs include earnings, contributions, and compensation earnable that would have been reported had the employee not been subject to mandatory furloughs, and would require that the employer pay the cost of the increased service credit that results from these inclusions. The bill would also require that, for all retirement purposes, credit for service and compensation earnable for members of the Public Employees' Retirement System employed by the state that are subject to mandatory furloughs be based

on the amount that would have been credited had the employee not been subject to mandatory furloughs. The bill would define mandatory furloughs in these regards.

The bill would further require, for the Judges' Retirement System and the Judges' Retirement System II, that calculations of retirement benefits and Extended Service Incentive Program benefits for any judge who voluntarily waives salary, as described above, include salary and contributions that would have been paid had the judge not done so, and that the state pay costs that result from the increased benefits and monetary credits.

~~(2) The Public Employees' Medical and Hospital Care Act requires that premiums charged for enrollment in a health benefit program reasonably reflect the cost of the benefits, provided that this does not limit the Board of Administration of PERS from adjusting premiums charged under any health benefit plan or contract to reflect regional variations in providing services, which adjustments are at the sole discretion of the board.~~

~~This bill, until January 1, 2012, would authorize the board to use excess reserves generated by one or more self-funded health benefit plans to either reduce or pay the premiums and corresponding administrative expenses related to any self-funded health benefit plans offered by the board, as specified.~~

~~(3) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22708 of the Education Code is amended
- 2 to read:
- 3 22708. (a) The calculations of retirement allowances under
- 4 this part for state employees in the personal leave program shall
- 5 include credit for service that would have been credited had the
- 6 employee not been in the personal leave program. The costs that
- 7 result from the increased service credit shall be paid for by the
- 8 employer in a manner prescribed by the system.
- 9 (b) The calculations of a retirement allowance under this part
- 10 for a state employee subject to mandatory furloughs shall include
- 11 earnings, contributions, and compensation earnable that would

1 have been reported had the employee not been subject to
2 mandatory furloughs. The employer shall pay the cost of the
3 increased service credit that results from these inclusions in a
4 manner prescribed by the system pursuant to Section 22909.

5 (c) For purposes of subdivision (b), “mandatory furloughs”
6 means time during which a member identified below is directed
7 to be absent from work without pay because of an Executive order
8 in the 2008–09 and 2009–10 fiscal years:

9 (1) A person subject to an Executive order requiring a
10 mandatory furlough for state employees.

11 (2) A person who is excepted from the definition of “state
12 employee” in subdivision (c) of Section 3513, or who is an officer
13 or employee of the executive branch of state government who is
14 not a member of the civil service, and who is subject to an
15 Executive order requiring a mandatory furlough for state
16 employees.

17 **SECTION 1.**

18 **SEC. 2.** Section 20731 of the Government Code is amended
19 to read:

20 20731. (a) Notwithstanding any other provision of this part,
21 a member who is credited with less than the years of service
22 specified in Article 1 (commencing with Section 21060) of Chapter
23 12 who enters employment as a member of a public retirement
24 system supported, in whole or in part, by state funds, including
25 the University of California Retirement System, or as a member
26 of a county retirement system, within six months of leaving state
27 service, shall have the right to elect to leave accumulated
28 contributions on deposit in the retirement fund. Failure to make
29 an election to withdraw accumulated contributions shall be deemed
30 an election to leave accumulated contributions on deposit in the
31 retirement fund. This section shall also apply to a member who is
32 subject to Section 21076, except that no election to leave
33 contributions on deposit is required for service that is subject to
34 Section 21076.

35 (b) (1) An election to allow accumulated contributions to remain
36 in the retirement fund may be revoked by the member at any time,
37 except any of the following:

38 (A) While the member is employed in state service in a position
39 in which the member is not excluded from membership with respect
40 to that service.

1 (B) While the member is in service as a member of a public
2 retirement system supported, in whole or in part, by state funds,
3 including the University of California Retirement System.

4 (C) While the member is in service, entered within six months
5 after discontinuing state service, as a member of a county
6 retirement system.

7 (2) All accumulated contributions in a member's account up to
8 the time of revocation shall be distributed in accordance with an
9 election pursuant to Section 20735.

10 (3) A member who is permanently separated from all service
11 covered by the system, who is not subject to paragraph (1), and
12 who attains 70 years of age shall be provided with an election to
13 withdraw contributions or, if vested, an election to either apply
14 for service retirement or to withdraw contributions. Failure to apply
15 for service retirement or to make an election to withdraw
16 contributions within 90 days shall be deemed an election to
17 withdraw contributions. If the person fails to either apply for
18 service retirement or elect to withdraw contributions, or cannot,
19 with reasonable diligence, be located, the accumulated
20 contributions shall be distributed in accordance with Section 21500.

21 (c) A member whose membership continues under this section
22 is subject to the same age and disability requirements as apply to
23 other members for service or for disability retirement. After the
24 qualification of the member for retirement by reason of age, which
25 shall be the lowest age applicable to any membership category in
26 which the member has credited service, or disability, the member
27 shall be entitled to receive a retirement allowance based upon the
28 amount of the member's accumulated contributions and service
29 standing to the member's credit at the time of retirement and on
30 the employer contributions held for the member and calculated in
31 the same manner as for other members, except that the provisions
32 in this part for minimum service and disability retirement
33 allowances shall not apply to the member, unless the member
34 meets the minimum service requirements. If a basic death benefit
35 becomes payable under Article 1 (commencing with Section
36 21490), Article 2 (commencing with Section 21530), and Article
37 5 (commencing with Section 21620) of Chapter 14 because of
38 death before retirement of a member, the average annual
39 compensation earnable in the year preceding the date of termination
40 of that service, rather than in the year preceding death, shall be

1 used in computing the benefit under Articles 1, 2, and 5 of Chapter
2 14.

3 The provisions of this section, as it read prior to June 21, 1971,
4 shall continue with respect to a member whose membership
5 continued under this section on that date.

6 *SEC. 3. Section 20969 is added to the Government Code, to*
7 *read:*

8 *20969. (a) For all retirement purposes, including benefit*
9 *eligibility and calculations of retirement allowances for members*
10 *employed by the state that are subject to mandatory furloughs,*
11 *credit for service and compensation earnable shall be based on*
12 *the amount that would have been credited had the employee not*
13 *been subject to mandatory furloughs.*

14 *(b) For the purposes of this section, “mandatory furloughs”*
15 *means time during which a member identified below is directed*
16 *to be absent from work without pay as a consequence of an*
17 *Executive order in the 2008–09 and 2009–10 fiscal years:*

18 *(1) A state employee subject to an Executive order requiring a*
19 *mandatory furlough for state employees.*

20 *(2) A person who is excepted from the definition of “state*
21 *employee” in subdivision (c) of Section 3513, or who is an officer*
22 *or employee of the executive branch of state government who is*
23 *not a member of the civil service, and who is subject to an*
24 *Executive order requiring a mandatory furlough for state*
25 *employees.*

26 *(3) A state employee, a person who is excepted from the*
27 *definition of “state employee” in subdivision (c) of Section 3513,*
28 *or a person who is an officer or employee of the executive branch*
29 *of state government who is not a member of the civil service, and*
30 *whose employer is not under the direct executive authority of the*
31 *Governor, and who is subject to a mandatory furlough imposed*
32 *by his or her employer in response to encouragement in an*
33 *Executive order.*

34 *(c) An employer of an employee identified in subdivision (b)*
35 *shall notify the board of the terms and conditions of any mandatory*
36 *furlough, including, but not limited to, the amount of mandatory*
37 *furlough time imposed on employees during a reporting period*
38 *and the date on which the mandatory furlough ends. The employer*
39 *and the Controller shall provide any additional information as the*
40 *board may require to implement this section.*

1 SEC. 4. Section 75103.6 is added to the Government Code, to
2 read:

3 75103.6. Calculations of retirement benefits and Extended
4 Service Incentive Program benefits under this chapter for any
5 judge in the Voluntary Waiver of Salary Program, as described
6 in paragraph (4) of subdivision (b) of Section 68106, shall include
7 salary and contributions that would have been paid had the judge
8 not been in the program. The state shall pay the costs that result
9 from the increased benefits and monetary credits.

10 SEC. 5. Section 75605.1 is added to the Government Code, to
11 read:

12 75605.1. Calculations of retirement benefits and monetary
13 credit under this chapter for any judge in the Voluntary Waiver
14 of Salary Program, as described in paragraph (4) of subdivision
15 (b) of Section 68106, shall include salary and contributions that
16 would have been paid had the judge not been in the program. The
17 state shall pay the costs that result from the increased benefits and
18 monetary credits.

19 ~~SEC. 2. Section 22864 of the Government Code is amended~~
20 ~~to read:~~

21 ~~22864. (a) Premiums charged for enrollment in a health benefit~~
22 ~~plan shall reasonably reflect the cost of the benefits provided.~~

23 ~~(b) This part does not limit the board's authority to do any of~~
24 ~~the following:~~

25 ~~(1) Enter into contracts with carriers providing compensation~~
26 ~~based on carrier performance.~~

27 ~~(2) Credit premiums to an employer for expenditures that the~~
28 ~~board determines are likely to improve the health status of~~
29 ~~employees and annuitants or otherwise reduce health care costs.~~

30 ~~(3) Adjust the premiums charged under any health benefit plan~~
31 ~~or contract to reflect regional variations in the cost of health care~~
32 ~~services and other relevant factors. Any adjustment of these~~
33 ~~premiums shall be at the sole discretion of the board and shall only~~
34 ~~apply to the premiums charged to employees and annuitants of~~
35 ~~contracting agencies. The board may require a contracting agency~~
36 ~~and its employees and annuitants to pay the premium rate~~
37 ~~established pursuant to this paragraph, which may be different~~
38 ~~than the health benefit plan or contract premium rate that would~~
39 ~~otherwise be applicable to that agency.~~

1 ~~(4) Use excess reserves generated by one or more self-funded~~
2 ~~health benefit plans to either reduce or pay the premiums and~~
3 ~~corresponding administrative expenses related to any self-funded~~
4 ~~health benefit plans offered by the board. The board, in its sole~~
5 ~~discretion, shall determine whether a self-funded health benefit~~
6 ~~plan maintains excess reserves to be used pursuant to this part.~~

7 ~~(e) This section shall remain in effect only until January 1, 2012,~~
8 ~~and as of that date is repealed, unless a later enacted statute, that~~
9 ~~is enacted before January 1, 2012, deletes or extends that date.~~

10 SEC. 3. ~~Section 22864 is added to the Government Code, to~~
11 ~~read:~~

12 ~~22864. (a) Premiums charged for enrollment in a health benefit~~
13 ~~plan shall reasonably reflect the cost of the benefits provided.~~

14 ~~(b) This part does not limit the board's authority to do any of~~
15 ~~the following:~~

16 ~~(1) Enter into contracts with carriers providing compensation~~
17 ~~based on carrier performance.~~

18 ~~(2) Credit premiums to an employer for expenditures that the~~
19 ~~board determines are likely to improve the health status of~~
20 ~~employees and annuitants or otherwise reduce health care costs.~~

21 ~~(3) Adjust the premiums charged under any health benefit plan~~
22 ~~or contract to reflect regional variations in the cost of health care~~
23 ~~services and other relevant factors. Any adjustment of these~~
24 ~~premiums shall be at the sole discretion of the board and shall only~~
25 ~~apply to the premiums charged to employees and annuitants of~~
26 ~~contracting agencies. The board may require a contracting agency~~
27 ~~and its employees and annuitants to pay the premium rate~~
28 ~~established pursuant to this paragraph, which may be different~~
29 ~~than the health benefit plan or contract premium rate that would~~
30 ~~otherwise be applicable to that agency.~~

31 ~~(c) The section shall become operative on January 1, 2012.~~

32 SEC. 4. ~~This act is an urgency statute necessary for the~~
33 ~~immediate preservation of the public peace, health, or safety within~~
34 ~~the meaning of Article IV of the Constitution and shall go into~~
35 ~~immediate effect. The facts constituting the necessity are:~~

36 ~~In order to allow the Board of Administration of the Public~~
37 ~~Employees' Retirement System (PERS) to use reserve funds to~~
38 ~~reduce health benefit premiums, thereby leading to substantial~~
39 ~~state savings in the current severe fiscal crisis, and to avoid~~
40 ~~imposing unnecessary penalties on members of PERS who have~~

- 1 permanently separated from public service, it is necessary that this
- 2 bill take effect immediately.

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