ASSEMBLY BILL No. 1987

Introduced by Assembly Member Hernandez

February 17, 2010

An act to add Section 7500.5 to the Government Code, relating to public retirement systems.

legislative counsel's digest

AB 1987, as introduced, Hernandez. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would provide, effective July 1, 2011, that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member's benefits would not be included in the calculation of a member's final compensation for purposes of determining that member's defined benefit. The bill would require the board of each state and local public retirement system to establish, by regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member's salary, compensation, or remuneration is not made principally for the purpose of enhancing a member's retirement benefits. This bill would limit the calculation of a member's final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group as that member. This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least 6 months.

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill and expresses the Legislature's intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. (a) The Legislature finds and declares that:

(1) State and local public retirement boards have been authorized under the law to administer retirement systems that provide adequate, secure retirement benefits for beneficiaries who dedicate their life's work to public service.

(2) Employees partner with their public agency employers to fund this benefit.

(3) Any manipulation of those benefits creates harm for the employees, beneficiaries, employers, and taxpayers and should not be permitted.

(b) The Legislature further finds and declares that the efficacy of the systems is threatened by the behavior of those who seek to unfairly and unjustifiably enhance or "spike" their pensions.

(c) Neither the Legislature nor the courts ever anticipated a circumstance where the application of the retirement law would result in a method that permits inequitable application of compensation rules in order to enhance an individual's retirement allowance.

(d) It is the responsibility of the Legislature to provide guidance to every retirement system so they can determine the proper elements that go into calculating a member's retirement benefit as recognized by the laws governing the retirement system.

(e) Retirement systems must employ sound principals that provide consistent treatment of compensation throughout a member's career and consistent treatment of compensation among a class of employees.

(f) In order to provide consistent treatment across the systems, the reporting system between the retirement system and each participating employer must be sufficiently precise so as to enable the retirement system to distinguish between items of remuneration that are and are not properly included in a member's final compensation.

SEC. 2. Section 7500.5 is added to the Government Code, to read:

7500.5. (a) In order to safeguard the integrity and soundness of all public retirement systems, assure prompt delivery of benefits and related services to the participants and their beneficiaries, and minimize employer expenses, all state and local public retirement systems shall, at a minimum, administer their systems in compliance with the provisions of this section. Nothing in this section shall be construed to limit the Legislature's authority to adopt more restrictive provisions applicable to a state or local public retirement system.

(b) The board of each state and local public retirement system shall establish, by regulation, accountability provisions applicable to participating employers. Those accountability provisions shall include an ongoing audit process to validate compliance with the provisions of this section and penalty provisions for noncompliance with the provisions of this section, including, but not limited to, untimely or inaccurate submissions of any information the board may require in the administration of the system.

(c) Any payrate, salary special compensation, or other remuneration determined by the board of a state or local public retirement system to have been paid for the principal purpose of enhancing a member's benefits under that system shall not be included in any calculation of compensation earnable. Any presumption by the board that salary or other remuneration was paid for the principle purpose of enhancing a member's benefit under the system may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing a member's benefits under that system may be reversed.

(d) Cash conversions of accrued employee benefits in amounts that exceed the amount that is both earned and payable to the member during a pay period shall not be credited to or included in any calculation of compensation earnable by any state or local public retirement system.

(e) Final settlement or termination pay or similar payment that is received by a member in anticipation of retirement, upon retirement, or separation from employment, shall not be credited to or included in any calculation of compensation earnable by any state or local public retirement system.

(f) A retired person, who has not reinstated following retirement, whether or not he or she has attained the normal retirement age, shall have a bona fide separation in service before performing service for any employer covered by a state or local retirement system as an employee, through a third party, or as an independent contractor. A board of a state or local retirement system shall establish, by regulation, the criteria under which a bona fide separation is satisfied. A bona fide separation established by the system shall not be less than six months.

(g) Compensation credited to, or included in, any calculation of compensation earnable for an employee who is not in a group or class shall not exceed, during the final compensation period as well as two years immediately preceding the final compensation period, the average increase in compensation earnable during the same period for all employees of that same employer who are in the closest related group or class.

(h) For the purposes of this section, the following definitions shall apply:

(1) "A group or class of employees" means a number of employees of the same employer considered together because they share job similarities, work location, collective bargaining unit, or other logical work grouping. Under no circumstance shall one employee be considered a group or class.

(2) "Payrate or salary" means the normal monthly rate of pay or monthly base pay of the member paid in cash and pursuant to publicly available pay schedules to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours.

(3) “Payrate or salary for a member who is not in a group or class” means the monthly rate of pay or monthly base pay or salary of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of subdivision (g).

(4) “Special compensation” means a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(5) “Compensation earnable” means the salary or payrate, special compensation, or other remuneration of the member used in the determination of final compensation for the purposes of calculation of a member’s retirement benefit.

SEC. 3. (a) It is the intent of the Legislature to enact changes in the Education Code applicable to the State Teachers’ Retirement System (Part 13 (commencing with Section 22000) of Title 1 of the Education Code) to implement the provisions established in Section 7500.5 of the Government Code.

(b) It is the intent of the Legislature to enact changes in the Public Employee’s Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code) to implement the provisions established in Section 7500.5 of the Government Code.

(c) It is the intent of the Legislature to enact changes in the County Employees Retirement Law (Part 3 (commencing with Section 31200) of Division 4 of Title 3 of the Government Code) to implement the provisions established in Section 7500.5 of the Government Code.

(d) It is the intent of the Legislature to enact changes to Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 of the Government Code, governing retirement plans established by cities, to implement the provisions established in Section 7500.5 of the Government Code.

(e) It is the intent of the Legislature to enact changes to Chapter 4 (commencing with Section 50800) of Part 1 of Division 1 of Title 5 of the Government Code, governing police officers’ pension fund laws and firemen’s pension fund laws, to implement the provisions established in Section 7500.5 of the Government Code.

SEC. 4. The provisions of this act shall be operative for all active and future members of the applicable retirement systems commencing on July 1, 2011.

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