AMENDED IN SENATE JULY 1, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1184

Introduced by Assembly Member Gatto
(Coauthors: Assembly Members Blumenfield, Gordon, Jeffries, Smyth, and Williams)
(Coauthor: Senator Liu)

February 18, 2011

An act to amend Section 21757 of, and to add Section ~~20532.5~~ *20791* to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1184, as amended, Gatto. Public employees' retirement benefits.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its employees based on age at retirement, service credit, and final or highest compensation paid to the employee. Existing law authorizes any public agency to participate in, and make its employees members of, PERS by contract. In the case of an employee who has been employed by one or more contracting public agencies, retirement benefits distributed to that employee are based on the highest final compensation under any system, and each system makes a separate retirement payment to the employee based upon the number of years that the employee worked for each of those agencies.

This bill would ~~provide that the obligations for retirement benefits that are attributable to excess compensation earned by a nonrepresented employee who was employed by one or more public agencies shall be~~

~~the sole obligation of the subsequent contracting agency that paid the excess compensation. This bill would define "excess compensation" as the final compensation of an employee of a contracting agency who previously worked for another contracting agency to the extent the final compensation received from the current contracting agency is 15% or more in excess of the salary paid by the prior contracting agency, as adjusted for actuarial increases in that salary~~ *state the intent of the Legislature that a contracting agency not experience a significant increase in actuarial liability due to increased compensation paid by another contracting agency to a nonrepresented employee. The bill would require the Board of Administration of PERS to develop guidelines in this regard and to implement program changes to ensure that a contracting agency that creates a significant increase in actuarial liability due to increased compensation bears the associated liability. The bill would require the system actuary to assess an increase in liability in this regard to the employer that created it at the time the increase is determined and to make adjustments to that employer's rates as needed. The bill would apply these requirements to any significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee regardless of when the increase in compensation occurred. The bill would require the board to report to the Legislature on the implementation of these provisions*.

Existing law requires the Board of Administration of PERS to establish a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by a specified provision of federal law and that cannot be fully maximized pursuant to PERL.

This bill would prohibit a plan of replacement benefits from being administered by the board for a person who first becomes a member on or after January 1, 2013.

Vote: 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 20532.5 is added to the Government~~
2 ~~Code, to read:~~
3 ~~20532.5. (a) (1) Notwithstanding any other law, the~~
4 ~~contributions and disbursements of benefits for that portion of the~~
5 ~~compensation of an employee of a contracting agency that~~

~~constitutes excessive compensation shall be the sole obligation of the current contracting agency that paid the excessive compensation to that employee.~~

~~(2) The liability of any prior contracting agency for the contributions and disbursements of benefits of that employee shall be limited to contributions and other assets sufficient to fund a retirement allowance calculated using the amount of the employee's final compensation at the time he or she terminated his or her service with the prior contracting agency and any amount that is not excess compensation.~~

~~(b) For purposes of this section, "excessive compensation" is the final compensation of an employee of a contracting agency who previously worked for another contracting agency to the extent the final compensation received from the current contracting agency is 15 percent or more in excess of the salary paid by the prior contracting agency, as adjusted for actuarial increases in that salary.~~

~~(c) This section shall not apply to any employee who is covered by a memorandum of understanding or to any employee who is a member of a recognized employee organization as that term is defined in Section 3501.~~

~~(d) The actuary, in determining contributions required of contracting agencies, subject to this section, shall establish a contribution with respect to excessive compensation separate from, and independent of, the contribution required for other benefits under their contracts. The total contribution, in that case, for the agencies as a group shall be established, and from time to time adjusted, by actuarial valuation performed by the actuary of the liability for the benefit or benefits on account of the employees of all those agencies. Adjustments shall affect only future contributions and shall take into account the difference between contributions on hand and the amount required to fund the allowances or benefits for which entitlement has already been established, as well as liability for future entitlements to benefits. The contribution as so established and adjusted from time to time shall be allocated between the agencies on a basis that, in the opinion of the board, after recommendation of the actuary, provides an equitable distribution between the agencies as required by this section. However, the allocation shall not be based on differences in the incidence of death or disability in the respective agencies.~~

~~(e) (1) Whenever the board, pursuant to subdivision (d), establishes a separate contribution, it shall maintain the contribution and any contributions required to be made by employees toward the cost of the benefit or benefits as a separate account, which shall be available only for payment of the benefit or benefits and shall not be a part of the accumulated contributions under this system of any of the employers or members included.~~

~~(2) All contributions in that account, irrespective of the agency from which they were received, shall be available for payment of the benefit or benefits with respect to the employees of any agency included. In the event of termination of any agency's participation in this system, the liability with respect to all those benefits to which the agency's employees have become entitled, after establishment of the rate and prior to the termination, shall be its contributions, as established under subdivision (d), that have become due and payable as of the date of termination.~~

~~(f) The board and each contracting agency shall modify each contract to reflect the requirements of this section on or before July 1, 2012.~~

SECTION 1. Section 20791 is added to the Government Code, to read:

20791. (a) It is the intent of the Legislature that a contracting agency shall not experience a significant increase in actuarial liability due to increased compensation paid by another contracting agency to a nonrepresented employee subject to this part.

(b) The board shall develop requirements for defining a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee and to implement program changes to ensure that a contracting agency that creates a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee that would also apply to another contracting agency or agencies shall instead bear that liability.

(c) The system actuary, in accordance with the requirements established pursuant to subdivision (b), shall assess the increase in liability to the employer that created it at the time the increase is determined and shall make adjustments to that employer's rates as needed to comply with the requirements.

(d) This section shall not apply to compensation paid to an employee for service performed while covered by a memorandum

of understanding or to compensation paid for service performed while a member of a recognized employee organization as that term is defined in Section 3501.

(e) This section shall apply to any significant increase in actuarial liability, due to increased compensation paid to a nonrepresented employee, that is determined after January 1, 2012, regardless of when the increase in compensation occurred.

(f) (1) No later than June 30, 2012, in compliance with Section 9795, the board shall report to the Legislature on the implementation of this section. The report shall include an explanation of the guidelines developed by the board pursuant to this section and an assessment of the implementation and effectiveness of the guidelines.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on June 30, 2016, pursuant to Section 10231.5.

SEC. 2. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries payable pursuant to Part 3 (commencing with Section 20000) would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of those benefits, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof, in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3 (commencing with Section 20000). The benefits provided by that plan may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost effectiveness. The board may periodically modify the replacement benefits plan and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The

administrative costs of the replacement benefits plan shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit plan result in increased benefit costs to an employer, member, or annuitant.

(e) The board shall not administer a plan of replacement benefits for a person who first becomes a member on or after January 1, 2013.

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