

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1649

Introduced by Assembly Member Smyth

February 13, 2012

An act to ~~amend Section 20350 of~~ *add Section 1243.5 to the Government Code*, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1649, as amended, Smyth. Public employees' retirement: ~~reciprocity.~~ *felony forfeiture.*

Existing law provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This bill would require that a public employee, as defined, who is convicted of any violent felony, serious felony, or a sex offense, as defined, for conduct arising out of, or in the performance of, his or her official duties in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, forfeit retirement benefits attributable to service performed on and after the earliest date of the commission of the felony, as specified. The bill would also require any contributions to the public retirement system made by the public employee on or after that date to be returned, without interest, to the public employee upon the occurrence of a distribution event, as defined, unless otherwise ordered by a court

or determined by the pension administrator. The bill would also make related, conforming changes.

~~Existing law requires the average monthly salary during any period of service as a member of a county retirement system to be considered compensation earnable by a member of the Public Employees' Retirement System (PERS) for purposes of computing final compensation for the member under specified circumstances in which the member retires concurrently under both systems. Under existing law, if a member on deferred retirement from PERS is eligible to retire for service from a reciprocal retirement system and retires prior to the time the member becomes entitled to retire under PERS, his or her retirement shall be deemed a concurrent retirement for purposes of computing final compensation.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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

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

1 SECTION 1. Section 1243.5 is added to the Government Code,
2 to read:

3 1243.5. (a) This section applies to all public employers and
4 to all public employees who are members of a public retirement
5 system, regardless of the date the public employee is first hired by
6 a public employer, to the fullest extent permissible under the United
7 States Constitution.

8 (b) If a public employee is convicted by a State or federal trial
9 court of a felony, as defined in subdivision (f), for conduct arising
10 out of or in the performance of his or her official duties, or in
11 pursuit of the office or appointment, or in connection with
12 obtaining salary, disability retirement, service retirement, or other
13 benefits, he or she shall, as of the date of conviction, forfeit all
14 rights and benefits attributable to service performed on and after
15 the forfeiture date in any public retirement system in which he or
16 she is a member and shall not accrue further benefits in that public
17 retirement system. The retirement benefits shall remain forfeited
18 notwithstanding any reduction in sentence, pardon, grant of
19 clemency, or expungement of the record of conviction following
20 the date of conviction. Retirement benefits attributable to service

1 performed prior to the forfeiture date shall not be forfeited as a
2 result of this section.

3 (c) Any contributions to the public retirement system made by
4 the public employee described in subdivision (b) on or after the
5 forfeiture date shall be returned, without interest, to the public
6 employee upon the occurrence of a distribution event unless
7 otherwise ordered by a court or determined by the pension
8 administrator.

9 (d) The public employer that employs a public employee
10 described in subdivision (b) and that public employee shall each
11 notify the public retirement system in which the public employee
12 is a member of that public employee's conviction within 60 days
13 of conviction in the trial court. The public employer's notification
14 obligations shall not apply if the public employee's conviction
15 occurs after the public employee separates from employment or
16 office with that public employer. The operation of this section is
17 not dependent upon the performance of the notification obligations
18 specified in this subdivision.

19 (e) If the public employee's conviction is reversed and that
20 decision is final, the employee shall be entitled to recover the
21 forfeited retirement benefits upon redeposit with the system of the
22 contributions received, if any, pursuant to subdivision (c).

23 (f) For the purposes of this section, the following definitions
24 shall apply:

25 (1) "Contributions" means the contributions to a public
26 retirement system required or authorized to be paid by a member
27 of the system, as fixed by law, regulation, administrative action,
28 contract, contract amendment, or other agreement.

29 (2) "Distribution event" means any of the following occurring
30 after the date of conviction by the trial court:

31 (A) Separation from employment.

32 (B) Death of the member.

33 (C) Retirement of the member.

34 (3) "Felony" means a violent felony, as defined by Section 667.5
35 of the Penal Code; a serious felony, as defined by Section 1192.7
36 of the Penal Code; or a felony that requires the convicted person
37 to register as a sex offender, as determined by Section 290 of the
38 Penal Code; or a felony under the laws of the United States that
39 would qualify as one of those felonies.

1 (4) “Forfeiture date” means the earliest date of the commission
2 of a felony described in subdivision (b) for which the public
3 employee is convicted.

4 (5) “Public employee” means an officer, including those elected
5 or appointed, or an employee of a public employer.

6 (6) “Public employer” means:

7 (A) The state and every state entity, including, but not limited
8 to, the Legislature, the courts, the California State University, and
9 the University of California.

10 (B) Any political subdivision of the state, including, but not
11 limited to, a city, county, city and county, charter city, charter
12 county, charter city and county, school district, community college
13 district, joint powers authority, joint powers agency, and any public
14 agency, authority, board, commission, district, or other entity.

15 (7) “Public retirement system” means any pension or retirement
16 system of a public employer.

17 ~~SECTION 1. Section 20350 of the Government Code is~~
18 ~~amended to read:~~

19 ~~20350. Notwithstanding Section 20638, if a member on~~
20 ~~deferred retirement from this system is eligible to retire for service~~
21 ~~from a reciprocal retirement system and retires prior to the time~~
22 ~~the member becomes entitled to retire under this system, his or~~
23 ~~her retirement shall be deemed a concurrent retirement for purposes~~
24 ~~of computing final compensation under Section 20638.~~