

AMENDED IN SENATE AUGUST 18, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1783

Introduced by Assembly Member Jones-Sawyer

February 18, 2014

~~An act to amend Section 19635 of the Government Code, relating to public employees.~~ *An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1783, as amended, Jones-Sawyer. ~~Public employees: adverse actions.~~ *Public employees' retirement.*

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA exempts from its provisions from its provisions public employees whose collective bargaining rights are subject to specified provisions of federal law until a specified federal district court decision on a certification by the United States Secretary of Labor, or until January 1, 2015, whichever is sooner.

This bill would extend that exemption with respect to the above-described date to January 1, 2016.

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

~~Existing law requires notice of any adverse action against any state employee for any cause for discipline based on any civil service law to be served within 3 years after the cause for discipline, upon which the notice is based, first arose. Existing law provides that an adverse action based on fraud, embezzlement, or the falsification of records is valid if notice of the adverse action is served within 3 years after the discovery of the fraud, embezzlement, or falsification.~~

~~This bill would, beginning January 1, 2016, require that notice of any adverse action for discipline, other than for fraud, embezzlement, or falsification of records, be served and the investigation completed within 2 years after the time the discovery of the cause for discipline arose.~~

Vote: ~~majority~~^{2/3}. 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 7522.02 of the Government Code is
 2 amended to read:
 3 7522.02. (a) (1) Notwithstanding any other law, except as
 4 provided in this article, on and after January 1, 2013, this article
 5 shall apply to all state and local public retirement systems and to
 6 their participating employers, including the Public Employees'
 7 Retirement System, the State Teachers' Retirement System, the
 8 Legislators' Retirement System, the Judges' Retirement System,
 9 the Judges' Retirement System II, county and district retirement
 10 systems created pursuant to the County Employees Retirement
 11 Law of ~~1937~~, 1937 (*Chapter 3 (commencing with Section 31450)*
 12 *of Part 3 of Division 4 of Title 3*), independent public retirement
 13 systems, and to individual retirement plans offered by public
 14 employers. However, this article shall be subject to the Internal
 15 Revenue Code and Section 17 of Article XVI of the California
 16 Constitution. The administration of the requirements of this article
 17 shall comply with applicable provisions of the Internal Revenue
 18 Code and the Revenue and Taxation Code.
 19 (2) Notwithstanding paragraph (1), this article shall not apply
 20 to the entities described in Section 9 of Article IX of, and Sections
 21 4 and 5 of Article XI of, the California Constitution, except to the
 22 extent that these entities continue to be participating employers in
 23 any retirement system governed by state statute. Accordingly, any
 24 retirement plan approved before January 1, 2013, by the voters of

1 any entity excluded from coverage by this section shall not be
2 affected by this article.

3 (3) (A) Notwithstanding paragraph (1), this article shall not
4 apply to a public employee whose interests are protected under
5 Section 5333(b) of Title 49 of the United States Code until a federal
6 district court rules that the United States Secretary of Labor, or
7 his or her designee, erred in determining that the application of
8 this article precludes certification under that section, or until
9 January 1, ~~2015~~, 2016, whichever is sooner.

10 (B) If a federal district court upholds the determination of the
11 United States Secretary of Labor, or his or her designee, that
12 application of this article precludes him or her from providing a
13 certification under Section 5333(b) of Title 49 of the United States
14 Code, this article shall not apply to a public employee specified
15 in subparagraph (A).

16 (4) Notwithstanding paragraph (1), this article shall not apply
17 to a multiemployer plan authorized by Section 302(c)(5) of the
18 *federal* Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
19 employer began participation in that plan prior to January 1, 2013,
20 and the plan is regulated by the *federal* Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. Sec. 1001 *et seq.*).

22 (b) The benefit plan required by this article shall apply to public
23 employees who are new members as defined in Section 7522.04.

24 (c) (1) Individuals who were employed by any public employer
25 before January 1, 2013, and who became employed by a subsequent
26 public employer for the first time on or after January 1, 2013, shall
27 be subject to the retirement plan that would have been available
28 to employees of the subsequent employer who were first employed
29 by the subsequent employer on or before December 31, 2012, if
30 the individual was subject to concurrent membership for which
31 creditable service was performed in the previous six months or
32 reciprocity established under any of the following provisions:

33 (A) Article 5 (commencing with Section 20350) of Chapter 3
34 of Part 3 of Division 5 of Title 2.

35 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
36 Division 4 of Title 3.

37 (C) Any agreement between public retirement systems to provide
38 reciprocity to members of the systems.

39 (D) Section 22115.2 of the Education Code.

1 (2) An individual who was employed before January 1, 2013,
2 and who, without a separation from employment, changed
3 employment positions and became subject to a different defined
4 benefit plan in a different public retirement system offered by his
5 or her employer shall be subject to that defined benefit plan as it
6 would have been available to employees who were first employed
7 on or before December 31, 2012.

8 (d) If a public employer, before January 1, 2013, offers a defined
9 benefit pension plan that provides a defined benefit formula with
10 a lower benefit factor at normal retirement age and results in a
11 lower normal cost than the defined benefit formula required by
12 this article, that employer may continue to offer that defined benefit
13 formula instead of the defined benefit formula required by this
14 article, and shall not be subject to the requirements of Section
15 7522.10 for pensionable compensation subject to that formula.
16 However, if the employer adopts a new defined benefit formula
17 on or after January 1, 2013, that formula must conform to the
18 requirements of this article or must be determined and certified by
19 the retirement system's chief actuary and the retirement board to
20 have no greater risk and no greater cost to the employer than the
21 defined benefit formula required by this article and must be
22 approved by the Legislature. New members of the defined benefit
23 plan may only participate in the lower cost defined benefit formula
24 that was in place before January 1, 2013, or a defined benefit
25 formula that conforms to the requirements of this article or is
26 approved by the Legislature as provided in this subdivision.

27 (e) If a public employer, before January 1, 2013, offers a
28 retirement benefit plan that consists solely of a defined contribution
29 plan, that employer may continue to offer that plan instead of the
30 defined benefit pension plan required by this article. However, if
31 the employer adopts a new defined benefit pension plan or defined
32 benefit formula on or after January 1, 2013, that plan or formula
33 must conform to the requirements of this article or must be
34 determined and certified by the retirement system's chief actuary
35 and the system's board to have no greater risk and no greater cost
36 to the employer than the defined benefit formula required by this
37 article and must be approved by the Legislature. New members of
38 the employer's plan may only participate in the defined
39 contribution plan that was in place before January 1, 2013, or a
40 defined contribution plan or defined benefit formula that conforms

1 to the requirements of this article. This subdivision shall not be
2 construed to prohibit an employer from offering a defined
3 contribution plan on or after January 1, 2013, either with or without
4 a defined benefit plan, whether or not the employer offered a
5 defined contribution plan prior to that date.

6 (f) The Judges' Retirement System and the Judges' Retirement
7 System II shall not be required to adopt the defined benefit formula
8 required by Section 7522.20 or 7522.25 or the compensation
9 limitations defined in Section 7522.10.

10 (g) This article shall not be construed to provide membership
11 in any public retirement system for an individual who would not
12 otherwise be eligible for membership under that system's
13 applicable rules or laws.

14 (h) On and after January 1, 2013, each public retirement system
15 shall modify its plan or plans to comply with the requirements of
16 this article and may adopt regulations or resolutions for this
17 purpose.

18 *SEC. 2. This act is an urgency statute necessary for the*
19 *immediate preservation of the public peace, health, or safety within*
20 *the meaning of Article IV of the Constitution and shall go into*
21 *immediate effect. The facts constituting the necessity are:*

22 *In order to remain eligible for federal transportation funds that*
23 *would be forfeited if transit employees are not exempt from PEPR,*
24 *it is necessary for this act to go into effect immediately.*

25 ~~SECTION 1. Section 19635 of the Government Code is~~
26 ~~amended to read:~~

27 ~~19635. (a) Except as otherwise provided in subdivision (b),~~
28 ~~no adverse action shall be valid against any state employee for any~~
29 ~~cause for discipline based on any civil service law of this state,~~
30 ~~unless notice of the adverse action is served and the investigation~~
31 ~~is completed within two years after the discovery of the cause for~~
32 ~~discipline arose.~~

33 ~~(b) Adverse action based on fraud, embezzlement, or the~~
34 ~~falsification of records shall be valid, if notice of the adverse action~~
35 ~~is served within three years after the discovery of the fraud,~~
36 ~~embezzlement, or falsification.~~

37 ~~SEC. 2. This act shall become operative on January 1, 2016.~~

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