

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2476**

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**Introduced by Committee on Public Employees, Retirement and Social Security (Bonta (Chair), Rendon, Ridley-Thomas, and Wieckowski)**

February 21, 2014

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An act to amend ~~Section 7522.56~~ *Sections 7522.56, 7522.72, and 7522.74* of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2476, as amended, Committee on Public Employees, Retirement and Social Security. ~~Employment after retirement eligibility. Public employees' retirement.~~

Existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA) establishes various limits on retirement benefits generally applicable to a public employee retirement system in the state, *system*, except as specified, and among other things, prescribes limits on service after retirement without reinstatement into the applicable retirement system. Under PEPRA, a retired person is not eligible to be employed for a period of 180 days following the date of retirement unless he or she meets specified requirements, including a requirement that the state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources.

This bill would instead provide, for purposes of that requirement, that either the Senate Committee on Rules or the Assembly Rules

Committee, the Trustees of the California State University, or the Administrative Office of the Courts makes those certifications and approvals for legislative, California State University, and judicial employees, respectively, instead of the Department of Human Resources.

*PEPRA requires a public employee, including one who is elected or appointed to a public office, who is convicted of any state or federal felony 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, to forfeit right, and benefits earned or accrued from the earliest date of the commission of the felony to the forfeiture date, as specified.*

*This bill would provide, instead, that a member of the retirement system who is convicted, as described above, would forfeit those rights and benefits.*

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 7522.56 of the Government Code is  
2 amended to read:

3 7522.56. (a) This section shall apply to any person who is  
4 receiving a pension benefit from a public retirement system and  
5 shall supersede any other provision in conflict with this section.

6 (b) A retired person shall not serve, be employed by, or be  
7 employed through a contract directly by, a public employer in the  
8 same public retirement system from which the retiree receives the  
9 benefit without reinstatement from retirement, except as permitted  
10 by this section.

11 (c) A person who retires from a public employer may serve  
12 without reinstatement from retirement or loss or interruption of  
13 benefits provided by the retirement system upon appointment by  
14 the appointing power of a public employer either during an  
15 emergency to prevent stoppage of public business or because the  
16 retired person has skills needed to perform work of limited  
17 duration.

18 (d) Appointments of the person authorized under this section  
19 shall not exceed a total for all employers in that public retirement  
20 system of 960 hours or other equivalent limit, in a calendar or  
21 fiscal year, depending on the administrator of the system. The rate

1 of pay for the employment shall not be less than the minimum,  
2 nor exceed the maximum, paid by the employer to other employees  
3 performing comparable duties, divided by 173.333 to equal an  
4 hourly rate. A retired person whose employment without  
5 reinstatement is authorized by this section shall acquire no service  
6 credit or retirement rights under this section with respect to the  
7 employment unless he or she reinstates from retirement.

8 (e) (1) Notwithstanding subdivision (c), any retired person shall  
9 not be eligible to serve or be employed by a public employer if,  
10 during the 12-month period prior to an appointment described in  
11 this section, the retired person received any unemployment  
12 insurance compensation arising out of prior employment subject  
13 to this section with a public employer. A retiree shall certify in  
14 writing to the employer upon accepting an offer of employment  
15 that he or she is in compliance with this requirement.

16 (2) A retired person who accepts an appointment after receiving  
17 unemployment insurance compensation as described in this  
18 subdivision shall terminate that employment on the last day of the  
19 current pay period and shall not be eligible for reappointment  
20 subject to this section for a period of 12 months following the last  
21 day of employment.

22 (f) A retired person shall not be eligible to be employed pursuant  
23 to this section for a period of 180 days following the date of  
24 retirement unless he or she meets one of the following conditions:

25 (1) The employer certifies the nature of the employment and  
26 that the appointment is necessary to fill a critically needed position  
27 before 180 days have passed and the appointment has been  
28 approved by the governing body of the employer in a public  
29 meeting. The appointment may not be placed on a consent calendar.

30 (2) (A) Except as otherwise provided in this paragraph, for state  
31 employees, the state employer certifies the nature of the  
32 employment and that the appointment is necessary to fill a critically  
33 needed state employment position before 180 days have passed  
34 and the appointment has been approved by the Department of  
35 Human Resources. The department may establish a process to  
36 delegate appointing authority to individual state agencies, but shall  
37 audit the process to determine if abuses of the system occur. If  
38 necessary, the department may assume an agency's appointing  
39 authority for retired workers and may charge the department an  
40 appropriate amount for administering that authority.

1 (B) For legislative employees, the Senate Committee on Rules  
2 or the Assembly Rules Committee certifies the nature of the  
3 employment and that the appointment is necessary to fill a critically  
4 needed position before 180 days have passed and approves the  
5 appointment in a public meeting. The appointment may not be  
6 placed on a consent calendar.

7 (C) For employees of the California State University, the  
8 Trustees of the California State University certifies the nature of  
9 the employment and that the appointment is necessary to fill a  
10 critically needed position before 180 days have passed and  
11 approves the appointment in a public meeting. The appointment  
12 may not be placed on a consent calendar.

13 (D) For judicial employees, the Administrative Office of the  
14 Courts certifies the nature of the employment and that the  
15 appointment is necessary to fill a critically needed position before  
16 180 days have passed and approves the appointment in a public  
17 meeting. The appointment may not be placed on a consent calendar.

18 (3) The retiree is eligible to participate in the Faculty Early  
19 Retirement Program pursuant to a collective bargaining agreement  
20 with the California State University that existed prior to January  
21 1, 2013, or has been included in subsequent agreements.

22 (4) The retiree is a public safety officer or firefighter hired to  
23 perform a function or functions regularly performed by a public  
24 safety officer or firefighter.

25 (g) A retired person who accepted a retirement incentive upon  
26 retirement shall not be eligible to be employed pursuant to this  
27 section for a period of 180 days following the date of retirement  
28 and subdivision (f) shall not apply.

29 (h) This section shall not apply to a person who is retired from  
30 the State Teachers' Retirement System, and who is subject to  
31 Section 24214, 24214.5, or 26812 of the Education Code.

32 (i) This section shall not apply to (1) a subordinate judicial  
33 officer whose position, upon retirement, is converted to a judgeship  
34 pursuant to Section 69615, and he or she returns to work in the  
35 converted position, and the employer is a trial court, or (2) a retiree  
36 who takes office as a judge of a court of record pursuant to Article  
37 VI of the California Constitution or a retiree of the Judges'  
38 Retirement System or the Judges' Retirement System II who is  
39 appointed to serve as a retired judge.

1     SEC. 2. Section 7522.72 of the Government Code is amended  
2 to read:

3     7522.72. (a) This section shall apply to a public employee first  
4 employed by a public employer or first elected or appointed to an  
5 office before January 1, 2013, and, on and after that date, Section  
6 7522.70 shall not apply.

7     (b) (1) If a public employee is convicted by a state or federal  
8 trial court of any felony under state or federal law for conduct  
9 arising out of or in the performance of his or her official duties, in  
10 pursuit of the office or appointment, or in connection with  
11 obtaining salary, disability retirement, service retirement, or other  
12 benefits, he or she shall forfeit all accrued rights and benefits in  
13 any public retirement system in which he or she is a member to  
14 the extent provided in subdivision (c) and shall not accrue further  
15 benefits in that public retirement system, effective on the date of  
16 the conviction.

17     (2) If a public employee who has contact with children as part  
18 of his or her official duties is convicted of a felony that was  
19 committed within the scope of his or her official duties against or  
20 involving a child who he or she has contact with as part of his or  
21 her official duties, he or she shall forfeit all accrued rights and  
22 benefits in any public retirement system in which he or she is a  
23 member to the extent provided in subdivision (c) and shall not  
24 accrue further benefits in that public retirement system, effective  
25 on the date of the conviction.

26     (c) (1) A ~~public employee member~~ shall forfeit all the rights  
27 and benefits earned or accrued from the earliest date of the  
28 commission of any felony described in subdivision (b) to the  
29 forfeiture date, inclusive. The rights and benefits shall remain  
30 forfeited notwithstanding any reduction in sentence or  
31 expungement of the conviction following the date of the ~~public~~  
32 ~~employee's member's~~ conviction. Rights and benefits attributable  
33 to service performed prior to the date of the first commission of  
34 the felony for which the ~~public employee member~~ was convicted  
35 shall not be forfeited as a result of this section.

36     (2) For purposes of this subdivision, “forfeiture date” means  
37 the date of the conviction.

38     (d) (1) Any contributions to the public retirement system made  
39 by the public employee described in subdivision (b) on or after  
40 the earliest date of the commission of any felony described in

1 subdivision (b) shall be returned, without interest, to the public  
2 employee upon the occurrence of a distribution event unless  
3 otherwise ordered by a court or determined by the pension  
4 administrator.

5 (2) Any funds returned to the public employee pursuant to  
6 subdivision (d) shall be disbursed by electronic funds transfer to  
7 an account of the public employee, in a manner conforming with  
8 the requirements of the Internal Revenue Code, and the public  
9 retirement system shall notify the court and the district attorney  
10 at least three business days before that disbursement of funds.

11 (3) For the purposes of this subdivision, a “distribution event”  
12 means any of the following:

- 13 (A) Separation from employment.
- 14 (B) Death of the member.
- 15 (C) Retirement of the member.

16 (e) (1) Upon conviction, a public employee as described in  
17 subdivision (b) and the prosecuting agency shall notify the public  
18 employer who employed the public employee at the time of the  
19 commission of the felony within 60 days of the felony conviction  
20 of all of the following information:

- 21 (A) The date of conviction.
- 22 (B) The date of the first known commission of the felony.

23 (2) The operation of this section is not dependent upon the  
24 performance of the notification obligations specified in this  
25 subdivision.

26 (f) The public employer that employs or employed a public  
27 employee described in subdivision (b) and that public employee  
28 shall each notify the public retirement system in which the public  
29 employee is a member of that public employee’s conviction within  
30 90 days of the conviction. The operation of this section is not  
31 dependent upon the performance of the notification obligations  
32 specified in this subdivision.

33 (g) A public retirement system may assess a public employer a  
34 reasonable amount to reimburse the cost of audit, adjustment, or  
35 correction, if it determines that the public employer failed to  
36 comply with this section.

37 (h) If a public employee’s conviction is reversed and that  
38 decision is final, the employee shall be entitled to do either of the  
39 following:

1 (1) Recover the forfeited rights and benefits as adjusted for the  
2 contributions received pursuant to subdivision (d).

3 (2) Redeposit those contributions and interest that would have  
4 accrued during the forfeiture period, as determined by the system  
5 actuary, and then recover the full amount of the forfeited rights  
6 and benefits.

7 (i) The forfeiture of rights and benefits provided in this section,  
8 with respect to judges, are in addition to and supplement the  
9 forfeitures and other requirements provided in Section 75033.2,  
10 75062, 75526, or 75563. If there is a conflict between this section  
11 and Section 75033.2, 75062, 75526, or 75563, the provisions that  
12 result in the greatest forfeiture or provide the most stringent  
13 procedural requirements to the claim of a judge shall apply.

14 (j) A public employee first employed by a public employer or  
15 first elected or appointed to an office on or after January 1, 2013,  
16 shall be subject to Section 7522.74.

17 *SEC. 3. Section 7522.74 of the Government Code is amended*  
18 *to read:*

19 7522.74. (a) This section shall apply to a public employee first  
20 employed by a public employer or first elected or appointed to an  
21 office on or after January 1, 2013, and on and after that date,  
22 Section 7522.70 shall not apply.

23 (b) (1) If a public employee is convicted by a state or federal  
24 trial court of any felony under state or federal law for conduct  
25 arising out of or in the performance of his or her official duties, in  
26 pursuit of the office or appointment, or in connection with  
27 obtaining salary, disability retirement, service retirement, or other  
28 benefits, he or she shall forfeit all accrued rights and benefits in  
29 any public retirement system in which he or she is a member to  
30 the extent provided in subdivision (c) and shall not accrue further  
31 benefits in that public retirement system, effective on the date of  
32 the conviction.

33 (2) If a public employee who has contact with children as part  
34 of his or her official duties is convicted of a felony that was  
35 committed within the scope of his or her official duties against or  
36 involving a child who he or she has contact with as part of his or  
37 her official duties, he or she shall forfeit all accrued rights and  
38 benefits in any public retirement system in which he or she is a  
39 member to the extent provided in subdivision (c) and shall not

1 accrue further benefits in that public retirement system, effective  
2 on the date of the conviction.

3 (c) (1) A ~~public employee~~ *member* shall forfeit all the rights  
4 and benefits earned or accrued from the earliest date of the  
5 commission of any felony described in subdivision (b) to the  
6 forfeiture date, inclusive. The rights and benefits shall remain  
7 forfeited notwithstanding any reduction in sentence or  
8 expungement of the conviction following the date of the ~~public~~  
9 ~~employee's~~ *member's* conviction. Rights and benefits attributable  
10 to service performed prior to the date of the first commission of  
11 the felony for which the ~~public employee~~ *member* was convicted  
12 shall not be forfeited as a result of this section.

13 (2) For purposes of this subdivision, "forfeiture date" means  
14 the date of the conviction.

15 (d) (1) Any contributions to the public retirement system made  
16 by the public employee described in subdivision (b) on or after  
17 the earliest date of the commission of any felony described in  
18 subdivision (b) shall be returned, without interest, to the public  
19 employee upon the occurrence of a distribution event unless  
20 otherwise ordered by a court or determined by the pension  
21 administrator.

22 (2) Any funds returned to the public employee pursuant to  
23 subdivision (d) shall be disbursed by electronic funds transfer to  
24 an account of the public employee, in a manner conforming with  
25 the requirements of the Internal Revenue Code, and the public  
26 retirement system shall notify the court and the district attorney  
27 at least three business days before that disbursement of funds.

28 (3) For the purposes of this subdivision, a "distribution event"  
29 means any of the following:

- 30 (A) Separation from employment.
- 31 (B) Death of the member.
- 32 (C) Retirement of the member.

33 (e) (1) Upon conviction, a public employee as described in  
34 subdivision (b) and the prosecuting agency shall notify the public  
35 employer who employed the public employee at the time of the  
36 commission of the felony within 60 days of the felony conviction  
37 of all of the following information:

- 38 (A) The date of conviction.
- 39 (B) The date of the first known commission of the felony.

1 (2) The operation of this section is not dependent upon the  
2 performance of the notification obligations specified in this  
3 subdivision.

4 (f) The public employer that employs or employed a public  
5 employee described in subdivision (b) and that public employee  
6 shall each notify the public retirement system in which the public  
7 employee is a member of that public employee's conviction within  
8 90 days of the conviction. The operation of this section is not  
9 dependent upon the performance of the notification obligations  
10 specified in this subdivision.

11 (g) A public retirement system may assess a public employer a  
12 reasonable amount to reimburse the cost of audit, adjustment, or  
13 correction, if it determines that the public employer failed to  
14 comply with this section.

15 (h) If a public employee's conviction is reversed and that  
16 decision is final, the employee shall be entitled to do either of the  
17 following:

18 (1) Recover the forfeited rights and benefits as adjusted for the  
19 contributions received pursuant to subdivision (d).

20 (2) Redeposit those contributions and interest that would have  
21 accrued during the forfeiture period, as determined by the system  
22 actuary, and then recover the full amount of the forfeited rights  
23 and benefits.

24 (i) The forfeiture of rights and benefits provided in this section,  
25 with respect to judges, are in addition to and supplement the  
26 forfeitures and other requirements provided in Section 75033.2,  
27 75062, 75526, or 75563. If there is a conflict between this section  
28 and Section 75033.2, 75062, 75526, or 75563, the provisions that  
29 result in the greatest forfeiture or provide the most stringent  
30 procedural requirements to the claim of a judge shall apply.

31 (j) A public employee first employed by a public employer or  
32 first elected or appointed to an office before January 1, 2013, shall  
33 be subject to Section 7522.72.

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