

AMENDED IN ASSEMBLY APRIL 29, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2476

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

February 21, 2014

An act to amend 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. 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, 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, Committee or the Trustees of the California State University, or the Administrative Office of the Courts~~ *University* makes those certifications and approvals for ~~legislative, legislative and California State University, and judicial~~ *University* 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

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

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

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

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

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

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

1 authority for retired workers and may charge the department an
2 appropriate amount for administering that authority.

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

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

15 ~~(D) For judicial employees, the Administrative Office of the~~
16 ~~Courts certifies the nature of the employment and that the~~
17 ~~appointment is necessary to fill a critically needed position before~~
18 ~~180 days have passed and approves the appointment in a public~~
19 ~~meeting. The appointment may not be placed on a consent calendar.~~

20 (3) The retiree is eligible to participate in the Faculty Early
21 Retirement Program pursuant to a collective bargaining agreement
22 with the California State University that existed prior to January
23 1, 2013, or has been included in subsequent agreements.

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

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

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

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

1 Retirement System or the Judges' Retirement System II who is
2 appointed to serve as a retired judge.

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

5 7522.72. (a) This section shall apply to a public employee first
6 employed by a public employer or first elected or appointed to an
7 office before January 1, 2013, and, on and after that date, Section
8 7522.70 shall not apply.

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

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

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

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

39 (d) (1) Any contributions to the public retirement system made
40 by the public employee described in subdivision (b) on or after

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

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

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

14 (A) Separation from employment.

15 (B) Death of the member.

16 (C) Retirement of the member.

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

22 (A) The date of conviction.

23 (B) The date of the first known commission of the felony.

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

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

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

38 (h) If a public employee’s conviction is reversed and that
39 decision is final, the employee shall be entitled to do either of the
40 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 member shall forfeit all the rights and benefits earned
4 or accrued from the earliest date of the commission of any felony
5 described in subdivision (b) to the forfeiture date, inclusive. The
6 rights and benefits shall remain forfeited notwithstanding any
7 reduction in sentence or expungement of the conviction following
8 the date of the member’s conviction. Rights and benefits
9 attributable to service performed prior to the date of the first
10 commission of the felony for which the member was convicted
11 shall not be forfeited as a result of this section.

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

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

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

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

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

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

- 37 (A) The date of conviction.
- 38 (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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