

AMENDED IN SENATE MAY 23, 2014

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, 7522.70, 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 or the Trustees of the California State University makes those certifications and approvals for legislative and California State 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.

The bill would also make other technical, clarifying changes.

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.

1 (d) Appointments of the person authorized under this section
2 shall not exceed a total for all employers in that public retirement
3 system of 960 hours or other equivalent limit, in a calendar or
4 fiscal year, depending on the administrator of the system. The rate
5 of pay for the employment shall not be less than the minimum,
6 nor exceed the maximum, paid by the employer to other employees
7 performing comparable duties, divided by 173.333 to equal an
8 hourly rate. A retired person whose employment without
9 reinstatement is authorized by this section shall acquire no service
10 credit or retirement rights under this section with respect to the
11 employment unless he or she reinstates from retirement.

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

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

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

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

34 (2) (A) Except as otherwise provided in this paragraph, for state
35 employees, the state employer certifies the nature of the
36 employment and that the appointment is necessary to fill a critically
37 needed state employment position before 180 days have passed
38 and the appointment has been approved by the Department of
39 Human Resources. The department may establish a process to
40 delegate appointing authority to individual state agencies, but shall

1 audit the process to determine if abuses of the system occur. If
2 necessary, the department may assume an agency's appointing
3 authority for retired workers and may charge the department an
4 appropriate amount for administering that authority.

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

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

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

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

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

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

31 (i) This section shall not apply to (1) a subordinate judicial
32 officer whose position, upon retirement, is converted to a judgeship
33 pursuant to Section 69615, and he or she returns to work in the
34 converted position, and the employer is a trial court, or (2) a retiree
35 ~~who takes office as a judge of a court of record pursuant to Article~~
36 ~~VI of the California Constitution or a retiree of the Judges'~~
37 ~~Retirement System or the Judges' Retirement System II who is~~
38 ~~appointed to serve as a retired judge. of the Judges' Retirement~~
39 ~~System or the Judges' Retirement System II who is assigned to~~
40 ~~serve in a court pursuant to Section 68543.5.~~

1 *SEC. 2. Section 7522.70 of the Government Code is amended*
2 *to read:*

3 7522.70. (a) This section shall apply to any elected public
4 officer who takes public office, or is reelected to public office, on
5 or after January 1, 2006.

6 (b) If an elected public officer is convicted during or after
7 holding office of any felony involving accepting or giving, or
8 offering to give, any bribe, the embezzlement of public money,
9 extortion or theft of public money, perjury, or conspiracy to commit
10 any of those crimes arising directly out of his or her official duties
11 as an elected public officer, he or she shall forfeit all rights and
12 benefits under, and membership in, any public retirement system
13 in which he or she is a member, effective on the date of final
14 conviction.

15 (c) (1) The elected public officer described in subdivision (b)
16 shall forfeit only that portion of his or her rights and benefits that
17 accrued on or after January 1, 2006, on account of his or her service
18 in the elected public office held when the felony occurred.

19 (2) *Paragraph (1) shall apply to the extent permissible by law.*

20 (d) Any contributions made by the elected public officer
21 described in subdivision (b) to the public retirement system that
22 arose directly from or accrued solely as a result of his or her
23 forfeited service as an elected public officer shall be returned,
24 without interest, to the public officer.

25 (e) The public agency that employs an elected public officer
26 described in subdivision (b) shall notify the public retirement
27 system in which the officer is a member of the officer's conviction.

28 (f) An elected public officer shall not forfeit his or her rights
29 and benefits pursuant to subdivision (b) if the governing body of
30 the elected public officer's employer, including, but not limited
31 to, the governing body of a city, county, or city and county,
32 authorizes the public officer to receive those rights and benefits.

33 (g) For purposes of this section, "public officer" means an
34 officer of the state, or an officer of a county, city, city and county,
35 district, or authority, or any department, division, bureau, board,
36 commission, agency, or instrumentality of any of these entities.

37 (h) This section applies to any person appointed to service for
38 the period of an elected public officer's unexpired term of office.

39 (i) On and after January 1, 2013, this section shall not apply in
40 any instance in which Section 7522.72 or 7522.74 applies.

1 ~~SEC. 2.~~

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

4 7522.72. (a) This section shall apply to a public employee first
5 employed by a public employer or first elected or appointed to an
6 office before January 1, 2013, and, on and after that date, Section
7 7522.70 shall not apply.

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

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

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

36 (2) *Paragraph (1) shall apply to the extent permissible by law.*

37 ~~(2)~~

38 (3) For purposes of this subdivision, “forfeiture date” means
39 the date of the conviction.

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

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

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

16 (A) Separation from employment.

17 (B) Death of the member.

18 (C) Retirement of the member.

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

24 (A) The date of conviction.

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

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

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

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

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

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

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

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

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

20 ~~SEC. 3.~~

21 *SEC. 4.* Section 7522.74 of the Government Code is amended
22 to read:

23 7522.74. (a) This section shall apply to a public employee first
24 employed by a public employer or first elected or appointed to an
25 office on or after January 1, 2013, and on and after that date,
26 Section 7522.70 shall not apply.

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

37 (2) If a public employee who has contact with children as part
38 of his or her official duties is convicted of a felony that was
39 committed within the scope of his or her official duties against or
40 involving a child who he or she has contact with as part of his or

1 her official duties, he or she shall forfeit all accrued rights and
2 benefits in any public retirement system in which he or she is a
3 member to the extent provided in subdivision (c) and shall not
4 accrue further benefits in that public retirement system, effective
5 on the date of the conviction.

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

15 (2) *Paragraph (1) shall apply to the extent permissible by law.*

16 ~~(2)~~

17 (3) For purposes of this subdivision, "forfeiture date" means
18 the date of the conviction.

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

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

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

34 (A) Separation from employment.

35 (B) Death of the member.

36 (C) Retirement of the member.

37 (e) (1) Upon conviction, a public employee as described in
38 subdivision (b) and the prosecuting agency shall notify the public
39 employer who employed the public employee at the time of the

1 commission of the felony within 60 days of the felony conviction
 2 of all of the following information:
 3 (A) The date of conviction.
 4 (B) The date of the first known commission of the felony.
 5 (2) The operation of this section is not dependent upon the
 6 performance of the notification obligations specified in this
 7 subdivision.
 8 (f) The public employer that employs or employed a public
 9 employee described in subdivision (b) and that public employee
 10 shall each notify the public retirement system in which the public
 11 employee is a member of that public employee’s conviction within
 12 90 days of the conviction. The operation of this section is not
 13 dependent upon the performance of the notification obligations
 14 specified in this subdivision.
 15 (g) A public retirement system may assess a public employer a
 16 reasonable amount to reimburse the cost of audit, adjustment, or
 17 correction, if it determines that the public employer failed to
 18 comply with this section.
 19 (h) If a public employee’s conviction is reversed and that
 20 decision is final, the employee shall be entitled to do either of the
 21 following:
 22 (1) Recover the forfeited rights and benefits as adjusted for the
 23 contributions received pursuant to subdivision (d).
 24 (2) Redeposit those contributions and interest that would have
 25 accrued during the forfeiture period, as determined by the system
 26 actuary, and then recover the full amount of the forfeited rights
 27 and benefits.
 28 (i) The forfeiture of rights and benefits provided in this section,
 29 with respect to judges, are in addition to and supplement the
 30 forfeitures and other requirements provided in Section 75033.2,
 31 75062, 75526, or 75563. If there is a conflict between this section
 32 and Section 75033.2, 75062, 75526, or 75563, the provisions that
 33 result in the greatest forfeiture or provide the most stringent
 34 procedural requirements to the claim of a judge shall apply.
 35 (j) A public employee first employed by a public employer or
 36 first elected or appointed to an office before January 1, 2013, shall
 37 be subject to Section 7522.72.

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