

AMENDED IN SENATE APRIL 1, 2014

SENATE BILL

No. 1219

Introduced by Senator Torres

February 20, 2014

An act to amend Sections 19144 and 21202 of, and to repeal and add Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1219, as amended, Torres. Public employees' retirement: service after 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, except as specified, and among other things, prescribes limits on service after retirement without reinstatement into the applicable retirement system. The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System (PERS) for the purpose of providing pension benefits to specified public employees. PERS is subject to the limits established by PEPRA, and PERL also prescribes limits on service after retirement without reinstatement that have been superceded by PEPRA.

The bill would repeal the superceded provisions in the PERL described above and would add provisions limiting service after retirement without reinstatement that conform with the requirements of PEPRA, with certain additions. The bill would specify that a retired person appointed without reinstatement, under those limitations, is prohibited from receiving any benefit, incentive, or compensation in lieu of benefits.

The bill would add similar provisions specifically addressing service by academic staff of the California State University. The bill would require that a person who has not attained normal retirement age have a bona fide separation from employment, as specified, before working after retirement. The bill would prescribe the consequences for working without reinstatement in violation of these prohibitions, which would include reinstatement in PERS, reimbursement of retirement allowance received, and additional contributions to the system, as specified. *The bill would authorize employment without reinstatement, as specified, for a person who retired with a disability but has not attained the mandatory age for retirement applicable to persons in the employment in which he or she will be employed, and whom the board finds is not disabled for that employment.* The bill would except from the restrictions on service without reinstatement specified judicial officers, judges, and elective officers. The bill would require the suspension of a retirement allowance of certain elective officers whose allowances are based on service in that office, which allowances would then resume after the office is vacated.

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 19144 of the Government Code is
- 2 amended to read:
- 3 19144. Subject to Article 8 (commencing with Section 21220)
- 4 of Chapter 12 of Part 3, a person who has retired from state civil
- 5 service may be employed temporarily in a civil service position
- 6 at any time following retirement, provided that the position is
- 7 either:
- 8 (a) In the class in which the person had permanent or
- 9 probationary status or a career executive assignment appointment
- 10 at the time of retirement.
- 11 (b) In another class to which the person could have been
- 12 permanently transferred, reinstated, or demoted at the time of
- 13 retirement.
- 14 SEC. 2. Section 21202 of the Government Code is amended
- 15 to read:

1 21202. A person employed in violation of Section 21221 shall
2 be reinstated to membership in the category in which, and on the
3 date on which, the unlawful employment occurred.

4 SEC. 3. Article 8 (commencing with Section 21220) of Chapter
5 12 of Part 3 of Division 5 of Title 2 of the Government Code is
6 repealed.

7 SEC. 4. Article 8 (commencing with Section 21220) is added
8 to Chapter 12 of Part 3 of Division 5 of Title 2 of the Government
9 Code, to read:

10
11 Article 8. Employment After Retirement
12

13 21220. This article shall be deemed to comply with Article 4
14 (commencing with Section 7522) of Chapter 21 of Division 7 of
15 Title 1, known as the California Public Employees' Pension Reform
16 Act of 2013, and shall be considered to further its purposes,
17 including, but not limited to, the purposes of Sections 7522.56 and
18 7522.57.

19 21221. (a) This section shall apply to any person who is
20 receiving a pension benefit from this system.

21 (b) A retired person shall not serve, be employed by, or be
22 employed through a contract directly by, a public employer in this
23 system if the retiree receives the benefit without reinstatement
24 from retirement, except as permitted by this article.

25 (c) A person who retires from a public employer in this system
26 may serve without reinstatement from retirement or loss or
27 interruption of benefits provided by this system upon appointment
28 by the appointing power or the governing body of a public
29 employer either during an emergency to prevent stoppage of public
30 business or because the retired person has skills needed to perform
31 work of limited duration.

32 (d) (1) Appointments of the person authorized under this section
33 shall not exceed a total for all employers in this system of 960
34 hours in a fiscal year. The monthly rate of pay for the employment
35 shall not be less than the minimum, nor exceed the maximum, paid
36 by the employer to other employees performing comparable duties,
37 divided by 173.333 to equal an hourly rate. A retired person
38 appointed pursuant to this section shall not receive any benefit,
39 incentive, compensation in lieu of benefits, or other form of
40 compensation in addition to the hourly pay rate. A retired person

1 whose employment without reinstatement is authorized by this
2 section shall acquire no service credit or retirement rights under
3 this section with respect to the employment unless he or she
4 reinstates from retirement.

5 (2) Appointments of the person authorized under this section
6 as a member of the academic staff of the California State University
7 shall not exceed a total for all employers in this system of 960
8 hours in a fiscal year or 50 percent of the hours the member worked
9 during the last fiscal year of service prior to retirement, whichever
10 is less. The monthly rate of pay for the employment shall not be
11 less than the minimum, nor exceed the maximum, paid by the
12 employer to other employees performing comparable duties,
13 divided by 173.333 to equal an hourly rate. A retired person
14 appointed pursuant to this section shall not receive any benefit,
15 incentive, compensation in lieu of benefits, or other form of
16 compensation in addition to the hourly pay rate. A retired person
17 whose employment without reinstatement is authorized by this
18 section shall acquire no service credit or retirement rights under
19 this section with respect to the employment unless he or she
20 reinstates from retirement.

21 (e) (1) Notwithstanding subdivision (c), any retired person shall
22 not be eligible to serve or be employed by a public employer in
23 this system if, during the 12-month period prior to an appointment
24 described in this section, the retired person received any
25 unemployment insurance compensation arising out of prior
26 employment subject to this article with a public employer. A retiree
27 shall certify in writing to the employer upon accepting an offer of
28 employment that he or she is in compliance with this requirement.

29 (2) A retired person who accepts an appointment after receiving
30 unemployment insurance compensation as described in this
31 subdivision shall terminate that employment on the last day of the
32 current pay period and shall not be eligible for reappointment
33 subject to this section for a period of 12 months following the last
34 day of employment.

35 21222. (a) A retired person shall not be eligible to be employed
36 pursuant to this article for a period of 180 days following the date
37 of retirement unless he or she meets one of the following
38 conditions:

39 (1) The public employer certifies the nature of the employment
40 and that the appointment is necessary to fill a critically needed

1 position before 180 days has passed and the appointment has been
2 approved by the governing body of the employer in a public
3 meeting. The appointment may not be placed on a consent calendar.

4 (2) The state employer certifies the nature of the employment
5 and that the appointment is necessary to fill a critically needed
6 state employment position before 180 days has passed and the
7 appointment has been approved by the Department of Human
8 Resources. The department may establish a process to delegate
9 appointing authority to individual state agencies, but shall audit
10 the process to determine if abuses of the system occur. If necessary,
11 the department may assume an agency's appointing authority for
12 retired workers and may charge the department an appropriate
13 amount for administering that authority.

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

18 (4) The retiree is a public safety officer or firefighter hired to
19 perform a function or functions regularly performed by a public
20 safety officer or firefighter.

21 (b) A retired person who accepted a retirement incentive upon
22 retirement shall not be eligible to be employed pursuant to this
23 section for a period of 180 days following the date of retirement
24 and subdivision (a) shall not apply.

25 21223. A retired person who has not attained the normal
26 retirement age shall have a bona fide separation in service to the
27 extent required by the Internal Revenue Code, and the regulations
28 promulgated thereunder, before working after retirement pursuant
29 to this article. The board shall establish, by regulation, the criteria
30 under which a bona fide separation is satisfied.

31 21224. (a) A person employed in violation of this article shall
32 be reinstated to membership in the category in which, and on the
33 date on which, the unlawful employment occurred.

34 (b) Upon reinstatement, the retired member employed in
35 violation of this article shall:

36 (1) Reimburse this system for any retirement allowance received
37 during the period or periods of employment that are in violation
38 of law.

39 (2) Pay to this system an amount of money equal to the
40 employee contributions that would otherwise have been paid during

1 the period or periods of unlawful employment, plus interest
2 thereon.

3 (3) Contribute toward reimbursement of this system for
4 administrative expenses incurred in responding to this situation,
5 to the extent the member is determined by the executive officer to
6 be at fault.

7 (c) Any public employer in this system that employs a retired
8 member in violation of this article shall, upon reinstatement of the
9 retired member:

10 (1) Pay to this system an amount of money equal to employer
11 contributions that would otherwise have been paid for the period
12 or periods of time that the member is employed in violation of this
13 article, plus interest thereon.

14 (2) Contribute toward reimbursement of this system for
15 administrative expenses incurred in responding to this situation,
16 to the extent the employer is determined by the executive officer
17 of this system to be at fault.

18 (d) This section shall not apply to violations under subdivision
19 (e) of Section 21221.

20 21225. (a) This section shall apply to any retired person who
21 is receiving a pension benefit from a public retirement system and
22 is first appointed on or after January 1, 2013, to a salaried position
23 on a state board or commission.

24 (b) A person who is retired from a public retirement system
25 may serve without reinstatement from retirement or loss or
26 interruption of benefits provided that appointment is to a part-time
27 state board or commission. A retired person whose employment
28 without reinstatement is authorized by this subdivision shall acquire
29 no benefits, service credit, or retirement rights with respect to the
30 employment. Unless otherwise defined in statute, for the purpose
31 of this section, a part-time appointment shall mean an appointment
32 with a salary of no more than sixty thousand dollars (\$60,000)
33 annually, which shall be increased in any fiscal year in which a
34 general salary increase is provided for state employees. The amount
35 of the increase provided by this section shall be comparable to,
36 but shall not exceed, the percentage of the general salary increases
37 provided for state employees during that fiscal year.

38 (c) A person who is retired from the Public Employees'
39 Retirement System shall not serve on a full-time basis on a state
40 board or commission without reinstatement unless that person

1 serves as a nonsalaried member of the board or commission and
2 receives only per diem authorized to all members of the board or
3 commission. A person who serves as a nonsalaried member of a
4 board or commission shall not earn any service credit or benefits
5 in the Public Employees' Retirement System or make contributions
6 with respect to the service performed.

7 (d) A person retired from a public retirement system other than
8 the Public Employees' Retirement System who is appointed on a
9 full-time basis to a state board or commission shall choose one of
10 the following options:

11 (1) The person may serve as a nonsalaried member of the board
12 or commission and continue to receive his or her retirement
13 allowance, in addition to any per diem authorized to all members
14 of the board or commission. The person shall not earn service
15 credit or benefits in the Public Employees' Retirement System and
16 shall not make contributions with respect to the service performed.

17 (2) (A) The person may suspend his or her retirement allowance
18 or allowances and instate as a new member of the Public
19 Employees' Retirement System for the service performed on the
20 board or commission. The pensionable compensation earned
21 pursuant to this paragraph shall not be eligible for reciprocity with
22 any other retirement system or plan.

23 (B) Upon retiring for service after serving on the board or
24 commission, the appointee shall be entitled to reinstatement of any
25 suspended benefits, including employer provided retiree health
26 benefits, that he or she was entitled to at the time of being
27 appointed to the board or commission.

28 (e) Notwithstanding subdivisions (c) and (d), a person who
29 retires from a public employer may serve without reinstatement
30 from retirement or loss or interruption of benefits provided by the
31 retirement system upon appointment to a full-time state board
32 pursuant to Section 5075 of the Penal Code.

33 *21226. A person who has retired for disability and has not*
34 *attained the mandatory age for retirement for persons in the*
35 *employment in which he or she will be employed, and whom the*
36 *board finds is not disabled for that employment, may be so*
37 *employed by any employer without reinstatement from retirement*
38 *if the position is not the position from which this person retired*
39 *or a position in the same member classification. The person's*
40 *disability retirement pension shall be reduced during this*

1 *employment to an amount that, when added to the compensation*
2 *received, equals the maximum compensation earnable by a person*
3 *holding the position that he or she held at the time of retirement.*
4 *This employment shall terminate upon the person's attainment of*
5 *the mandatory retirement age for persons in that employment. A*
6 *person employed under this section shall not be concurrently*
7 *employed under this article.*

8 21230. A retired person may serve without reinstatement from
9 retirement or loss or interruption of benefits provided by this
10 system, as follows:

11 (a) (1) As a subordinate judicial officer whose position, upon
12 retirement, is converted to a judgeship pursuant to Section 69615,
13 and he or she returns to work in the converted position, and the
14 employer is a trial court.

15 (2) As a retiree who takes office as a judge of a court of record
16 pursuant to Article VI of the California Constitution or a retiree
17 of the Judges' Retirement System I or the Judges' Retirement
18 System II who is appointed to serve as a retired judge.

19 (b) (1) As an elective officer.

20 (2) If a retired person serves without reinstatement from
21 retirement in an elective office and part or all of his or her
22 retirement allowance is based on service in that elective office,
23 the portion of the allowance based on service in that elective office
24 shall be suspended during incumbency in that elective office. The
25 entire retirement allowance shall be paid for time on and after the
26 person vacates the elective office in the monthly amount payable
27 had the allowance not been suspended. The governing body of
28 every employer other than the state shall cause immediate notice
29 to be given to this system of the election of any retired person to
30 an office of the employer.