

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 704

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to amend Section 20822 of, to add Sections 19858.8 and 20281.7 to, and to add Chapter 19 (commencing with Section 21710) to Part 3 of Division 5 of Title 2 of, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 704, as amended, Charles Calderon. Public employees' retirement: Deferred Retirement Option Program.

(1) Existing law authorizes the Department of Personnel Administration to provide for annual leave benefits with respect to each officer and employee excluded from the definition of state employee for the purposes of the Ralph C. Dills Act, which regulates state employer-employee relations. Existing law permits an employee who is excluded from the definition of state employee for the purposes of that act to make an irrevocable election, in lieu of earning sick leave and vacation benefits, to participate in the annual leave program.

This bill would provide that an excluded or exempt state employee of State Bargaining Units ~~Unit 5, 6, 7, and~~ or 8 who participates in the Deferred Retirement Option Program shall also participate in the annual leave program and accumulate 12 hours of annual leave credits per month.

(2) The Public Employees' Retirement Law provides a comprehensive set of rights and benefits for various employees of the state and local agencies. That law also establishes the Public Employees' Retirement

System and sets forth the provisions for its administration and the delivery of benefits to its members. Under that law, the retirement benefits of a retirement system member are based, in part, on the completed service credit and compensation received by that member.

This bill would establish the Deferred Retirement Option Program as a voluntary program in the Public Employees' Retirement System for the excluded or exempt state employees of State Bargaining Units *Unit 5, 6, 7, and or 8*, as specified. The program would provide eligible members, upon retirement, access to a lump sum in addition to a monthly retirement allowance, as specified. The program would also permit a specified beneficiary to receive any remaining balance upon the death of the member.

The bill would require that the program result in a cost savings or be cost neutral to the state, direct the Board of Administration of the Public Employees' Retirement System to prepare a cost analysis of the program, as specified, and direct the board to implement the program on July 1, 2010, except as specified. The bill would also require the actuary to conduct a biennial valuation of the program, as specified, and authorize the Department of Personnel Administration to terminate the program if it is not cost neutral, subject to specified conditions.

(3) The Public Employees' Retirement Law provides that the state's employer contribution from the General Fund to the Public Employees' Retirement Fund shall be made quarterly. That law defines the term "compensation" for purposes of determining required contributions and benefits. That law generally requires a miscellaneous member to pay 5%, and a specified patrol and state peace officer and firefighter member to pay 8% of compensation as his or her normal retirement contribution to the Public Employees' Retirement System, subject to specified exceptions.

This bill would provide that an excluded or exempt state employee of State Bargaining Unit 5, 6, 7, or 8 who participates in the Deferred Retirement Option Program, shall not pay contributions to or receive service credit in the Public Employees' Retirement System. The bill would also provide that the state shall not pay employer contributions from the General Fund to the Public Employees' Retirement Fund relating to these excluded or exempt state employees.

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 19858.8 is added to the Government
2 Code, to read:

3 19858.8. (a) In lieu of sick leave and vacation provisions of
4 Sections 19858.1 and 19859, an employee, as defined in
5 subdivision (d), shall participate in an annual leave program. Each
6 employee who participates in the annual leave program and who
7 is employed full time shall receive 12 hours credit for annual leave
8 with pay per month, regardless of the length of service of that
9 employee.

10 (b) A part-time or hourly employee shall accrue proportional
11 annual leave credits based on the schedule in this section. The time
12 when annual leave shall be taken shall be determined by the
13 appointing power of the officer or employee.

14 (c) The department shall provide by rule for the regulation and
15 accumulation of annual leave, the effect of an absence from the
16 payroll of 10 workdays or less in a calendar month upon credit for
17 annual leave, methods by which an employee leaving the
18 employment of the state may be compensated for, or otherwise
19 receive proper credit for, his or her accumulated annual leave, and
20 other provisions necessary for the administration of this section.

21 (d) This section shall apply to an excluded or exempt employee
22 of State Bargaining Unit 5, 6, 7, or 8, who participates in the
23 Deferred Retirement Option Program pursuant to Chapter 19
24 (commencing with Section 21710) of Part 3.

25 SEC. 2. Section 20281.7 is added to the Government Code, to
26 read:

27 20281.7. A member who is an excluded or exempt employee
28 of State Bargaining Unit 5, 6, 7, or 8, who participates in the
29 Deferred Retirement Option Program pursuant to Chapter 19
30 (commencing with Section 21710) shall not accrue credit for
31 service in the system and shall not make employee contributions
32 to the system for employment with the state.

33 SEC. 3. Section 20822 of the Government Code is amended
34 to read:

35 20822. (a) From the General Fund in the State Treasury there
36 is appropriated quarterly, to the retirement fund, the state's
37 contribution for all of the following:

1 (1) All state miscellaneous members and all other categories of
2 members whose compensation is paid from the General Fund.

3 (2) All university members whose compensation is paid from
4 funds of, or funds appropriated to, the university.

5 (3) All state miscellaneous members who are employed by the
6 State Department of Education or the Department of Rehabilitation
7 and whose compensation is paid from the Vocational Education
8 Federal Fund, the Vocational Rehabilitation Federal Fund, or any
9 other fund received, in whole or in part, as a donation to the state
10 under restrictions preventing its use for state contributions to the
11 retirement system.

12 (4) All state miscellaneous members and all other categories of
13 members whose compensation is paid from the Senate Operating
14 Fund or the Assembly Operating Fund or the Operating Funds of
15 the Assembly and Senate.

16 (b) An appropriation shall not be required pursuant to this
17 section with respect to any state member who, pursuant to Section
18 20281.5, is not accruing service credit during the first 24 months
19 of service, unless and until that service credit is credited to the
20 member.

21 (c) An appropriation shall not be required pursuant to this section
22 with respect to a state employee who participates in the Deferred
23 Retirement Option Program pursuant to Chapter 19 (commencing
24 with Section 21720).

25 SEC. 4. Chapter 19 (commencing with Section 21710) is added
26 to Part 3 of Division 5 of Title 2 of the Government Code, to read:

27
28 CHAPTER 19. DEFERRED RETIREMENT OPTION PROGRAM

29
30 Article 1. General Provisions

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32 21710. This chapter shall be known and may be cited as the
33 Deferred Retirement Option Program.

34 21710.1. The Deferred Retirement Option Program is hereby
35 created to add flexibility to the public employees' retirement
36 system. This program permits a member who elects to participate
37 in the program to accumulate and defer retirement funds. That
38 member may access a lump-sum payment for a specified period
39 in addition to his or her normal monthly retirement allowance.
40 This program also permits a member, subject to the Internal

1 Revenue Code, to rollover his or her lump sum into a 401(k) or
2 individual retirement account.

3 21710.2. The design and administration of the Deferred
4 Retirement Option Program shall conform with the applicable
5 provisions of Title 26 of the United States Code and the Revenue
6 and Taxation Code.

7 21710.3. If any provision of this chapter or *the* application
8 thereof to any person or circumstance is held invalid, that invalidity
9 shall not affect other provisions or applications of this chapter that
10 can be given effect without the invalid provision or application,
11 and to this end the provisions of this chapter are severable.

12 21710.4. The board shall implement the Deferred Retirement
13 Option Program pursuant to the provisions of this chapter on July
14 1, 2010, unless the board determines, by resolution, that the
15 implementation tasks cannot be completed until a later date, in
16 which case the board shall implement the program pursuant to this
17 chapter no later than January 1, 2011.

18 21710.5. The board may adopt regulations to implement the
19 program.

20 21710.6. The program shall result in a cost savings or be cost
21 neutral. The board shall, on or before June 1, ~~2009~~ 2010, issue a
22 report providing an analysis of the anticipated cost impact to the
23 state during the 2010–11 fiscal year of the program established by
24 this chapter. The purpose of the report is to assist in reaching the
25 goal of a cost savings or cost neutral program for the state
26 employer.

27 21710.7. After the program is implemented, the actuary shall
28 conduct a valuation of the program every two years to determine
29 its fiscal impact on the state employer and shall report the findings
30 to the board and the Department of Personnel Administration no
31 later than July 1, 2011, and biennially ~~each~~ *no later than* July 1
32 thereafter. The program may be terminated, by written notice from
33 the Department of Personnel Administration to the board, if the
34 annual valuation indicates that the program is not cost neutral and
35 has increased the liability of the state employer. The terms of any
36 termination of the program shall be subject to the meet and confer
37 process.

Article 2. Definitions

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21712. Unless the context otherwise requires, the definitions set forth in this article shall govern the interpretation of terms in this chapter.
21712.1. "Actual retirement date" means the effective date of the member's retirement following termination of all employment subject to membership in the system.
21712.2. "Deferred retirement calculation date" means the date subsequent to the member's actual retirement date as of which benefits under the program shall be calculated as provided in Article 4 (commencing with Section 21714.1).
21712.3. "Deferred retirement period" means the period of time between the member's actual date of retirement and the date the member ends his or her participation in the program, which period shall not be less than 12 months nor more than 60 months.
21712.4. "Program" means the Deferred Retirement Option Program established by this chapter.
21712.5. "Program payment" means the amount to be paid to the member as a result of his or her participation in the program, as calculated in Section 21714.1.

Article 3. Eligibility

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21713. This program is established for excluded or exempt employees of State Bargaining Unit 5, 6, 7, or 8.
21713.1. A member described in Section 21713 shall be eligible to elect to participate in the program at any time the member has met the minimum service requirements applicable for a service retirement and attained at least 50 years of age.
21713.2. A member who is eligible to elect to participate in the program shall voluntarily:
(a) Make this election prior to retirement on a form prescribed and retained by the board.
(b) Designate his or her deferred retirement calculation date, which date shall not be more than 60 months nor less than 12 months subsequent to the member's actual retirement date and shall be subsequent to the date that the member meets the minimum age and service requirements for a service retirement. The deferred retirement calculation date shall not be prior to January 1, 2011.

1 (c) Receive benefits from the system upon retirement at the time
2 and in the manner provided in this chapter.

3 (d) A member who participates in the program shall participate
4 in the annual leave program described in Section 19858.8.

5 (e) A member shall not be required to pay contributions to or
6 receive service credit in the system during his or her participation
7 in the program, as described in Section 20281.7, and no
8 appropriation shall be required by the state with respect to any
9 employer contributions, as described in subdivision (c) of Section
10 20822.

11 21713.3. (a) Except as described in subdivision (b), the election
12 to participate in the program shall be irrevocable.

13 (b) A member may be allowed to extend his or her participation
14 in the program if this extension does not exceed 60 cumulative
15 months of participation in the program.

16 21713.4. A member who participates in the Deferred
17 Retirement Option Program may not participate in reduced
18 worktime for partial service retirement pursuant to Article 4
19 (commencing with Section 21110) of Chapter 12 of this part.

20 21713.5. A member who participates in the program and
21 reinstates from retirement shall not be eligible to again participate
22 in the program upon subsequent retirement.

23
24 Article 4. Calculation of Distribution

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26 21714.1. Upon the termination of employment and retirement
27 of an eligible member who has elected to participate in the
28 program, the system shall calculate the following amounts:

29 (a) The member's monthly service retirement allowance payable
30 the day prior to when the member begins to participate in the
31 program.

32 (b) The member's program payment, which shall be the amount
33 calculated pursuant to subdivision (a), plus interest at an annual
34 rate of 5 percent minus the costs the system incurs to administer
35 the program.

36 21714.2. The retirement allowance pertaining to service of the
37 member other than as an exempt or excluded employee of State
38 Bargaining Unit 5, 6, 7, or 8 shall be based upon the member's
39 actual retirement date and not the deferred retirement calculation
40 date.

Article 5. Distribution Methods

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21715.1. Upon termination of employment and retirement from the system, a member who has elected to participate in the program shall receive the member’s program payment as calculated pursuant to Section 21714.1.

21715.2. The member shall elect one of the following as the form of distribution of the member’s program payment:

- (a) A single lump-sum payment.
- (b) A lump-sum rollover to a 401(k) or individual retirement account.

21715.3. (a) Notwithstanding any other provision of this chapter, a participant, nonparticipant spouse, or beneficiary shall not be permitted to elect a distribution under this chapter that does not satisfy the requirements of Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of Title 26 of the United States Code and the regulations thereunder.

(b) A lump-sum distribution to the participant that reflects the entire program payment of the participant shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains 70 and one-half years of age or the calendar year in which the participant terminates all employment for the employer.

(c) In the case of a lump-sum distribution on account of the participant’s death, distributions shall be paid no later than December 31 of the calendar year in which the second anniversary of the participant’s date of death occurs unless the beneficiary is the participant’s spouse in which case the benefit shall be paid on or before December 31 of the calendar year immediately following the calendar year in which the participant dies.

Article 6. Beneficiaries

21716. The beneficiary or beneficiaries entitled to receive any remaining balance described in Section 21715.3 shall be the same beneficiary or beneficiaries designated by the member to receive

- 1 the postretirement death benefit provided by Article 5 (commencing
- 2 with Section 21620) of Chapter 14 of this part.

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