

ASSEMBLY BILL

No. 1184

**Introduced by Assembly Member Gatto
(Coauthors: Assembly Members Smyth and Williams)**

February 18, 2011

An act to amend Sections 21757 and 21761 of, and to add Section 20532.5 to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1184, as introduced, Gatto. Public employees' retirement benefits.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its employees based on age at retirement, service credit, and final or highest compensation paid to the employee. Existing law authorizes any public agency to participate in, and make its employees members of, PERS by contract. In the case of an employee who has been employed by one or more contracting public agencies, retirement benefits distributed to that employee are based on the highest final compensation under any system, and each system makes a separate retirement payment to the employee based upon the number of years that the employee worked for each of those agencies.

This bill would provide that the obligations for retirement benefits that are attributable to excess compensation earned by a nonrepresented employee who was employed by one or more public agencies shall be the sole obligation of the subsequent contracting agency that paid the excess compensation. This bill would define "excess compensation" as the final compensation of an employee of a contracting agency who previously worked for another contracting agency to the extent the final

compensation received from the current contracting agency is 15% or more in excess of the salary paid by the prior contracting agency, as adjusted for actuarial increases in that salary.

Existing law requires the Board of Administration of PERS to establish a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by a specified provision of federal law and that cannot be fully maximized pursuant to PERL. PERL requires the state, school employers, and all contracting agencies under PERS to be deemed to have elected to contract with the board for administration of the replacement benefit plan.

This bill would prohibit a plan of replacement benefits from being administered by the board or a participating agency, as specified, for members hired on or after January 1, 2013.

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 20532.5 is added to the Government
2 Code, to read:
3 20532.5. (a) (1) Notwithstanding any other law, the
4 contributions and disbursements of benefits for that portion of the
5 compensation of an employee of a contracting agency that
6 constitutes excessive compensation shall be the sole obligation of
7 the current contracting agency that paid the excessive compensation
8 to that employee.
9 (2) The liability of any prior contracting agency for the
10 contributions and disbursements of benefits of that employee shall
11 be limited to contributions and other assets sufficient to fund a
12 retirement allowance calculated using the amount of the employee's
13 final compensation at the time he or she terminated his or her
14 service with the prior contracting agency and any amount that is
15 not excess compensation.
16 (b) For purposes of this section, "excessive compensation" is
17 the final compensation of an employee of a contracting agency
18 who previously worked for another contracting agency to the extent
19 the final compensation received from the current contracting
20 agency is 15 percent or more in excess of the salary paid by the
21 prior contracting agency, as adjusted for actuarial increases in that
22 salary.

1 (c) This section shall not apply to any employee who is covered
2 by a memorandum of understanding or to any employee who is a
3 member of a recognized employee organization as that term is
4 defined in Section 3501.

5 (d) The actuary, in determining contributions required of
6 contracting agencies, subject to this section, shall establish a
7 contribution with respect to excessive compensation separate from,
8 and independent of, the contribution required for other benefits
9 under their contracts. The total contribution, in that case, for the
10 agencies as a group shall be established, and from time to time
11 adjusted, by actuarial valuation performed by the actuary of the
12 liability for the benefit or benefits on account of the employees of
13 all those agencies. Adjustments shall affect only future
14 contributions and shall take into account the difference between
15 contributions on hand and the amount required to fund the
16 allowances or benefits for which entitlement has already been
17 established, as well as liability for future entitlements to benefits.
18 The contribution as so established and adjusted from time to time
19 shall be allocated between the agencies on a basis that, in the
20 opinion of the board, after recommendation of the actuary, provides
21 an equitable distribution between the agencies as required by this
22 section. However, the allocation shall not be based on differences
23 in the incidence of death or disability in the respective agencies.

24 (e) (1) Whenever the board, pursuant to subdivision (d),
25 establishes a separate contribution, it shall maintain the contribution
26 and any contributions required to be made by employees towards
27 the cost of the benefit or benefits as a separate account, which shall
28 be available only for payment of the benefit or benefits and shall
29 not be a part of the accumulated contributions under this system
30 of any of the employers or members included.

31 (2) All contributions in that account, irrespective of the agency
32 from which they were received, shall be available for payment of
33 the benefit or benefits with respect to the employees of any agency
34 included. In the event of termination of any agency's participation
35 in this system, the liability with respect to all those benefits to
36 which the agency's employees have become entitled, after
37 establishment of the rate and prior to the termination, shall be its
38 contributions, as established under subdivision (d), that have
39 become due and payable as of the date of termination.

1 (f) The board and each contracting agency shall modify each
2 contract to reflect the requirements of this section on or before
3 July 1, 2012.

4 SEC. 2. Section 21757 of the Government Code is amended
5 to read:

6 21757. (a) If the retirement benefits of any member or his or
7 her survivors or beneficiaries payable pursuant to Part 3
8 (commencing with Section 20000) would be limited by Section
9 415 of Title 26 of the United States Code, the board shall adjust
10 the payment of those benefits, including, but not limited to,
11 cost-of-living adjustments, cost-of-living banks, temporary
12 annuities, survivor continuance benefits, or any combinations
13 thereof, in order to maximize benefits within the limits of Section
14 415.

15 (b) The board shall establish a plan of replacement benefits for
16 members and any survivors or beneficiaries whose retirement
17 benefits are limited by Section 415 and cannot be fully maximized
18 pursuant to Part 3 (commencing with Section 20000). The benefits
19 provided by that plan may consist of deferred compensation, cash
20 payments, health benefits, or supplemental disability benefits, as
21 shall be determined by the board to give effect to the purpose of
22 this part. The factors the board may take into consideration in
23 making its determination shall include, but not be limited to, the
24 following: legal constraints, administrative feasibility, and cost
25 effectiveness. The board may periodically modify the replacement
26 benefits plan and may add or eliminate any type of replacement
27 benefits, as necessary, to carry out the purpose of this part. The
28 administrative costs of the replacement benefits plan shall be
29 satisfied out of funds credited to the accounts of the participant
30 members, and shall not be paid from the retirement fund or the
31 retirement trust fund of a participating agency.

32 (c) The application of Section 415 to benefits provided under
33 Part 3 (commencing with Section 20000) and this part shall not
34 be taken into account for purposes of determining employers' or
35 employees' contribution rates, until replacement benefits are
36 implemented pursuant to Section 21758.

37 (d) Under no circumstances shall the replacement benefit plan
38 result in increased benefit costs to an employer, member, or
39 annuitant.

1 (e) *The board shall not administer a plan of replacement benefits*
2 *for members hired on or after January 1, 2013.*

3 SEC. 3. Section 21761 of the Government Code is amended
4 to read:

5 21761. The state, school employers, as defined in Section
6 20063, and all contracting agencies under this system shall be
7 deemed to have elected to contract with the board for
8 administration of the replacement benefit plan pursuant to this
9 part. A participating agency may contract with the board for
10 administration to participate in the replacement benefit plan
11 administered by the board, as follows:

12 (a) A participating agency shall deposit its replacement benefit
13 contributions into the Replacement Benefit Custodial Fund, as the
14 board directs.

15 (b) At the request of the board, the participating agency shall
16 furnish any data concerning its members the board requires to
17 direct the payment of replacement benefit contributions.

18 (c) A public agency that intends to contract under this section
19 and become a participating agency shall do so only pursuant to
20 the procedure set forth in Sections 20469 to 20471, inclusive.

21 (d) The ordinance or resolution by which a public agency
22 approves a contract under this section shall be filed with the board.
23 A participating agency under this section shall not maintain any
24 other replacement benefit plan, except upon the express approval
25 of the board.

26 (e) A contract entered into under this section may be amended
27 pursuant to the procedure set forth in Section 20472.

28 (f) *A participating agency shall not administer a plan of*
29 *replacement benefits for members hired on or after January 1,*
30 *2013.*