california legislature—2019–20 regular session

ASSEMBLY BILL No. 2101

Introduced by Committee on Public Employment and Retirement (Assembly Members Rodriguez (Chair), Cooley, Cooper, and O'Donnell)

February 6, 2020

An act to amend Sections 20731, 22772, 22960.95, 22970.85, and 75088.3 of the Government Code, relating to public employees' retirement.

legislative counsel's digest

AB 2101, as introduced, Committee on Public Employment and Retirement. Public employees' retirement: required distributions: age.

(1) The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System (PERS) for the purpose of providing pension benefits to state employees and employees of contracting agencies. Existing law requires administration of PERS by the Board of Administration of PERS. Existing law creates the Public Employees' Retirement Fund as a trust fund to be expended only for purposes related to the system and its administration, as specified, and provides that the fund is continuously appropriated for these purposes. Existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA), on and after January 1, 2013, generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act, as specified.

Existing law authorizes a member of PERS, who is credited with less than a certain number of years of service and who enters employment as a member of another public retirement system supported by state funds, within 6 months of leaving state service, to elect to leave their accumulated contributions on deposit in the retirement fund. Existing law specifies that a member's failure to make an election to withdraw accumulated contributions is deemed an election to leave the member's accumulated contributions on deposit in the retirement fund. Existing law provides that a member may revoke their election to allow accumulated contributions to remain in the retirement system, except under specified circumstances. Existing law requires a member who is permanently separated from all PERS covered service, who meets specified conditions, and who attains 70 years of age, to be provided with an election to withdraw contributions, or, if vested, an election to either apply for service retirement or to withdraw contributions.

This bill would instead require a member permanently separated under the circumstances described above to attain 71 ½ years of age before being provided with those election options. This bill would also correct an obsolete cross reference.

(2) The PERL contains the State Peace Officers' and Firefighters' Defined Contribution Plan as a separate supplemental plan for certain peace officers and firefighters, and is administered by the board of PERS. Existing law establishes the State Peace Officers' and Firefighters' Defined Contribution Plan Fund as a trust fund, with moneys in the fund continuously appropriated to the board for purposes of administering the plan.

Under existing law, a participant, nonparticipant, spouse, or beneficiary is not permitted to elect a distribution under the plan that does not satisfy specified requirements of federal law related to being a qualified pension trust plan. Existing law requires the beginning date of distributions that reflect the entire interest of the participant, for a lump-sum distribution, to be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains 70 ½ or the calendar year in which the participant terminates all employment subject to plan coverage. Existing law also requires, for a distribution to the participant in the form of installment payments or an annuity, that payment begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains 70 ½ years of age or the calendar year in which the participant terminates all employment subject to plan coverage. Existing law also requires, if a benefit is payable on account of the participant's death, and the beneficiary is the participant's spouse, the distributions to commence on or before the later of either December 31 of the calendar year immediately following the calendar year in which the participant dies, or December 31 of the calendar year in which the participant would have attained 70 ½ years of age.

This bill would raise the age for required distributions, in the circumstances described above, from 70 ½ years of age to 72 years of age.

(3) Existing law establishes the Supplemental Contributions Program as a defined contribution plan to supplement the benefits provided under PERL. Existing law establishes the Supplemental Contributions Program Fund as a special trust fund, with moneys in the fund continuously appropriated to the board of PERS, for purposes of the program. Under existing law, a participant, nonparticipant, spouse, or beneficiary is not permitted to elect a distribution under the plan that does not satisfy federal requirements related to being a qualified pension trust plan. Existing law requires the beginning date of distributions that reflect the entire interest of the participant, for a lump-sum distribution to the participant, to be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains 70 ½ years of age or the calendar year in which the participant terminates all employment. Existing law requires the beginning date of distributions, if provided in periodic payments, to begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains 70 ½ years of age or the calendar year in which the participant terminates all employment subject to plan coverage. Existing law also requires, if a benefit is payable on account of the participant's death, and the beneficiary is the participant's spouse, that distributions commence on or before the later of either December 31 of the calendar year immediately following the calendar year in which the participant dies or December 31 of the calendar year in which the participant would have attained 70 ½ years of age.

This bill would raise the age for required distributions, in the circumstances described above, from 70 ½ years of age to 72 years of age.

(4) The Judges' Retirement Law prescribes retirement benefits for judges, as defined, who were first elected or appointed to judicial office before November 9, 1994. Existing law also establishes the Extended Service Incentive Program to provide enhanced retirement benefits for those judges who continue in service beyond retirement age, as specified, and directs the board of administration of PERS to implement the program. Existing law prescribes that the required beginning date of distributions that reflect the entire interest of the judge, for a lump-sum

distribution, be made not later than April 1 of the calendar year following the later of the calendar year in which the judge attains 70 ½ years of age or the calendar year in which the judge terminates employment. Existing law also requires, if a benefit is payable on account of the judge's death, and the beneficiary is the judge's spouse, that distributions commence on or before the later of December 31 of the calendar year immediately following the calendar year in which the judge dies or December 31 of the calendar year in which the judge would have attained 70 ½ years of age.

This bill would raise the age for required distributions, in the circumstances described above, from 70 ½ years of age to 72 years of age.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 20731 of the Government Code is amended to read:

20731. (a) Notwithstanding any other provision of this part, a member who is credited with less than the years of service specified in Article 1 (commencing with Section 21060) of Chapter 12 who enters employment as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System, or as a member of a county retirement system, within six months of leaving state service, shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund. This section shall also apply to a member who is subject to Section 21076 or 21076.5.

(b) (1) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time, except any of the following:

(A) While the member is employed in state service in a position in which the member is not excluded from membership with respect to that service.

(B) While the member is in service as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System.

(C) While the member is in service, entered within six months after discontinuing state service, as a member of a county retirement system.

(2) All accumulated contributions in a member's account up to the time of revocation shall be distributed in accordance with an election pursuant to Section 20735.

(3) A member who is permanently separated from all service covered by the system, who is not subject to paragraph (1), and who attains ~~70~~ *71 ½* years of age shall be provided with an election to withdraw contributions or, if vested, an election to either apply for service retirement or to withdraw contributions. Failure to apply for service retirement or to make an election to withdraw contributions within 90 days shall be deemed an election to withdraw contributions. If the person fails to either apply for service retirement or elect to withdraw contributions, or cannot, with reasonable diligence, be located, the accumulated contributions shall be distributed in accordance with Section 21500.

(c) A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members, except that the provisions in this part for minimum service and disability retirement allowances shall not apply to the member, unless the member meets the minimum service requirements. If a basic death benefit becomes payable under Article 1 (commencing with Section 21490), Article 2 (commencing with Section 21530), and Article 5 (commencing with Section 21620) of Chapter 14 because of death before retirement of a member, the average annual compensation earnable in the year preceding the date of termination of that service, rather than in the year preceding death, shall be used in computing the benefit under Articles 1, 2, and 5 of Chapter 14.

The provisions of this section, as it read prior to June 21, 1971, shall continue with respect to a member whose membership continued under this section on that date.

SEC. 2. Section 22772 of the Government Code is amended to read:

22772. (a) "Employee" means:

(1) An officer or employee of the state or of any agency, department, authority, or instrumentality of the state, including the University of California.

(2) An employee who is employed by a contracting agency and participates in a publicly funded retirement system provided by the contracting agency, or an officer or official of a contracting agency.

(3) An annuitant receiving a retirement allowance pursuant to Section ~~21228~~ *21232* who is employed by a contracting agency.

(4) A teaching associate, lecturer, coach, or interpreter employed by the California State University who is appointed to work in an academic year classification for at least six weighted teaching units for one semester, or for at least six weighted teaching units for two or more consecutive quarter terms. This paragraph does not apply to a state member employed by the California State University, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) All employees in job classes specified in subdivision (a) of Section 14876.

(6) An individual not described in paragraphs (1) to (5), inclusive, who is both of the following:

(A) A "full-time employee" of the state or a contracting agency within the meaning of Section 4980H of Title 26 of the United States Code and applicable United States Treasury Department regulations and interpretive guidance.

(B) Designated in writing as an employee for purposes of this section by the state or the contracting agency, as applicable.

(b) Except as otherwise provided by this part, "employee" does not include any of the following:

(1) A person employed on an intermittent, irregular, or less than half-time basis, or an employee similarly situated.

(2) A National Guard member described in Section 20380.5.

SEC. 3. Section 22960.95 of the Government Code is amended to read:

22960.95. Notwithstanding any other provision of this part, a participant, nonparticipant spouse, or beneficiary shall not be permitted to elect a distribution under this part 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 and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(a) In the case of a lump-sum distribution to the participant, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of ~~70 and a half~~ *72* years or the calendar year in which the participant terminates all employment for the employer.

(b) In the case of a distribution to the participant in the form of installment payments or an annuity, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of ~~70 and a half~~ *72* years or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(c) In the case of a benefit payable on account of the participant's death, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions must commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(2) December 31 of the calendar year in which the participant would have attained the age of ~~70 and a half~~ *72* years.

SEC. 4. Section 22970.85 of the Government Code is amended to read:

22970.85. Notwithstanding any other provision of this part, a participant or beneficiary shall not be permitted to elect a distribution under this part that does not satisfy the requirements of paragraph (9) of subsection (a) Section 401 of Title 26 of the United States Code, including the incidental death benefit requirements of subparagraph (G) of paragraph (9) of subsection (a) of Section 401 and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(a) In the case of a lump sum distribution to the participant, the lump sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of ~~70~~ ½ *72* years or the calendar year in which the participant terminates employment.

(b) In the case of a distribution to the participant in the form of periodic payments, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of ~~70~~ ½ *72* years or the calendar year in which the participant terminates employment.

(c) In the case of a benefit payable on account of the participant's death after distributions to the participant have commenced in the form of periodic payments, the remainder of the participant's account shall be distributed at least as rapidly as if the participant had not died.

(d) In the case of a benefit payable on account of the participant's death before distributions to the participant have commenced, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the benefit is paid over a period not extending beyond the life expectancy of the beneficiary and distributions commence not later than December 31 of the calendar year immediately following the calendar year in which the participant died, or in the event that the beneficiary is the participant's spouse, distributions must commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(2) December 31 of the calendar year in which the participant would have attained the age of ~~70~~ ½ *72* years.

SEC. 5. Section 75088.3 of the Government Code is amended to read:

75088.3. The required beginning date of distributions that reflect the entire interest of the judge shall be as follows:

(a) In the case of a lump-sum distribution to the judge, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the judge attains the age of ~~70 and one-half~~ *72* years or the calendar year in which the judge terminates employment.

(b) In the case of a program payment payable on account of the judge's death, the distribution shall be made no later than December 31 of the calendar year in which the fifth anniversary of the judge's date of death occurs unless the beneficiary is the judge's spouse in which case distributions shall commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the judge dies.

(2) December 31 of the calendar year in which the judge would have attained the age of ~~70 and one-half~~ *72* years.

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