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AB-2696 Public Employees' Retirement System: limited term appointments. (2017-2018)

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Assembly Bill No. 2696

CHAPTER 767

An act to amend Section 20480 of the Government Code, relating to public employee retirement, and making an appropriation therefor.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, Rodriguez. Public Employees' Retirement System: limited term appointments.

The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL authorizes a public agency and a school employer to contract to make their employees members of PERS. PERL establishes the compensation earnable by members of the system, defined as the member's payrate and special compensation, including out-of-class pay. Existing law requires fees and other amounts received by the Board of Administration of PERS pursuant to PERL to be credited to the Public Employees' Retirement Fund, a continuously appropriated fund.

PERL prohibits an out-of-class appointment by a contracting agency employer or a school employer from exceeding 960 hours in each fiscal year. PERL requires an employer who violates this provision to pay penalties to the system based on, among other factors, an amount of money equal to 3 times the employee and employer contributions that would otherwise be paid to the system for the difference between the compensation paid for an out-of-class appointment and the compensation paid and reported to the system for the member's permanent position, for the entire period or periods the member serves in an out-of-class appointment.

This bill would instead require that the amount of money for this penalty equal 3 times the employee and employer contributions that otherwise would have been paid and reported to the system for the difference between the compensation paid for the out-of-class appointment and the compensation that would have been paid and reported to the system, but for the vacancy, for the position in accordance with a publicly available pay schedule applicable to the vacant position, for the entire period or periods the member serves in an out-of-class appointment. By increasing the amount of moneys deposited in a continuously appropriated fund, this bill would make an appropriation.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20480 of the Government Code is amended to read:

20480. (a) An out-of-class appointment by a contracting agency employer or a school employer shall not exceed a total of 960 hours in each fiscal year.

(b) A contracting agency employer or school employer shall track the hours worked by an employee serving in an out-of-class appointment and report that service to the system no later than 30 days following the end of each fiscal year.

(c) The compensation for an appointment described in subdivision (a) shall be pursuant to a collective bargaining agreement or a publicly available pay schedule.

(d) (1) An employer who violates this section shall pay penalties to the system according to the following:

(A) An amount of money equal to three times the employee and employer contributions that would otherwise be paid to the system for the difference between the compensation paid for an appointment described in subdivision (a) and the compensation that would have been paid and reported to the system, but for the vacancy, for the position in accordance with a publicly available pay schedule applicable to the vacant position, for the entire period or periods the member serves in an out-of-class appointment.

(B) Reimbursement for administrative expenses incurred in responding to this situation.

(2) Penalties paid to the system pursuant to this subdivision are not normal contributions or additional contributions that would stand to the credit of a member's individual account.

(e) The member shall bear no liability, obligations, or expense as a result of the unlawful actions of the employer with respect to this section.

(f) For purposes of this section, "out-of-class appointment" means an appointment of an employee to an upgraded position or higher classification by the employer or governing board or body in a vacant position for a limited duration.

(g) For purposes of this section, "vacant position" refers to a position that is vacant during recruitment for a permanent appointment. "Vacant position" does not refer to a position that is temporarily available due to another employee's leave of absence.