SB-656 Judges’ Retirement System II: deferred retirement. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL NO. 656

Introduced by Senators Moorlach and Lara
(Principal coauthors: Assembly Members Brough and Cooley)
(Coauthor: Assembly Member Calderon)

February 17, 2017

An act to amend Sections 22760, 22814, 75521, 75523, 75553, 75570, 75571.5, and 75590 of, and to add Sections 75522.5 and 75591.5 to, the Government Code, relating to judges’ retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 656, Moorlach. Judges’ Retirement System II: deferred retirement.

(1) Existing law establishes the Judges’ Retirement System II, which the Board of Retirement of the Public Employees’ Retirement System administers. Existing law authorizes a judge who is a member of the system and who retires upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of 5 years of service, to elect from specified retirement benefits including a monthly pension. Existing law requires a judge who leaves judicial office after accruing 5 or more years of service, but who has not reached the applicable age of retirement, to be paid a lump sum equal to monetary credits that accrued while he or she was in office, as specified. Existing law authorizes a judge who, among other things, separates from office after accruing 5 or more years of service and has not reached 65 years of age to continue health

care benefits if he or she assumes certain payments. Existing law specifies benefits provided to a surviving spouse or other beneficiary in relation to these provisions.

This bill would authorize a judge who is not otherwise eligible to retire and who has either attained 60 years of age with a minimum of 5 years of service or accrued 20 or more years of service to leave his or her monetary credits on deposit with the system, to retire, and upon reaching retirement age, as specified, to receive a monthly retirement allowance, as provided. The bill would prescribe procedures to apply if the judge fails to elect within 30 days of separation and would authorize the board to charge an administrative fee, as specified, to a judge who elects to apply these provisions. The bill would specify the monthly allowance provided to a surviving spouse or other beneficiary and would make other conforming changes in relation to these provisions. The bill would also provide, for the purposes of the Judges' Retirement System II, and for a judge first appointed or elected to office on or after January 1, 2019, that a surviving spouse is a spouse who was married to the judge continuously from the date of retirement until the judge's death.

(2) Existing law establishes the Public Employees' Medical and Hospital Care Act (PEMHCA) for the purpose of providing health care benefits to employees and annuitants, as defined. PEMHCA defines an annuitant for purposes of receiving postretirement health benefits as including, among others, a person who retires within 120 days of separation from public employment and a judge who receives the above-described lump sum payment of monetary credits. Contributions and premiums paid under PEMHCA are deposited in the Public Employees' Contingency Reserve Fund, which is continuously appropriated.

This bill would authorize a judge who elects to retire as described above, but is not yet receiving his or her retirement allowance, to continue health care benefits upon separation from office if he or she assumes specified payments. The bill would include these judges within the definition of annuitant upon commencement of the judge's retirement allowance, thereby authorizing the judge to receive applicable postretirement health benefits. By authorizing the use of continuously appropriated funds for a new purpose, and by depositing additional amounts into a continuously appropriated fund, this bill would make an appropriation.
Vote: majority   Appropriation: yes   Fiscal Committee: yes   Local Program: no

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

SECTION 1. This act shall be known as the Judicial Fairness Act of 2018.

SEC. 2. Section 22760 of the Government Code is amended to read:

22760. "Annuitant" means:

(a) A person, other than a National Guard member defined in Section 20380.5, who has retired within 120 days of separation from employment and who receives a retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(b) A surviving family member receiving an allowance in place of an annuitant who has retired as provided in subdivision (a), or as the survivor of a deceased employee under Section 21541, 21546, 21547, or 21547.7, or similar provisions of any other state retirement system.

(c) A person who has retired within 120 days of separation from employment with a contracting agency as defined in Section 22768 or, if applicable, consistent with the provisions of subdivision (b) of Section 22893, and who receives a retirement allowance from the retirement system provided by that employer, or a surviving family member who receives the retirement allowance in place of the deceased.

(d) A judge who receives the benefits provided by subdivision (e) of Section 75522, or who retires pursuant to Section 75522.5 and is receiving a retirement allowance pursuant to that section.

(e) A person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) A Member of the Legislature or an elective officer of the state whose office is provided by the California Constitution, who has at least eight years of credited service, and who meets the following conditions:

(1) Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement, or is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2.

(2) Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.

(g) An exempt employee who meets all of the following conditions:

(1) Has at least 10 years of credited state service that includes at least 2 years of credited service while an exempt employee.

(2) Permanently separates from state service on or after January 1, 1988, and not more than 10 years before or 10 years after his or her minimum age for service retirement.

(3) Receives a retirement allowance under a state retirement system supported in whole or in part by state funds other than the University of California Retirement System.

(h) A person receiving a survivor allowance pursuant to Article 3 (commencing with Section 21570) of Chapter 14 of Part 3 provided that he or she was eligible to enroll in a health benefit plan on the date of the member's death, on whose account the survivor allowance is payable.

(i) (1) A family member of a deceased retired member of the State Teachers' Retirement Plan, if the deceased member meets the following conditions:

(A) Retired within 120 days of separation from employment.

(B) Retired before the member's school employer elected to contract for health benefit coverage under this part.

(C) Prior to his or her death, received a retirement allowance that did not provide for a survivor allowance to family members.

(2) The family member shall elect coverage as an annuitant within one calendar year from the date that the deceased member's school employer elected to contract for health benefit coverage under this part.

(j) A person who reinstates benefits pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 7522.57.

SEC. 3. Section 22814 of the Government Code is amended to read:

22814. (a) A judge who retires pursuant to Chapter 11 (commencing with Section 75000) of Title 8, but is not yet receiving a pension, may continue his or her coverage and the coverage of any family members for the duration of the leave of absence, upon his or her application and upon assuming payment of the contributions otherwise required of the employer.

(b) (1) A judge who leaves judicial office pursuant to subdivision (b) of Section 75521 and who has not attained 65 years of age may continue his or her coverage and the coverage of any family members upon assuming payment of the contributions otherwise required of the employer. The judge shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Human Resources.

(2) An election to continue coverage under this subdivision shall be made within 60 days of permanent separation. A retired judge who cancels that coverage may not reenroll.

(3) Upon attaining 65 years of age, a retired judge who has continuous and uninterrupted coverage pursuant to this subdivision shall be entitled to the applicable employer contribution.

(c) (1) A judge who retires pursuant to Section 75522.5, but is not yet receiving a retirement allowance, may continue his or her coverage and the coverage of any family members upon assuming payment of all contributions, including those otherwise required of the employer. The judge shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Human Resources.

(2) Upon commencement of his or her retirement allowance, the judge shall become an annuitant, as defined in subdivision (d) of Section 22760, and thereupon the judge may continue his or her health plan enrollment, enroll in a health benefit plan within 60 days of the commencement of his or her retirement allowance, or enroll during any future open enrollment period, without discrimination as to premium rates or benefit coverage.

SEC. 4. Section 75521 of the Government Code is amended to read:

75521. (a) A judge who leaves judicial office before accruing at least five years of service shall be paid the amount of his or her contributions to the system, and no other amount.

(b) (1) Except as provided in paragraph (2), a judge who leaves judicial office after accruing five or more years of service and who is not eligible to elect to retire under Section 75522 shall be paid the amount of his or her monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution, and no other amount.

(2) A judge who meets the requirements of Section 75522.5 and who is not otherwise eligible for retirement under Section 75522 may elect to leave his or her monetary credits on deposit with the system and retire under Section 75522.5.

(c) Judges who leave office as described in subdivision (b) are “retired judges” for purposes of a concurrent retirement with respect to the benefits provided under Section 20639 and assignment pursuant to Article 2 (commencing with Section 68540.7) of Chapter 2 and are eligible for benefits provided under Section 22814.

(d) After a judge has withdrawn his or her accumulated contributions or the amount of his or her monetary credits upon leaving judicial office, the service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges’ Retirement System II Fund the amount withdrawn, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees’ Retirement System under Section 20750 from the date of withdrawal to the date of payment.

SEC. 5. Section 75522.5 is added to the Government Code, to read:

75522.5. (a) A judge who is not eligible to retire under Section 75522 and who has either attained 60 years of age with a minimum of 5 years of service or accrued 20 or more years of service may elect to retire subject to the requirements of this section.

(b) (1) A judge who leaves judicial office after attaining 60 years of age and accruing 5 or more years of service may retire and leave his or her monetary credits determined pursuant to Section 75520 on deposit with the system, including additional amounts credited to the judge’s account pursuant to subdivision (b) of that section, and upon attaining 70 years of age receive a retirement allowance calculated as described in subdivision (d) of Section 75522.

(2) A judge who leaves judicial office after accruing 20 or more years of service may retire and leave his or her monetary credits determined pursuant to Section 75520 on deposit with the system, including additional amounts credited to the judge’s account pursuant to subdivision (b) of that section, and upon attaining 65 years of age receive a retirement allowance calculated as described in subdivision (d) of Section 75522.

(3) A judge who elects to retire under this section shall have his or her monetary credits determined pursuant to Section 75520 on deposit with the system and shall continue to accrue interest as described in subdivision (b) of Section 75520 through the last day of the month preceding distribution of either the first monthly allowance payment or distribution of the monetary credits pursuant to Section 75591.5.

(c) (1) An eligible judge who wishes to retire and receive a retirement allowance pursuant to this section shall make an election to do so within 30 days of separation. If an eligible judge fails or refuses to make an election within 30 days of separation, the judge shall receive the amount of his or her monetary credits pursuant to paragraph (1) of subdivision (b) of Section 75521.

(2) Under the rules adopted by the board, the time within which an election shall be made may be extended in cases of illness or other hardship, but once made, the election shall be final and irrevocable.

(d) The board may charge a judge who elects to retire pursuant to this section a fee to cover the administrative costs to the system, including costs associated with health care coverage that a judge may elect pursuant to subdivision (c) of Section 22814.

(e) A judge who elects to retire pursuant to this section shall not be considered to have received an enhancement to his or her retirement formula or retirement benefit for purposes of Section 7522.44.

SEC. 6. Section 75523 of the Government Code is amended to read:

75523. (a) The retirement allowance of retired judges who have elected to receive a monthly allowance under subdivision (d) of Section 75522 or who have retired for disability and are receiving an allowance under Section 75560.4 shall be adjusted effective in January of each year after a judge has been retired under this chapter for more than six months to reflect any increase in the cost of living occurring after January 1 of the immediately preceding fiscal year. The United States city average of the “Consumer Price Index for All Urban Consumers,” as published by the United States Bureau of Statistics, shall be used as the basis for determining changes in the cost of living.

(b) The retirement allowance of a retired judge who has elected to retire under Section 75522.5 shall be adjusted effective in January of each year after the judge has received a retirement allowance under this chapter for more than six months to reflect any increase in the cost of living occurring after January 1 of the immediately preceding fiscal year. The United States city average of the “Consumer Price Index for All Urban Consumers,” as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining changes in the cost of living.

(c) No adjustment shall be made unless the cost-of-living increase equals or exceeds 1 percent. The allowance shall not be increased more than 3 percent in a single year. Increases shall be compounded.

(d) The allowance shall not be decreased as a result of the cost-of-living adjustment.

(e) The board shall provide, by rule, any details needed for the implementation of this section.

SEC. 7. Section 75553 of the Government Code is amended to read:

75553. (a) If a member leaves judicial office after a nonmember has received a share of the member’s contributions or a share of the member’s monetary credits pursuant to Section 75551, the member’s retirement fund rights shall be determined pursuant to this section.

(b) If the member has redeposited the amount paid to the nonmember, with interest, pursuant to Section 75552, the payment to the nonmember shall be ignored and the member’s rights shall be determined as though the payment to the nonmember had not occurred; and subdivisions (c), (d), and (e) shall not apply.

(c) If the member leaves judicial office before accruing at least five years of service, he or she shall be paid the dollar amount of his or her contributions to the system minus the amount paid to the nonmember, and no other amount.

(d) If the member leaves office after accruing five or more years of service and either: (1) elects, pursuant to subdivision (e) of Section 75522, to receive the amount of his or her monetary credits; or (2) is entitled, pursuant to subdivision (b) or (c) of Section 75521 to receive only the amount of his or her monetary credits, the member shall be paid the amount of his or her monetary credits as provided in Section 75521 or subdivision (e) of Section 75522, reduced as provided in subdivision (d) of Section 75551.

(e) If the member elects to retire and receive a monthly allowance pursuant to either subdivision (d) of Section 75522 or Section 75522.5, the judge’s monthly allowance shall equal the monthly allowance that would have been payable pursuant to subdivision (d) of Section 75522 based on the judge’s service and salary, multiplied by a fraction equal to:

$$\frac{NMS}{S} + \frac{50\% (MS)}{S}$$

where:	_____ “S”	=	the member’s total service
	_____ “MS”	=	the member’s service while married to the nonmember prior to their separation
	_____ “NMS”	=	the member’s service while not married to the nonmember

(f) If, notwithstanding paragraph (1) of subdivision (a) of Section 75551, the judgment did not specify the number of years of service that accrued during the marriage or other necessary facts, the system may make its own determination in order to make the computation in subdivision (e).

SEC. 8. Section 75570 of the Government Code is amended to read:

75570. (a) In lieu of electing the unmodified allowance for his or her life alone, a judge who elects to retire and receive a monthly allowance under either subdivision (d) of Section 75522 or Section 75522.5 may, on or before the date of retirement, elect to have the actuarial equivalent of his or her retirement allowance as of the date of retirement applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in Section 75571 if the judge retires on or before December 31, 2017, or Section 75571.5 if the judge retires on or after January 1, 2018.

(b) A revocation or change of election shall be made by a writing filed with the system within 30 calendar days after the making of the first payment on account of any retirement allowance.

(c) If there is a spouse who would qualify for the survivor allowance under subdivision (b) or (c) of Section 75590, then the election, with respect to any optional settlement other than the optional settlement in subdivision (a) of Section 75571 or subdivision (b) of Section 75571.5, shall apply only to the portion of the retirement allowance that exceeds the amount of the allowance deemed payable to the surviving spouse.

SEC. 9. Section 75571.5 of the Government Code is amended to read:

75571.5. This section shall apply to any judge who retires on or after January 1, 2018.

(a) The unmodified allowance consists of the right to have the maximum retirement allowance paid to the judge for his or her life alone. A continuing allowance to the surviving spouse, other than the benefit provided in subdivision (b) or (c) of Section 75590, is not provided and there is not a return of unused accumulated contributions after the death of the judge.

(b) The Return of Remaining Contributions Option 1 consists of the right to have a retirement allowance paid to the judge for his or her life alone and if he or she dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her surviving spouse, or if none, to his or her estate.

(c) (1) The 100 Percent Beneficiary Option 2 consists of the right to have a retirement allowance paid to the judge until his or her death and thereafter to have the same monthly allowance paid to his or her surviving spouse for life; provided that with respect to a judge subject to subdivision (b) or (c) of Section 75590, the surviving spouse shall receive that portion of the judge’s monthly allowance that exceeds the amount of the allowance deemed payable pursuant to subdivision (b) or (c) of Section 75590.

(2) Upon the death of both the judge and the surviving spouse, any remaining balance of the judge’s accumulated contributions at retirement not used to fund the allowances paid to the judge and the surviving spouse pursuant to this subdivision will be paid in a lump sum to the estate of the deceased.

(d) (1) The 100 Percent Beneficiary Option 2 with Benefit Allowance Increase consists of the right to have a retirement allowance paid to the judge until his or her death and thereafter to have the same monthly allowance paid to his or her surviving spouse for life; provided that with respect to a judge subject to subdivision (b) or (c) of Section 75590, the surviving spouse shall receive that portion of the judge’s monthly allowance that exceeds the amount of the allowance deemed payable pursuant to subdivision (b) or (c) of Section 75590.

(2) If the judge’s spouse predeceases the judge and the judge elected this optional settlement, the judge’s allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or a legal separation filed, and the judgment dividing the community property between the judge and the surviving spouse awards the total interest in this system to the retired judge, or the marriage is annulled and confirmed by a court, the retired judge’s allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(e) (1) The 50 Percent Beneficiary Option 3 consists of the right to have a retirement allowance paid to the judge until his or her death and thereafter to have one-half of the monthly allowance paid to his or her surviving spouse for life; provided that with respect to a judge subject to subdivision (b) or (c) of Section 75590, the surviving spouse shall receive one-half of that portion of the judge’s monthly allowance that exceeds the amount of the allowance deemed payable pursuant to subdivision (b) or (c) of Section 75590.

(2) Upon the death of both the judge and the surviving spouse, any remaining balance of the judge’s accumulated contributions at retirement not used to fund the allowances paid to the judge and the surviving spouse pursuant to this subdivision will be paid in a lump sum to the estate of the deceased.

(f) (1) The 50 Percent Beneficiary Option 3 with Benefit Allowance Increase consists of the right to have a retirement allowance paid to the judge until his or her death and thereafter to have one-half of the monthly allowance paid to his or her surviving spouse for life; provided that with respect to a judge subject to subdivision (b) or (c) of Section 75590, the surviving spouse shall receive one-half of that portion of the judge’s monthly allowance that exceeds the amount of the allowance deemed payable pursuant to subdivision (b) or (c) of Section 75590.

(2) If the judge’s spouse predeceases the judge and the judge elected this optional settlement, the judge’s allowance shall be adjusted effective the first day of the month following the death of the spouse to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or a legal separation filed, and the judgment dividing the community property between the judge and the surviving spouse awards the total interest in this system to the retired judge, or the marriage is annulled and confirmed by a court, the retired judge’s allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(g) The Flexible Beneficiary Option 4 consists of the right to have a retirement allowance paid to a judge until his or her death, and thereafter to have a monthly allowance paid to his or her surviving spouse for life. Subject to Section 75570.5, the judge may select the monthly allowance payable to the surviving spouse from the options below:

(1) Specific Dollar Amount to a Surviving Spouse. The judge may specify that upon his or her death after retirement, a monthly allowance in an amount determined by the judge be paid to his or her surviving spouse for life.

(2) Specific Percentage to a Surviving Spouse. The judge may specify that upon his or her death after retirement, a monthly allowance in an amount equivalent to a specified percentage of the judge’s allowance be paid to his or her surviving spouse for life.

SEC. 10. Section 75590 of the Government Code is amended to read:

75590. (a) A surviving spouse of a judge who was eligible to retire pursuant to subdivision (a) of Section 75522 shall, within 90 days after the judge's death, elect to receive either of the following:

(1) A monthly retirement allowance equal to one-half of the judge's benefit factor computed as stated in subdivision (d) of Section 75522 as of the date of death, multiplied by the judge's final compensation multiplied by the number of years of service credit. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(2) The judge's monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution.

(b) A surviving spouse of a retired judge who elected to receive a monthly allowance under subdivision (d) of Section 75522 or who was retired for disability and receiving an allowance under Section 75560.4 shall receive a monthly allowance equal to 50 percent of the deceased judge's unmodified monthly retirement allowance. This allowance shall be adjusted for changes in the cost of living in the same manner as provided in Section 75523.

(c) (1) A surviving spouse of a retired judge who was receiving a monthly allowance under Section 75522.5 shall receive a monthly allowance equal to 50 percent of the deceased judge's unmodified monthly retirement allowance. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(2) A surviving spouse of a judge who elected to retire and receive a monthly allowance under Section 75522.5, but who died before receiving the retirement allowance, shall receive a monthly allowance equal to 50 percent of the unmodified retirement allowance the deceased judge would have received had he or she been living and receiving the retirement allowance, beginning the date the judge would have been eligible to receive benefits under Section 75522.5. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(d) (1) Notwithstanding any other provision of this article to the contrary, the surviving spouse of a judge who (A) died in office, (B) had attained the minimum age for service retirement applicable to the judge preceding his or her death, with a minimum of 20 years of service, and (C) was eligible to receive an allowance pursuant to Section 75522, shall receive an allowance that is equal to the amount that the judge would have received if the judge had been retired from service on the date of death and had elected the optional settlement specified in subdivision (b) of Section 75571 and in Section 75573.

(2) A surviving spouse receiving an allowance pursuant to this subdivision shall have no other claim to benefits with respect to the Judges' Retirement Fund or with respect to any other provision of the Judges' Retirement System II Law.

(3) The benefits provided by this subdivision are only payable to the surviving spouse of a judge who elects to come within this subdivision. That election may be made at any time while the judge is in office and, once made, the election is irrevocable.

(e) Except as provided in paragraph (2) of subdivision (c), a monthly allowance payable to a surviving spouse pursuant to this section is payable commencing upon the death of the judge and continuing until the death of the surviving spouse.

(f) The surviving spouse of a judge who dies after retirement may receive benefits payable to a surviving spouse under this section only if the spouse was married to the judge continuously from the date of retirement until the judge's death. This subdivision shall only apply to judges first appointed or elected to office on and after January 1, 2019.

SEC. 11. Section 75591.5 is added to the Government Code, to read:

75591.5. If a judge who retired pursuant to Section 75522.5 dies before receiving his or her monthly retirement allowance, and there is no monthly allowance payable to a surviving spouse, the judge's monetary credits on deposit, including interest accrued through the last day of the month preceding the date of distribution, shall be paid pursuant to the following order:

(a) To the beneficiary designated by the judge.

(b) To the estate of the deceased judge. The payment to the estate shall be paid to either the estate of the deceased judge or to the duly authorized representative or representatives of the estate when the system receives a court order appointing an executor, administrator, or personal representative.

(c) If the estate does not require probate and the deceased has a trust, the monetary credits on deposit, including interest accrued through the last day of the month preceding the date of distribution, may be paid, in the judgment of the board, to the successor trustee named in the trust.

(d) To the surviving next of kin of the deceased judge pursuant to the order of distribution specified in Section 21493.