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AB-3025 County employees' retirement: disallowed compensation: benefit adjustments. (2023-2024)

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Assembly Bill No. 3025

CHAPTER 427

An act to add Section 31541.2 to the Government Code, relating to county employees' retirement.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3025, Valencia. County employees' retirement: disallowed compensation: benefit adjustments.

(1) Existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA), generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to their employees. CERL generally vests management of each retirement system in a board of retirement. CERL authorizes a board of retirement to correct errors in the calculation of a retired member's monthly allowances or other benefits under CERL in certain circumstances, including if the member caused their final compensation to be improperly increased or otherwise overstated at the time of retirement, and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance or benefits under CERL, subject to certain limitations.

The Public Employees' Retirement Law (PERL) also authorizes its board of administration to adjust retirement payments due to errors or omissions, including for cases in which the retirement systems that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPRA and other specified laws and is thus impermissible.

This bill would require a retirement system established under CERL, upon determining that the compensation reported for a member is disallowed compensation, to require the employer, as defined, to discontinue reporting the disallowed compensation. The bill would require, for an active member, the retirement system to credit all employer contributions made on the disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation, and return any member contribution paid by, or on behalf of, that member, to the member directly or indirectly through the employer that reported the disallowed compensation, except in certain circumstances in which a system has already initiated a process, as defined, to recalculate compensation. The bill would require the system, for a retired member, survivor, or beneficiary whose final compensation was predicated upon the disallowed compensation, to credit the employer contributions made on the disallowed compensation against future contributions, to the benefit of the employer that reported the disallowed compensation, to return any member contributions paid by, or on behalf of, that member, to the member directly, and to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation. The bill would establish other conditions required to be satisfied with respect to a retired member, survivor, or beneficiary when final compensation was predicated upon disallowed compensation, including, among others, requiring a specified payment to be made by the employer that reported contributions on the disallowed compensation to the retired member, survivor, or beneficiary, as appropriate. The bill would authorize a retirement system that has initiated a process prior to January 1, 2024, to permanently adjust the benefit of the

affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation to use that system in lieu of specified provisions that the bill would enact. The bill would also require certain information regarding the relevant retired member, survivor, or beneficiary needed for purposes of these provisions to be kept confidential by the recipient.

This bill would authorize an employer to submit to a retirement system for review a compensation item proposed to be included in an agreement, as specified, on and after January 1, 2025, that is intended to form the basis of a pension benefit calculation and would require the system to provide guidance on the matter. The bill would prescribe a process in this regard. The bill would specify that it does not affect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system after July 30, 2020.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

SECTION 1. Section 31541.2 is added to the Government Code, to read:

31541.2. (a) For purposes of this section, the following definitions apply:

(1) "Agreement" means a memorandum of understanding or collective bargaining agreement between the employer and an exclusive representative pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1).

(2) "Alameda" means the Supreme Court case of Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032 and its holding.

(3) "Disallowed compensation" means nonpensionable compensation reported for a member of the retirement system that the system subsequently determines is not in compliance with PEPRA, the holding in Alameda, other provisions of this part, or the system's administrative regulations or policies through no fault of the member.

For purposes of this paragraph, "disallowed compensation" also includes nonpensionable compensation that was previously included in an agreement.

(4) "Employer" means the appropriate applicable county, county agency, or special district standing in relationship between the employee and the system.

(5) "Initiated a process" means a system has formally adopted a resolution or made an administrative determination for a correction process on identified disallowed compensation that has required or will require collecting any portion of an overpayment from, or refunding member contributions to, any affected active member, retired member, survivor, or beneficiary, or adjusting the retirement allowance of any affected retired member, survivor, or beneficiary due to the determination of disallowed compensation by the system, including a determination by the system that is consistent with PEPRA, the holding in Alameda, and other provisions of this part.

(6) "PEPRA" means the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1).

(7) "System" means a retirement association or system established pursuant to the County Employees Retirement Law of 1937 (commencing with Section 31450).

(b) If the system determines that the compensation reported for a member is disallowed compensation, it shall require the employer to discontinue reporting the disallowed compensation.

(1) (A) In the case of an active member, the system shall credit all employer contributions made on the disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation, and shall return any member contribution paid by, or on behalf of, that member, to the member directly or indirectly through the employer that reported the disallowed compensation, except as provided by subparagraph (B).

(B) A system that has initiated a process prior to January 1, 2024, to recalculate an active member's compensation earnable pursuant to Section 31461 to exclude disallowed compensation and return contributions, either directly to the member or

indirectly through the employer, may continue to use that process to ensure compliance with PEPRA, and that is consistent with, and pursuant to, the holding in Alameda.

(2) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation, the system shall credit the employer contributions made on the disallowed compensation against future contributions, to the benefit of the employer that reported the disallowed compensation, shall return any member contributions paid by, or on behalf of, that member, to the member directly, and the system shall permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

(3) (A) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation as described in paragraph (2), the repayment and notice requirements described in this paragraph and paragraph (4) shall apply only if all of the following conditions are met:

(i) The employer reported the compensation to the system and made contributions on that compensation while the member was actively employed.

(ii) The system determined after the date of retirement that the compensation was disallowed.

(iii) The member was not aware that the compensation was disallowed at the time the employer reported it.

(B) If the disallowed compensation meets the conditions of subparagraph (A), the employer that reported contributions on it shall do all of the following:

(i) Pay to the system, as a direct payment, or through recognition in the actuarial accrued liability, as determined by the system, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the disallowed compensation.

(ii) Pay to the affected retired member, survivor, or beneficiary, as appropriate, an amount that is 20 percent of the amount calculated by the system representing the actuarial equivalent present value of the difference between the monthly allowance that was predicated on the disallowed compensation and the adjusted monthly allowance calculated pursuant to paragraph (2) for the duration the system projects to pay that allowance to the retired member, survivor, or beneficiary. The employer shall begin payment within six months of notice from the system as prescribed in paragraph (4) and may have up to four years to complete the payment. The system may charge the employer the actual costs of actuarial services provided under this paragraph.

(4) The system shall provide a written notice to the employer that reported contributions on the disallowed compensation and to the affected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

(A) The overpayment amount that the employer shall pay to the system as described in subparagraph (B) of paragraph (3).

(B) The actuarial equivalent present value that the employer owes to the retired member, survivor, or beneficiary as described in clause (ii) of subparagraph (B) of paragraph (3), if applicable.

(C) Written disclosure of the employer's obligations to the retired member, survivor, or beneficiary pursuant to this section.

(5) In lieu of the process described in paragraphs (3) and (4), a system that has initiated a process prior to January 1, 2024, to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation pursuant to paragraph (2) may continue to use that process provided that it is consistent with PEPRA, and with the holding in Alameda.

(6) Upon the employer's request, the system shall provide the employer with contact information data in its possession of a relevant retired member, survivor, or beneficiary in order for the employer or agency to fulfill their obligations to that retired member, survivor, or beneficiary pursuant to this section. The recipient of this contact information data shall keep it confidential, shall use such contact data only to the extent necessary to carry out its duties under this section, and shall not be disclosable under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

(c) (1) An employer or authorized employee representative may submit to the system for review an additional compensation item that a party to a proposed agreement requests be included, contained, adopted, or entered into that agreement, on and after January 1, 2025, that is intended to form the basis of a pension benefit calculation, in order for the system to review consistency of the proposal with PEPRA, the holding in Alameda, Section 31461, other provisions in the part, and the system's administrative regulations or policies.

(2) A submission to the system for review under paragraph (1) shall include all supporting documents or requirements the system deems necessary to complete its review.

(3) The system shall provide guidance regarding the submission within 90 days of the receipt of all information required to make a review.

(d) The system may periodically publish a notice of the proposed compensation language submitted to the system pursuant to this section for review and the guidance it provided.

(e) This section does not alter or abrogate an employer's responsibility to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit, but whose benefit was the product of collective bargaining.

(f) This section does not affect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system after July 30, 2020.

(g) The board of retirement or board of supervisors, as authorized pursuant to this chapter, may enter into any contracts for administrative purposes or as may be necessary and appropriate to carry out the provisions of this section.

(h) (1) It is the intent of the Legislature in enacting this section to fully comply with the provisions of the Internal Revenue Code, the Internal Revenue Service Employee Plans Compliance Resolution System (EPCRS), and any successor to such Internal Revenue Service program, that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems.

(2) Systems that have initiated a process under this section that was or is intended to comply with the Internal Revenue Code and EPCRS requirements may revise the process as necessary to the extent required to comply with the Internal Revenue Code and EPCRS in order to maintain the tax exempt status of the system.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 31541.2 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to appropriately maintain the current confidentiality of personal contact information held by a county retirement system regarding retired members of the system, and their survivors and beneficiaries, it is necessary to limit access to this information if it is provided to other public entities for purposes of Section 31541.2 of the Government Code.